

COLORADO LIVESTOCK LAW MANUAL

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P.O. Box 7996
Breckenridge, CO 80424

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INTRODUCTION

This manual is intended to be a guide for persons involved in the livestock industry. The purpose of this publication is to educate members of the public, specifically, those engaged in the sale, transportation, and production of livestock. Additionally, the compilation of agencies and forms will assist those who recognize their legal problems and need to identify the places or persons they can turn to for more information or assistance. Care should be taken by anyone reading this manual in the application of the analysis and description of law to their specific problems. The general solutions that seem applicable to all apparently similar individual issues are deceptive and are not impliedly or expressly offered here. Slight changes in fact situations may require a material variance in the applicable procedures outline in this text.

To insure that the reader is not misled or feel misadvised, any particular problem should be referred to an attorney, or the appropriate governmental agent, for particular application of the law to the facts of each situation. Do not attempt to solve individual problems upon the basis of the information contained in this text unless the answer is self-evident from the law itself.

The author gratefully acknowledges the continuous assistance of Colorado Brand Commissioner Gary Shoun, Executive Director of the Department of Natural Resources Ken Salazar for permission to reprint the standard plans for water tanks, the Colorado Cattleman's Association for their list of affiliate organizations, and Summit County Sheriff Delbert Ewoldt for his friendship and help to me on this project, as well as many others.

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CHAPTER ONE: BRAND INSPECTION

A. State Board

The Colorado board of stock inspection commissioners is appointed by the Governor¹. Five commissioners, representing the livestock industry, are designated from all regions of the state of Colorado, but no two may be from the same place. To be eligible to become a stock inspection commissioner a person must be actively engaged in cattle or sheep production. One of the five commissioners is required to from among feedlot operators. Serving four year terms, the stock inspection commissioners may be removed for cause by the Governor. Commissioners receive no compensation for their work except actual and necessary traveling expenses. Unless an emergency meeting is called by the Governor, the commissioners meet monthly.

The board itself has the power to make rules and regulation concerning the inspection of brands and livestock in the state and is the supervising body over the division of brand inspection in the state department of agriculture. The board is controlled by statute as defined by the Colorado legislature².

The board appoints a brand commissioner who acts under their supervision and is subject to the state personnel system, receiving compensation from the brand inspection fund set aside from revenues created by the stock inspection process. The brand commissioner is charged with the statutory duties, which he accomplishes with the help of brand inspectors under his control, to inspect the brands and earmarks of livestock transported into this state, to furnish the owners with a certificate when the inspection is completed and to make a report to the board at least once every thirty days³. The board must also receive a similar report concerning the inspection of all hides transported within the state and which have been inspected upon payment of a fee⁴.

The board may appoint as many brand inspectors as necessary. Once appointed, a brand inspector is classified by law as a peace officer and has powers of arrest, and may enforce all of the laws of the state of Colorado, as well as carry arms if so authorized by the board⁵. Concurrent liability is attached to the position as well: any inspector who knowingly makes a false certificate commits a misdemeanor⁶.

The board has the power to collect a per head inspection tax, and a service charge for brand inspection⁷. Brand inspectors are required to collect these taxes and charges, although anyone who has a lease or grazing permit for five years and who in the regular course of business moves cattle, horses, or mules from a central headquarters to a feeding ground may receive a fee waiver permit for that travel upon proper application to the board⁸.

A \$1.00 fee is also required for cattle and calves moved or offered for sale, to fund the Colorado Beef Board, except those moved less than seventy-five miles within the state for grazing; calves, under weaning age, still with mother cows; cattle in feedlots which are not changing ownership; or cattle used for in-state rodeo competition, if first inspected at ranch headquarters⁹. However, owners are required to pay a mileage expense for unbranded calves with ownership-proven mothers. Other fees include a 35 cent per hide inspection fee for all hides transported within, or out of the state, which inspection certificate must be carried with all shipments and displayed upon demand¹⁰. A mileage fee for travel incurred while performing the duties assigned to the brand inspectors may also be collected at twenty cents per mile¹¹.

B. Recorded Brands

The basic premise of Colorado brand law, supported by both criminal and civil penalties, is that it is unlawful to mark cattle or horses with an owner's brand without the owner's permission, or to use any brand not recorded with the state board¹². A brand can be put on either side of livestock. The owner must use the brand if s/he chooses to drive cattle or sheep into or through any county in the state¹³. Earmarks are also acceptable in addition to brands but cannot exceed one half of the ear or result in leaving both ears in a point. Branded livestock must be cut out or otherwise separated from other animals bearing different marks¹⁴.

The strength of a brand as a distinct mark begins with the requirement that the brand be recorded by application with the state board. To adopt a brand, a person must forward a copy of the mark to the state board for recording with a \$25 fee. Upon recording, the owner will receive a certified copy of the record signed by the brand commissioner or secretary of the board. For the cost of \$1.00 per request, copies can be acquired. A \$90 fee, for a five year period, or \$18 per year for the remainder of the period, is then required to maintain the recorded brand¹⁵. Subsequent recording with the county clerk and recorder is lawful only if compliance with the state board application process is accomplished first¹⁶. Once recorded, however, use can be discontinued if necessary, by board action.

Brands, once recorded, are considered personal property, with all the rights of real property, and can be sold¹⁷. A certified copy of a brand record creates a legal presumption in state courts, of ownership by the brand owner of all animals which carry his or her mark¹⁸. Certified copies of out-of-state brands are also accepted as evidence in Colorado as if recorded here¹⁹.

The state board is required to publish a book listing all recorded brands with the owner's names and addresses²⁰. The board must also make a monthly publication of all brands and transfers which are exhibited in county clerk and recorders offices and licensed livestock markets and kept by all brand inspectors.

C. Inspection

Brand inspectors are required to ride the ranges and pastures of the state, to protect livestock from depredation and theft, and perform the inspection duties related to sale or transportation of livestock inter or intrastate as set forth with particularity by the statute²¹. Brand inspectors may also, within their own power or through the assistance of any sheriff or other peace officer, stop and inspect any vehicle containing livestock or carcasses and demand a bill-of-sale, permit or certificate, as described more fully below. If a person cannot comply the brand inspector or other peace office may make an arrest and take possession of the livestock or carcasses²².

Unweaned calves must be inspected, and a mileage and inspection fee paid, while still with the ownership-proven mother cow. Unbranded calves found at any public livestock market or shipping point are treated as if estrays if presented without their ownership-proven mothers²³. Cattle, if moved from pasture must be inspected for brands at the point of origin, before being placed in any feedlot. Animals with questionable brands are handled as estrays. If multiple owners claim the same animal, the state board may provide for arbitration of the dispute²⁴.

Upon arrival at market, cattle are again subject to inspection before being taken to scales²⁵. Brand inspectors are also required to inspect all cattle entering a custom feedlot if not already accompanied by a brand certificate or valid documentation of purchase. Cattle entering

the state for grazing, if owned by a nonresident, must receive a brand inspection also before the cattle can be mixed or turned loose. Any such cattle which carry more than two brands must be marked with one consistent brand, an ear tag, or as otherwise allowed by the state board. Evidence of the brand relied on must be shown on the certificate²⁶.

Upon petition of 51% of the sheep growers in a county, a Board of County Commissioners must request the state board to designate the applicable county as a sheep inspection district, at which time a brand inspector shall be authorized to inspect sheep moving from range to range or through the counties so affected. The inspector must be notified by seven days prior to any movement and inspect the livestock in a designated corral convenient to the route²⁷.

All cattle, horses, or mules transported, or driven, into or within this state must be inspected, with the owner, or agent, giving sufficient notice to the brand inspector to appear. Such livestock transported by rail should be inspected at the stockyard; if transported by truck, inspected at the point of origin or at a convenient unloading point; but, in either event, the inspection must be at least three miles from the state line. This rule, however, is riddled with exceptions²⁸.

The exceptions to the requirement of inspection before shipment include the following:

1. Unbranded registered purebred horses going from a registered racetrack to another registered race track if accompanied by a bill-of-lading;
2. Cattle, horses, or mules driven or transported by truck to a licensed public livestock market if accompanied by a shipper's certificate of agreement;

3. Cattle transported by truck to a licensed packing house if accompanied by a shipper's certificate of agreement;
4. Cattle, horses, or mules driven or transported between established ranges, pastures, and properties under the control of the owner if the final destination is not more than seventy-five driving miles from a point of origin and if accompanied by a statement showing point of origin and destination;
5. Any registered purebred cattle transported to the National Western Stock Show, or Colorado State Fair, if accompanied by registration papers;
6. Any cattle, horse, or mules used in rodeo competition within Colorado which are branded, if first inspected at the beginning of the rodeo season.

Rodeo horses (other than contract-owned bucking horses), competition and registered breed show-horses, race horses, special drill or pleasure horses, farm or ranch horses, and work or saddle horses, may also receive a permanent transportation permit²⁹ and avoid regular inspection requirements.

If applicable, however, failure to receive brand inspection may result in criminal prosecution³⁰. Likewise, persons are prohibited from shipping animals not described in a certificate of inspection, or removing those inspected and replacing the livestock with different animals, without the inspector's knowledge³¹. Animals bearing marks or brands, other than those of the lawful owner, may be taken into possession by the brand inspector and treated as estrays, unless a bill-of-sale or some other proof of ownership is shown³².

Cattle and horses purchased for slaughter must also be inspected for brands and marks at the point of origin. If no inspection has been accomplished, the packer must hold these animals separately and becomes liable for the inspection costs. Packers, in Colorado, must receive this brand inspection certificate, a current account of sale showing brands issued by a federal packers and stockyard department registered or state licensed market seller. If a packer purchases from a state which does not maintain brand inspection standards, a bill-of-sale must accompany the livestock³³.

Even livestock carcasses and hides are subject to inspection³⁴. Failure to produce a bill-of-sale for livestock, or livestock carcasses, will result in the brand inspector refusing to issues a certificate and in the taking of the livestock or carcasses into the possession of the inspector for eventual sale³⁵, and in some instances, may result in the arrest of the person in, what is presumed to be an illegal, possession³⁶. Hides must be inspected and tagged prior to transportation with the certification carried with all shipments and displayed upon demand to any inspector or other peace officer.

Also related to brand inspection is the concurrent responsibility for any person who carries sheep, swine, goats, horses, mules, domestic fowl or their carcasses, to obtain, and present upon demand by a brand inspector or other peace officer, a written permission from the lawful owner to accomplish the movement³⁷.

CHAPTER TWO: SALE OF LIVESTOCK

The passing of title to livestock in Colorado must be accompanied by a brand inspection certificate. If, however, the seller conspicuously notes that payment has not yet been received title will not pass until satisfaction of the debt.³⁸

A statutory lien also exists on the offspring of any bull, ram, or boar, for one year following birth until such time as payment is made for stud service provided. However, a purchaser of the offspring affected by such a lien is only responsible for payment if notice is provided of the lien at or prior to purchase.³⁹ Neither will title pass without full compliance with the requirement to complete a fully executed, written, bill-of-sale⁴⁰, a requirement which supersedes even the provisions of the Uniform Commercial Code, in connection with the sale of any livestock.

The bill-of-sale for livestock must state that the legal owner, or authorized agent, transfers title to the buyer and guarantees to defend title against all lawful claims. The document must also describe the animal to be sold with some detail:

- a. For Horses and Mules: age, color, sex, special markings, and iron brands;
- b. For Registered Cattle: registered number tattooed in the ear, name, sex, breed, brand and marks;
- c. For Range Cattle: sex, age, breed, brands, earmarks, wattle or dewlap, horned or dehorned;
- d. For Neat Cattle with Colorado Brands: brands giving location of all Colorado recorded brands;

e. For Sheep: number, breed, class, ewes, rams, wethers, lambs, paint brands, firebrands, and earmarks.

The bill-of-sale must, finally, be signed and be witnessed by a legal resident of the county in which the livestock resided at the time of transfer, and show a post office address for each party to the transaction. The document must also be dated the day of the transaction.

Once executed, a purchaser must show his bill-of-sale upon any reasonable request, or state the reason why no such display will occur. Selling, or even offering, livestock for sale without a bill-of-sale, or equivalent power of attorney⁴¹, is considered a theft in Colorado⁴². Actual theft of livestock, or knowingly killing, selling, driving, leading, transporting, riding away with, or in any other manner depriving the lawful owner of immediate possession of any livestock, live or slaughtered, or knowingly purchasing livestock from someone who has no lawful right to sell is a felony⁴³.

Agreements for a partial interest in livestock, called "partido contracts," are not valid unless recorded with the county clerk and recorder where the livestock is kept⁴⁴. Partido contracts need not be in any set format as long as the agreement shows an interest held by a person to whom care of livestock is entrusted⁴⁵.

Cattle and horses purchased for slaughter must be brand inspected and a certificate issued. Without proper inspection, the packer must hold the livestock separately. Calves under weaning age may not be sold, offered for sale, slaughtered, or moved until marked with the brand of the mother cow, or inspected by an authorized inspector prior to separation from their ownership=proven mothers. Persons feeding cattle for slaughter or operating a dairy may apply to the state board for a permit to sell calves less than ten days old which are born at either the

dairy or feedlot. Such calves shall have an ear tag with a permit number showing and if sold shall be accompanied by a bill of sale with the owner's permit number noted and signed by the feedlot or dairy owner. Without proper inspection the packer must hold the livestock separately⁴⁶.

In Colorado operators of public livestock markets are not given the authority to determine ownership of livestock and may lose their license from the state board for selling livestock with unknown ownership⁴⁷. However, there is an implied warranty of title associated with livestock sold in the course of a licensed auction business, which may also result in the proprietor becoming liable for the purchase price and attorney fees to the lawful owner⁴⁸.

Good advice, generally, when selling livestock is to follow these rules:

1. Do not misstate original purchase price or other offers;
2. Do not misstate the quality of the animal;
3. Allow a buyer reasonable time to rescind the sale if a misrepresentation of fact is alleged;
4. Put specific statements relied on during the sale in writing⁴⁹.

CHAPTER THREE: OTHER PROVISIONS

A. Livestock Associations

Three or more state residents engaged in livestock production may form a cooperative association under Colorado law⁵⁰ by filing articles of incorporation and bylaws⁵¹ with the secretary of state. Once formed, the association must make an annual report to the Commissioner of Agriculture.

Certain rules apply to these, and similar cooperatives⁵². Earnings distributed and services provided to members cannot be exceeded by that rendered to nonmembers; stock dividends and equity interest is limited by the bylaws; only members may vote; the cooperative must be not-for-profit, but, rather, designed to meet the needs of the membership as defined by the bylaws as well as how transfer, if any, of membership is accomplished; membership for persons from out of the state of Colorado must be described in the bylaws, as well as whether membership in other associations by a member is allowed.

Once formed, a livestock association has an array of powers: to have succession of its corporate name; to sue and be sued; to make and use a seal; to hold real and personal property; to regulate stockholders' or members' stock and equity; to appoint officers and agents; and to eliminate or limit personal liability of a director, member or stockholder. Persons interested in creating a livestock association should contact a lawyer.

B. Equine Activities

Colorado has declared legislatively that equine, or llama, activities are exempt from civil liability⁵³. Summarily, the statute states that anyone who engages in an equine or llama activity⁵⁴, excluding spectators in some instances, and the horse racing industry, shall not have a cause of action against the provider for injury, loss, damage or death caused by the inherent risk of the activity, meaning those dangers or conditions which are an integral part of equine or llama activities including the following:

1. The propensity of the animal;
2. The unpredictability of the animal;
3. Certain ground hazards;
4. Collisions; and,
5. Negligence by a participant.

The statute, however, does not limit liability for persons who provide equipment or tack which is faulty; fail to determine the ability level of the participant; owns land containing a latent dangerous condition; demonstrates a willful and wanton disregard for safety; or intentionally injures a participant. Persons engaged in equestrian sports professionally must post on their premises, and include in their written contracts the following warning:

WARNING

Under Colorado Law, an equine professional is not liable for an injury to or death of a participant in equine activities resulting from the inherent risks of equine activities pursuant to section 13-21-119, Colorado Revised Statutes.

C. Mavericks and Estrays

Any unregistered cattle and horses found running at large without a mother, a mark or brand are "mavericks" as defined by Colorado law. Such animals may be sold to the highest bidder for cash by the state board of stock inspection commissioners. This term does not apply to domestic or blooded stock that stray onto the open range. The marking, branding or converting to use of a maverick without proper authorization from the board is a misdemeanor⁵⁵.

An estray is any bovine animal, horse, mule, or ass running at large or outside the limits of usual range or pasture⁵⁶. Unbranded calves found at any public livestock market or shipping point are also treated as estrays⁵⁷, as are animals bearing marks or brands other than those of the lawful owner upon brand inspection⁵⁸. Cattle, if moved from pasture, with questionable brands are also handled as estrays⁵⁹.

Estrays may be taken by persons who have right to the land on which the animal is found by ownership, lease, or other type of control. Estrays may be taken on public land as well pursuant to the provisions of the Wild Free-Roaming Horses and Burros Act⁶⁰, although the particular method for obtaining title is controlled by state law⁶¹.

Within five days of seizure, the person must make out a written description of the animal and forward it to the state board or nearest brand inspector. Failure to give notice while keeping custody of an estray is a felony⁶². It is then the duty of the state board to examine their records and notify the actual owner of the fact that the animal has been seized. The owner then must pay reasonable charges for whatever cost of care was incurred⁶³.

If no owner is found, then the Brand Commissioner shall prepare a notice showing a facsimile of the brand or other characteristics of the animal and post the notice with all county clerks, licensed livestock markets, and in other conspicuous places in the vicinity, stating when and where the estray was taken into custody. Notice must also be placed in a local county newspaper for one issue. If the animal is not claimed it may be sold within ten days of the notice date by the state board, which shall issue a bill-of-sale to the buyer. The proceeds of the sale pay the expenses of the process. The balance, if any, goes into an estray fund, which, if the owner, within three years, comes forward, can receive, minus a ten dollar fee.

Perhaps, because of this apparent assumption that the owner will eventually come forward, the legislature has chosen to make concealing, or marking found livestock a felony. In fact even carrying an estray beyond the county of discovery, or permitting such transportation to be accomplished, is also a felony, as is failing to promptly notify the state board⁶⁴.

Although the law differentiates between estrays and abandoned animals, the state board retains jurisdiction over the animals in either case, and gives similar notice to the owners, with eventual right to sell if expenses for care are not paid. As with estrays also, the good-faith purchaser of an abandoned or neglected animal will also receive a bill-of-sale from the state board with proceeds to the owner after expenses are deducted⁶⁵.

D. Fences and Livestock Running at Large

A lawful fence is defined as one which is well constructed, comprised of at least three barbed wire strands, with posts no more than twenty feet apart⁶⁶. Colorado law requires the state erect fences along highways⁶⁷; divides the obligation for fences between adjacent landowners⁶⁸; and provides for a right to recover if livestock trespass across properly fenced

property⁶⁹. Even if unfenced it is the duty of any owner, or person left in charge of a drove of livestock, to prevent mixing cattle, horses, or sheep with those belonging to others lawfully on the land, or from allowing livestock being driven to trespass on land being used for grazing, hay production or crops, or from damaging ditches⁷⁰. In addition, it is unlawful to break a fence or leave open any gate or remove a fence wrongly constructed unless notice is given for one year prior in order to gather crops⁷¹.

Except when driving to market or pasture, or riding, driving or drawing an animal, or if allowed by land grant or treaty, it is unlawful to allow horses or mules to run-at-large within ten miles of any city over 100,000 population or within five miles of a city of between five and thirty thousand, or one mile of any other city⁷². If this prohibition is violated any peace officer, upon complaint, can take the animal into custody. Similarly, no more than ten sheep may be kept at-large within two miles of any city, town, or village, unless being driven to market or kept on a ranch or farm⁷³. Alike, is the prohibition that hogs not be allowed to run at large at all⁷⁴.

It is unlawful to allow any bull which is not registered, or capable of registration as a purebred animal, if one year old, or ram, over two months old, to run-at-large. On the other hand, it is unlawful to leave twenty-five or more cows on the public range without at least one registered purebred bull⁷⁵. A person may lawfully castrate any inferior animal found running-at-large, although a civil judgment may be found for three times the value of any animal castrated by another which was not found at large⁷⁶.

E. Water Tanks

All reservoirs created by dams, since 1941, on watercourses, which are normally left dry by order of the state engineer, not to exceed ten acre feet, or a vertical height of fifteen feet, capable of use for stock watering purposes, are regulated by the state. However, dams lower than five feet, which impounds less than two acre feet, are excluded from the permit process⁷⁷.

In order to build such a stock tank, plans must be submitted, accompanied by a fee, to the state engineer who is required to note his decision on the plans and return to sender. The state engineer may inspect the site if he chooses but must act within fifteen days of receipt. Construction is prohibited until approval is received, which is required of the state engineer as long as "reasonable compliance" is accomplished with the standards set by the state, which are kept on file by the engineer for public review⁷⁸.

F. Public Domain Range⁷⁹

The general rule in Colorado is that the last annual grazing season determines whether sheep or cattle will occupy the range in the forthcoming season. This police power of the state over the public domain has been recognized since at least 1932⁸⁰. Range, which by necessity must be used for both types of livestock, is apportioned by the state District Court, based on principals of equity and previous use. If the owners of competing livestock are unknown a user may petition the court in the name of the land itself and publish the suit rather than serve persons individually. Before the court makes any final determination, however, a panel of referees is appointed to hear the case and render a report for the court to make its final decree. Once the decree becomes final, violation is a misdemeanor⁸¹. A supplemental petition will allow reapportionment as necessary.

Colorado has stated that it is the policy of the state to preserve the grasses and vegetation on the public domain and protect the wild game in their natural ranges, especially their winter ranges, as well as to prevent overstocking which might affect erosion and water supply⁸². A person who claims to be affected by violation of these policies may also petition the courts for a determination of whether the range can support the current livestock population for two years from the suit.

Despite these principals of private ownership, the law sets forth clearly that nothing in the statute is to be construed to prohibit free transit over the public domain or any exclusive right to use or occupancy of the range. Of course the law in the state of Colorado must also be considered by the priority set through federal law, especially the Taylor Grazing Act, and may not be controlling in any case in which public range is managed by the Bureau of Land Management or the United State Forest Service.

G. Prevention of Disease⁸³

The prevention and eradication of diseases is managed by the state veterinarian who is appointed by the Director of the state Department of Agriculture. It is unlawful to ship or drive into Colorado any livestock without an official health certificate unless the livestock is going to slaughter. To be satisfactory, the certificate must be signed by a licensed, accredited veterinarian from the state of origin, one copy of which must be left with the state veterinarian within thirty days if issuance, another copy to be left with the livestock.

The State Agricultural Commissioner may, when necessary, quarantine livestock, or, when the state veterinarian reports an outbreak of a contagious or infectious disease among domestic animals which may endanger livestock, and if the governor approves, the commissioner may

condemn or destroy all animals so infected or exposed, including livestock, barns, sheds, corrals, pens, or other property.

Compensation is provided for by a board of appraisers. If the state veterinarian cannot positively determine the exact nature of a disease among quarantined livestock, he may order one of the animals slaughtered for a post-mortem examination. In this instance the owner receives no compensation for the single lost animal.

The state agricultural commissioner may also make regulations affecting the movement of livestock in order to prevent the introduction or spread of contagious or infectious diseases. Such a program is supported by fees charged on cattle, horses, and sheep entering Colorado from any quarantined or infected territory. The governor may prohibit importation of any such livestock, if not accompanied by a certificate of health from the state veterinarian or sanitary inspectors⁸⁴.

Colorado also provides statutory authority for tuberculosis and brucellosis eradication. Violation of these procedures, or programs for testing and vaccination, are misdemeanors⁸⁵.

H. Feed Liens⁸⁶

By Colorado law a rancher or any other keeper of livestock, called an "agistor," may receive a lien against the animals, superior to all other claims, for the cost of boarding and providing care⁸⁷. Cases have limited rights under the statute and demand strict compliance with its terms⁸⁸. The superiority of the lien is set forth specifically by the statute and will prevail over even recorded UCC liens and other secured interests. Because this section is a derogation of the common law the entire statute must be strictly construed⁸⁹. The statute allows the rendering of judgment by the court without personal service against the owner, or other persons

who have an interest in the livestock, but has been found legally sufficient⁹⁰. However, if the agistor sells the livestock without complying with the terms of the statute the owner is entitled to recover damages and attorney's fees⁹¹.

The statute sets out the procedures that must be followed:

1. All contracts, or copies, made by the owner of livestock, for the herding or caring of the animals for pay, must be filed with the clerk and recorder in the county where the contract was made;
2. If payment is not made within thirty days of the due date, the agistor may file a foreclosure action in the county or district court⁹² where the contract was made, or where the owner resided at the time of contract or foreclosure, or in the county where the work was performed. This right to foreclose expires if the agistor does not file an action within sixty days, unless agreed to for a longer period by the parties;
3. Show the following to the court in the foreclosure complaint:
 - a. The agistor (lienholder) performed a specified service;
 - b. The service was provided at the request of the owner (defendant);
 - c. A description of the property;
 - d. That the defendant has failed to pay within thirty days of the last date due;
 - e. That notice of demand for payment has been given to the defendant personally or by registered mail at the owner's last known address;
4. Upon filing of the complaint the clerk of the court issues a summons as in other cases, for the owner to answer within three to five days. The summons shall state: "If you fail to file with the court, at or before the time for appearance specified in the

summons, an answer to the complaint, denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the lien charges described in the complaint, for costs as provided in this article, and for any other relief to which the plaintiff is entitled;"

5. The agistor, if successful before the court, upon giving ten days notice, by publication, of the time and place of sale, describing the property to be sold, and giving notice to the owner personally, or by mail, may proceed at public auction. Upon auction, the agistor must file a bill-of-sale with the court.

The provisions of the statute do not apply to abandoned property, which applies whenever the owner fails to contact the agistor for at least thirty days, and the agistor, in good faith, is without knowledge that the owner does not intend to abandon the property⁹³. For abandoned property, the agistor must attempt to notify the owner by certified mail, and, if unclaimed, publish in a newspaper where the livestock is located, then wait a year for any response, and then may sell or otherwise dispose of the animals.

ADDENDUM

A. ENDNOTES

1. 35-41-101 CRS

2. For the purposes of the board and the inspectors who work for the Brand Commissioner the following terms apply: 1.

Feedlot: a place for cattle fattening; 2. A place for cattle fattening; Hide: skin from livestock; 3. skin from livestock; Licensed slaughterhouse, butcher, or packing establishment: a place licensed for cattle, A place licensed for cattle, horse, burros, or mules to be processed; 4. Livestock: cattle, calves, horses, mules burros or sheep; 5. Public Livestock Market: a place licensed for the sale of livestock and where brand inspections occur.

3. 35-53-102 CRS

4. 35-53-115(2) CRS

5. 18-1-901(2)(1)(IV) CRS and 35-53-128 CRS

6. 35-53-103 CRS Knowingly making a false brand inspection certificate by an inspector is a misdemeanor punishable by a fine of \$1000 and up to one year in jail.

7. 35-41-104 CRS states that the board may collect a per head inspection tax of no more than 40 cents per head with exceptions that apply to livestock taken to slaughter. The board may also collect a service charge of from \$1.00 to \$7.50 for each brand inspection which does not apply to livestock consigned to market or slaughterhouse.

8. 35-53-101 CRS allows for the waiver upon payment of a \$25 fee.

9. 35-41-104(5) CRS

10. 35-53-115 CRS

11. 35-41-104(9) CRS

12. 35-43-101, 105 and 116, 117 CRS. It is a misdemeanor to use an unrecorded brand or the recorded brand of another, punishable by a fine of \$50 to \$500 and or thirty days to one year in jail. Willfully or knowingly branding or causing to be branded livestock of another with a brand not recorded to the owner, or effacing, defacing, or obliterating a brand or mark is a class six felony.

Additionally, this act is considered the equivalent of theft and may result in a liability to the lawful owner for three times the value of the livestock so marked illegally. See also 35-43-118 CRS prohibiting the marking or branding of maverick livestock, discussed further in text below.

13. 35-43-102 CRS Failure to comply is a misdemeanor punishable by a fine of from \$50 to \$300.

14. 35-43-119 CRS. Failure to comply is a misdemeanor punishable by a fine of \$500 per offense and may be considered evidence of theft.

15. 35-43-115 CRS The fee is \$18 a year or \$90 per five year assessment period.

16. 35-43-104 to 107 CRS.

17. 35-43-109 CRS. Record of sale of a brand requires payment of a \$25 fee. The affect of recordation is discussed in Weaver v. First National Bank, 138 Colo. 83, 330 P.2d 142 (1958).

18. 35-43-110 CRS. See also, Thomas v. Seloom, 80 Colo. 189, 250 P.2d 381 (1926); Weaver, supra; Cahill v. People, 111 Colo. 29, 137 P.2d 673, 148 A.L.R. 531 (1943); Howry v. Sigel-Campion Livestock Commission, 80 Colo. 143, 249 P.658 (1926); Debord v. Johnson, 11 Colo. App. 402, 53 P. 255 (1898).

19. 35-43-101 CRS

20. 35-43-108 CRS

21. 35-41-104 CRS, 35-53-102 and 128 CRS

22. 35-53-117 to 120 CRS

23. 35-43-129 CRS. Failure to have calves branded and inspected is a misdemeanor punishable by a fine of from \$100 to \$500 and up to 90 days in jail; a second offense is punishable by a \$500 fine and ten days minimum confinement.

24. 35-53-125 CRS

25. 35-53-126 CRS Failure to inspect cattle upon arrival at market, unless released by the brand inspector, is a misdemeanor, punishable by a fine of from \$100 to \$500.

26. 35-43-130 CRS Failure to comply with this section is a class one petty offense; second violation is a class three misdemeanor.

27. 35-50-105 CRS Failure to give notice is a misdemeanor punishable by a fine of \$300 and up to three months in jail.

28. 35-53-105 CRS

29. 35-53-129 CRS Upon completion of the appropriate form, a brand inspection certificate, and a \$40 fee, if proof of ownership is established, a permit will issue which is good for the life of the horse unless ownership changes. Fraudulent use of such a transportation certificate is a class three misdemeanor.

30. 35-53-112 CRS Willful failure to have livestock inspected is a misdemeanor punishable by a fine of \$200 to \$1000 and from ninety to one year in jail; second offense is punishable by a fine of \$500 to \$1000 and ninety days to one year which cannot be suspended by the court; third offense is a class six felony.

31. 35-53-106 CRS Violation is a misdemeanor punishable by a fine of \$1000 and up to one year in jail.

32. 35-53-107 to 109 CRS These statutory provisions provide for disposition without reliance on the estray provisions discussed below.

33. 12-11-111 CRS Violation by a meat packer of the brand inspection requirements is a class three misdemeanor; second offense within three years is a class one misdemeanor.

34. "Carcass" is defined to mean one or more animal bodies or parts but not less than one quarter of a body, (see, 35-53-113 CRS), "Hide" is defined at endnote 2, above.

35. 35-53-114, 116, 118, and 119 CRS. If livestock or carcasses are sold or detained, however, a report must be made to the District Attorney in the Judicial District where the seizure took place.

36. 35-53-117 and 120 CRS. Violation of the requirement for brand inspection concerning livestock carcasses and hides is a misdemeanor punishable by a fine of \$300 and sixty days in jail.

37. 35-53-121 to 124 CRS. Possession of false or forged permits, or knowingly exhibiting, or refusal to exhibit a permit is a misdemeanor punishable by a fine of \$300 and up to three months in jail.

38. 4-2-401 CRS. See also, Rochester Ranch Company of Stubblefield, 640 P.2d 267 (Colo. App. 1981); and Cugnini v. Reynolds Cattle Co., 648 P.2d 159 (Colo. App. 1981), aff'd 687 P.2d 962 (Colo. 1984).

39. 35-48-101 CRS

40. 35-54-101 CRS

41. See form in Addendum. Powers of Attorney are controlled in Colorado by the provisions of 15-1-1301 CRS.

42. 35-54-105 CRS

43. 35-43-128 CRS It is a class six felony regardless of the value of the livestock and as such is an exception to the standard criminal law code section (18-4-401 CRS). Applied in People v. Burns, 197 Colo. 284, 593 P.2d 351 (1979); Spann v. People, 193 Colo. 53, 561 P.2d 1268 (1977).

44. 35-54-106 CRS. See also, Klutts v. Parker, 409 P.2d 275 (Colo. 1965); Clay Robinson and Company v. Antencio, 218 P.2d 906 (Colo. 1923); First National Bank v. Matteson, 103 P.2d 487 (Colo. 1940).

45. Klutts v. Parker, 409 P.2d 275 (Colo. 1965). "Partido" is a derivative word from the latin word "partitio" meaning partition, or division (from Black's Law Dictionary).

46. 12-11-109 and 111 CRS. Violation of this requirement is a class three misdemeanor; second offense is a class one misdemeanor if committed within three years.

47. Howard & Associates, Inc. v. State Board of Stock Inspection Commissioners, 532 P.2d 366, 35 Colo. App. 86 (Colo. App. 1974)

48. Weaver v. First National Bank of Limon, 330 P.2d 142, 138 Colo. 83 (Colo. 1958)

49. For further information concerning this issue see, James C. Zalewski, "Buyer and Seller BEWARE," Western Horseman, September 1992.

50. 7-57-101 CRS

51. See forms in Addendum, above.

52. 7-55-101 CRS

53. 13-21-119 CRS

54. "Equine or Llama Activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine or llama, whether mounted or unmounted or any person assisting a participant or show management. "Equine" means a horse, pony, mule, donkey, or hinney. "Llama" means a South American camelid which is an animal of the genus lama, commonly referred to as a "one l llama", including llamas, alpacas, guanacos, and vicunas.

55. 35-43-118 CRS

56. 35-44-101 CRS
57. 35-43-129(5) CRS
58. 35-53-107 to 110 CRS These statutory provisions provide for disposition without reliance on the estray provisions discussed below.
59. 35-53-125 CRS If multiple owners claim the same animal the state board may provide for arbitration of the dispute.
60. 16 USCA 1331-1340
61. Sheridan v. Andrus, 465 F.Supp. 662 (D.C. Colo. 1979)
62. 35-44-108 CRS
63. 35-41-104(3) CRS The board may impose a mileage charge for the cost of investigating estrays determined on a per-mile basis as for other state employees.
64. 35-44-111 CRS
65. 33-44-112 CRS
66. 35-46-101(1) CRS
67. 35-46-111 CRS. See also, 35-43-120 CRS which also provides that willfully causing injury to stock being driven on a public highway is a misdemeanor punishable by a fine of from \$25 to \$100 and damages. 35-43-120 CRS also provides that willfully causing injury to stock being driven on a public highway is a misdemeanor punishable by a fine of from \$25 to \$100 and damages.
68. 35-46-112 CRS
69. 35-46-102 CRS
70. 35-43-120 CRS.
71. 35-46-114 CRS
72. 35-47-101 CRS
73. 35-43-121 to 124 CRS Sheep running at large may result in the imposition of a fine of \$25 per day; thoroughbred rams must also be herded or a fine may also be imposed of from \$25 to \$100. Revenue from such fines are paid into the school fund in the county of violation.

74. 35-43-125 CRS. Hogs allowed to run at large may result in an award of treble damages for trespass and a fine of from \$5 to \$10 per offense.

75. 35-48-103 CRS

76. 35-48-104 CRS

77. 35-49-103 CRS

78. See plans in Addendum "forms" above. These standard plans are effective as of September 1992; caution should be taken to ensure that these forms have not been replaced by the state engineer since publication.

79. 33-45-101 et seq.

80. See, Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932) and Jouflos v. Pitchford, 91 Colo. 284, 14 P.2d 1097 (1932).

81. 35-45-104 CRS Violation of a range decree is a misdemeanor punishable by a fine of \$1,000 and six months in jail for each day in violation.

82. 33-45-106 Overstocking range

83. 35-50-101 CRS

84. 35-53-111 CRS Violation of the Governor's proclamation is a misdemeanor punishable by a fine of from \$300 to \$3000 and from thirty days to one year in jail.

85. 35-50-130 and 145 CRS. Failure to comply with procedures for the eradication of tuberculosis is a misdemeanor punishable by a fine of from \$100 to \$500 and ninety day in jail; violation of programs to test, vaccinate and dispose of livestock infected with brucellosis is a misdemeanor punishable by a fine of from \$500 to \$2000 and ninety day in jail for each day of violation.

86. 38-20-101 et seq. CRS

87. For further information see, Robert L. Asher, "The Colorado Agistor's Lien Statute: Scope, Enforcement and Due Process," 16 Colo. Lawyer 989.

88. Auld v. Travis, 5 Colo. App. 535, 9 P. 357 (1985); Ellison v. Tuckerman, 24 Colo. App. 322, 134 P. 163 (1914).

89. McKee Livestock Co. v. Menzel, 70 Colo. 308, 301 P. 52 (1921)

90. See, Tarantino v. Martin, 602 P.2d 906 (Colo. App. 1979).

91. 38-20-107 CRS

92. The proper court should be selected by the value of the livestock; controversies under \$5,000 should be filed in the county court; over \$5,000 in the district court.

93. 38-20-116 CRS

- B. PENALTIES (All citations are to the Colorado Revised Statutes, referred to as "CRS")
- 12-11-109 CRS Failure to have livestock purchased for slaughter inspected is a class three misdemeanor, a class one misdemeanor if violated twice within three years.
- 12-11-111 CRS Violation by a meat packer of the brand inspection requirements is a class three misdemeanor; second offense within three years is a class one misdemeanor.
- 35-43-102 CRS Failure to brand cattle or sheep driven into or through a county is a misdemeanor punishable by a fine of from \$50 to \$300.
- 35-43-105 CRS It is a misdemeanor to use an unrecorded brand or the recorded brand of another, punishable by a fine of \$50 to \$500 and or thirty days to one year in jail.
punishable by a fine of \$50 to \$500 and or thirty days to one year in jail.
- 35-43-115 CRS Willfully or knowingly branding or causing to be branded livestock of another with a brand not recorded to the owner, or effacing, defacing, or obliterating a brand or mark is a class six felony.
- 35-43-118 CRS The marking, branding or converting to use of a maverick without proper authorization from the board is a misdemeanor.
- 35-43-119 CRS Failure to separate stock showing the brand of another is a misdemeanor punishable by a fine of \$500 per offense and may considered evidence of theft.
- 35-43-120 CRS Willfully causing injury to stock being driven on a public highway is a misdemeanor punishable by a fine of from \$25 to \$100 and damages.
- 35-43-128 CRS Theft of livestock, or knowingly depriving the lawful owner of immediate possession of any livestock, live or slaughtered, or knowingly purchasing livestock from someone who has no lawful right to sell is a class six felony.

- 35-43-129 CRS Failure to have calves branded and inspected is a misdemeanor punishable by a fine of from \$100 to \$500 and up to 90 days in jail; a second offense is punishable by a \$500 fine and ten days minimum confinement.
- 35-43-130 CRS Failure have cattle inspected upon entering a custom feedlot, prior to being turned loose to graze by a nonresident owner, or to be marked with a consistent brand or eartag is a class one petty offense; second violation is a class three misdemeanor.
- 35-44-108 CRS Failure to give notice of estrays while keeping custody is a felony.
- 35-44-111 CRS Concealing, effacing or changing a mark or brand on estray, or carrying an estray beyond county limits, or permitting such transportation, or failure to notify state board of the existence of an estray is a felony.
- 35-45-104 CRS Violation of a range decree is a misdemeanor punishable by a fine of \$1,000 and six months in jail for each day in violation.
- 35-47-103 CRS Allowing horses or mules to run-at-large is a misdemeanor punishable by a fine of from \$25 to \$500.
- 35-48-103 CRS Allowing inferior bulls or rams, or not providing a registered bull for each twenty five cows on the public range is a misdemeanor, punishable by \$100 fine.
- 35-49-115 CRS Violating the approval process for building a stock watering tank is punishable by a fine.
- 35-50-103 CRS Driving or shipping livestock into Colorado without an official health certificate is a misdemeanor, punishable by a fine of \$100 to \$1000 and/or up to six months in jail.

- 35-50-105 Failure to give notice is a misdemeanor punishable by a fine of \$300 and up to three months in jail.
- 35-50-110 CRS Willful violation of a livestock quarantine is a misdemeanor punishable by a fine of \$500 to \$2000 and or ninety days to one year; a second offense requires imposition of a mandatory minimum sentence.
- 35-50-130 CRS Failure to comply with procedures for the eradication of tuberculosis is a misdemeanor punishable by a fine of from \$100 to \$500 and ninety days in jail.
- 35-50-145 CRS Violation of programs to test, vaccinate and dispose of livestock infected with brucellosis is a misdemeanor punishable by a fine of from \$500 to \$2000 and ninety days in jail for each day of violation.
- 35-53-103 CRS Knowingly making a false brand inspection certificate by an inspector is a misdemeanor punishable by a fine of \$1000 and up to one year in jail.
- 35-53-106 CRS Shipping animals not described in a certificate of inspection, or removing those inspected and replacing the livestock with different animals without the brand inspector's knowledge is a misdemeanor punishable by a fine of \$1000 and up to one year in jail.
- 35-53-111 CRS Violation of the Governor's proclamation prohibiting the importation of quarantined or infected livestock into Colorado is a misdemeanor punishable by a fine of from \$300 to \$3000 and from thirty days to one year in jail.

- 35-53-112 CRS Willful failure to have livestock inspected is a misdemeanor punishable by a fine of \$200 to \$1000 and from ninety to one year in jail; second offense is a fine of \$500 to \$1000 and ninety days to one year which cannot be suspended by the court; third offense is a class six felony.
- 35-53-120 CRS Violation of the requirement for brand inspection concerning livestock carcasses and hides is a misdemeanor punishable by a fine of \$300 and sixty days in jail.
- 35-53-124 CRS Possession of false or forged permits from the lawful owner, for transporting livestock or fowl, or their carcasses, or knowingly exhibiting, or refusal to exhibit a permit is a misdemeanor punishable by a fine of \$300 and up to three months in jail.
- 35-53-126 CRS Failure to inspect cattle upon arrival at market, unless released by the brand inspector, is a misdemeanor, punishable by a fine of from \$100 to \$500.
- 35-53-129 CRS Fraudulent use of a transportation certificate for competition horses is a class three misdemeanor.
- 35-54-102 CRS Sale of livestock without a written bill-of-sale, or failure to display a bill-of-sale upon request, is a misdemeanor punishable by a fine of \$25 to \$500 and/or thirty days to six months.