

EQUINE LEASES: HAND-SHAKE DEAL OR WRITTEN AGREEMENT?

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Horse leasing is gaining popularity. There are a variety of reasons that horse owners may consider leasing their horses — time constraints, cost-savings, and/or the need for a more advanced competition mount. The lease offers a means to retain ownership of the horse, while reducing both the time commitment and cost of horse care. The question that arises is whether or not the horse owner should require a written lease agreement. In short, yes. It is best practice for a horse owner to carefully consider the terms of the lease and execute a comprehensive, written lease agreement prior to the commencement of the lease.

Although the “hand-shake” deal is common in the horse industry, it can lead to trouble down the road. As horse owners, we are all aware that, when it comes to horses, we should expect the unexpected. As examples, the otherwise healthy horse can colic tomorrow and require expensive life-saving surgery, fracture its leg in the pasture or injure itself and require lengthy stall rest. The hand-shake deal is very unlikely to cover the difficult issues that arise in these circumstances, and verbal agreements are generally hard to enforce. It is important that everyone understands their rights and responsibilities before the problem occurs, and to reduce that understanding to written form.

The first step in the process is for the horse owner (the “lessor”) and person leasing the horse (the “lessee”) to discuss and agree to the terms of the lease. The discussion often starts with an agreement as to whether the lease is a “full lease” or a “partial lease.” With the full lease, the lessee typically steps into the role of the horse owner and assumes complete responsibility for the horse. In contrast, with the partial lease, the lessee is typically permitted limited access to the horse in exchange for assuming a portion of the costs related to horse care (*i.e.*, the lessee has access to the horse three days a week in exchange for assuming 50% of board, vet and farrier costs). But this is just the starting point — the lease negotiations should not stop there.

To illustrate, let’s use the example of the horse that unexpectedly required emergency colic surgery. In that situation, who is responsible for the costs related to the surgery? Does the horse have mortality and/or major medical insurance? If so, who covers the cost of the insurance? Who has the authority to decide whether to go ahead with the surgery or euthanize the horse? Can the lessee terminate the lease after the surgery (leaving the horse owner to pay all remaining vet bills and board

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while the horse recovers)?

In situations such as the above, the “hand-shake” deal may lead to a difference of opinion and expensive litigation. In contrast, a well-drafted lease agreement will provide certainty over the rights and obligations of the parties.

Although not an exhaustive list, some things to consider during negotiations are:

- Who are the parties to the lease?
- What is the term of the lease (*e.* monthly, yearly)?
- Can the lease be renewed?
- What is the lease fee and how is it to be paid?
- Who covers the cost of routine care (vet, farrier, etc.)?
- What is considered routine care for the particular horse?
- Who covers the cost of major medical bills?
- Are there restrictions as to the use of the horse (*e.* no jumping)?
- Can the horse be taken off the premises without permission of the horse owner?
- Is the lessee required to obtain mortality, major medical, and/or loss of use insurance?
- What are the termination provisions?
- Can the owner sell the horse during the term of the lease?

It is also recommended that horse owners carefully consider the relevant release and indemnity language enforceable under applicable state law. In addition, be sure that the lessee is not a minor, as the agreement is not enforceable against an individual who does not have the legal capacity to enter into the agreement.

A lease arrangement can be beneficial to all parties involved—horse, horse owner, and lessee. Moreover, the time and expense required to prepare a comprehensive lease agreement is minimal, and well worth the peace of mind for the financial and emotional well-being of all parties involved.