

THINKING ABOUT EQUINE LEASES

by

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Recently, I saw an advertisement on television which highlighted the significance of being understood correctly. In it, a young man is left alone to operate a German coast guard station. Suddenly, a frantic call for help crackles across the radio receiver, “Mayday!¹ Mayday!” the voice implores. The young man replies in halting English with a thick German accent, “Allo – dis is zee German coast gart.” The radio crackles again, “We are sinking! I repeat. We are sinking!” The young man sits back in his chair for a moment and contemplates this news thoughtfully. He then leans forward and says slowly into the microphone, “Okay....so vat are you zinking about?”

Equine leases require some thinking. This is because leasing a horse may be one of the most dangerous things that an owner/lessor can ever do with his or her horse. The risk and prospect of misunderstanding or downright misconduct during the term of the lease is not uncommon. From extreme instances where a lessee may refuse to return a horse to after expiration of the lease, to cases where an owner might sell a horse out from under a lessee who has paid thousands of dollars in training bills in preparation of competition, the leasing of a horse is fraught with uncertainty in a thousand different ways which no oral or standard form contract can ever fully cover.

The best way to avoid confusion and misunderstandings in any equine leasing situation is to take the time to discuss the wants and needs of the parties, and to create a customized agreement which reflects that discussion. It would be a mistake to conclude that an equine lease is a simple contract for the possession, custody and control of a horse in exchange for cash. It is not.

First and foremost, the lease of large, powerful, sometimes expensive (not to mention potentially dangerous) animal should focus on apportionment of risk and limitations of legal liability. Secondly, a lease should deal squarely with the financial arrangements and understandings between the parties for board, costs, veterinary bills, training, supplements, and various expenses incurred during the term of the lease. Third, the contract should express faithfully and accurately the intentions and expectations of the parties.

In drafting an equine lease, the parties should be cognizant of the applicable Equine Activity Statute(s) (EAS) effecting their transaction. As of January 1, 2004, 44

¹ The term is actually “M’aidez” meaning “help me” in French.

states have passed an EAS², and only Alaska, California, Maryland, Nevada, New York, and Pennsylvania have NOT enacted an EAS.³

The following is a list of elements commonly included in a lease agreement, and a few special provisions which the parties may wish to consider.

1. The parties names, addresses, and legal standing.
2. The effective date of the agreement.
3. Recitals which explain the intent of the parties in entering into the lease. (For purposes of: e.g. breeding a mare, racing a mule, training a jumper, trail riding).
4. Legal and common description of the horse including name, breed, age, registration number, color, size and sex.
5. Statement of ownership of the horse, and acknowledgment by lessee that the agreement does not intend to transfer or convey any ownership rights.
6. Duration of the lease, whether or not it is exclusive or non-exclusive, full or part time, and any options for renewal.
7. Payment terms for lease of horse (e.g. month to month lease payable or annual lease payable in full up front.)
8. Owner Representations regarding the veterinary record, health and condition of the horse (including propensity to colic), and the fitness of the horse for a particular purpose.
9. Owner Representations concerning any vices, or dangerous behaviors of the horse. (An owner always has a duty to disclose any known dangerous vices of the horse to anyone allowed to ride the horse.)
10. Lessee's Representations of level of horsemanship, experience, riding ability and fitness for leasing the particular horse. (Under most EAS, the owner has a duty to determine that the lessee has the requisite ability to ride the horse and to make sure the horse is appropriate for the rider.)
11. Limitation on activities and permitted use(s) of the horse. (If a horse should not participate in an activity, that should be clearly spelled out.)
12. Specific Restrictions on use and handling of the horse. (e.g. horse cannot be cross-tied or shall not be turned out with other horses.)
13. Acknowledgment by Lessee that he/she has had the opportunity to inspect the horse, and/or ride the horse prior to entering into the lease and is satisfied with its condition.
14. Maintenance and payment of normal care and expenses, veterinary, farrier, boarding.
15. Location of the horse during the term of the lease. Does lessee have the right to relocate horse?

² To read the full text of any EAS, the reader may access the website located at the University of Texas at Austin located at <http://utopia.utexas.edu/explore/equine> or contact the American Association for Horsemanship Safety (AAHS) at (866) 609-4746 or www.horsemanshipssafety.com.

³ The six states which do not have an EAS do have recreational use statutes which may, in some circumstances, apply to certain equine activities. However, case law in those states rely heavily on the doctrine of assumption of risk.

16. Requirement for lessee to use good horsemanship judgment at all times, together with statement about the expected quality of care.
17. Owner's right to inspect the horse at any time and to terminate the lease if the horse is not being properly maintained.
18. Restrictions on Lessee's ability to transfer, sublease or loan the horse to any third party.
19. Prohibition against assignment of the lease by lessee.
20. Obligations of the lessee to make lease payments on time, maintain the horse in good condition, to obtain the services of a veterinarian in the event of injury, communicate with the owner about any medical emergencies, or problems with the horse.
21. Authority for the lessee to act in the best interest of the horse to preserve life and welfare.
22. Insurance requirements for the lessee (medical and/or general liability) and/or the horse (mortality, major medical and surgical) while under lessee's custody, control and possession.
23. Statement of Assumption of Risk by lessee for the inherent dangers of equine activities.
24. Requirement to train with the horse during the lease period with a particular trainer or with a particular method?
25. Use of Owner's tack. Obligations to keep clean, repair and replace.
26. Right to terminate by owner and lessee, and if there is an early termination, is owner obligated to refund any amount?
27. Release of Liability by lessee in favor of owner.
28. Indemnification of owner and hold harmless by lessee for any and all claims, damages lawsuits, expenses and costs incurred by the lessee in connection with the lease of the horse.
29. Warning and Disclaimer concerning the risks inherent in equine activities.
30. Provide contact information for both owner and lessee for notices.
31. Right of Owner to retake possession anytime, anywhere, if lessee wrongfully claims ownership of the horse or relocates it without owner's consent.
32. Consequences of a material breach of the lease, and remedies allowed to each party.
33. Agreement as to how possession of the horse will be delivered back to the owner.
34. General provisions concerning how and where to resolve disputes.

SPECIAL PROVISIONS

1. Right or restriction on Owner's ability to sell the horse during the lease term.
2. Lessee's option to purchase the horse at the end of the lease for a predetermined price.
3. Lessee's right of first refusal to force the owner to offer to sell the horse to lessee before selling it to any third party.

4. Lessee's right to force owner to sell the horse to lessee triggered by a certain event (e.g. Horse wins a 50 mile endurance race or on death or incapacity of owner.)
5. Owner's right to terminate lease early on happening of an event. (e.g. Owner moving out of state.)
6. Lessee's right or restriction on ability to show and sell the horse, and the division of proceeds from winnings or sale.
7. Lessee's right or restriction on standing a stallion, or breeding a mare, and the ownership of any resulting foal.

Jennifer Hagan is a business and equine law attorney who practices law in Palo Alto, California. She has owned and ridden horses for 32 years. She currently has two Arabians and is a member of AHA and AERC. You may review a model lease agreement on her website at www.haganlaw.com.