

SEARCHING FOR THE PERFECT FOAL?

Searching for that perfect foal? Breeding refers to man directing the process of planned mating of animals. Humans can increase the chances of conception, a successful pregnancy, and successful foaling. And, today more than ever, the choices for a sire and a dam are nearly limitless. With the Internet, artificial insemination ("A.I."), and the option for nearly world-wide overnight delivery of semen—anyone can conceive a plan for the horse of their dreams. There is no legal requirement that these arrangements be ironed out in contracts, as traditionally, these arrangements were worked out over a fence after kicking some dirt. With the high costs of artificial insemination and added knowledge of disease, few are willing to leave anything to chance. In today's world of various forms of "guarantees," contracts become the key to resolving the potential for disputes. In your excitement to plan a perfect foal, you shouldn't overlook the benefits in ironing out the details before the colt or filly is born.

For stallion owners, there is the old-fashioned way—contracting a stallion for live-cover breeding of a mare. Then, there is A.I.: you choose the collection procedure and then shipping options from fresh, shipped-cooled or frozen-thawed semen. On the mare breeding side, there are services for on-site, outpatient (trailer-in) or inpatient basis (mare housed at a reproduction laboratory or veterinary facility). For both sides, you have examinations to determine the proper time to cover, ship, and so on. With nearly world-wide overnight shipping, your options are no longer limited to breeding across the fence line, in the state, or even in the country. Importing frozen semen is now common. You simply pick the sire and the dam, pay the price tag, and, viola! You have the horse of your dreams! If everything works out as planned and for the price agreed, obviously no one cares what the contract says or whether there was a contract at all.

But, what if you don't get the horse of your dreams? What if you get a sickly



foal or no pregnancy at all? As in many areas of horse management, it is very important to clarify all of the terms beforehand in a written breeding agreement. A few dollars spent on an attorney to ensure that you have a thorough understanding of the terms is essential in most cases, whether you are undertaking the drafting of the agreement, or one is sent to you to sign.

In the cases of live covering, whether you own the stallion or the mare, you ought to consider whether a transportation contract and a boarding contract might be necessary, to clarify who is assuming what liabilities and expenses. In the cases of A.I., live foal guarantees, refunds, return breeding provisions, and extra straws are very important to understand. Insurance may also be an important consideration in limiting liability or satisfying contractual requirements. There are many options here for liability protections, mortality, surgical, and stallion fertility insurance.

The myriad of warranties that may be offered (such as live-foal guarantees), who is responsible for insurance of the mare during transport and at the farm, and what kind of protections are utilized against injury and the spread of contagious disease, are among some of the most important issues to review. Beyond warranties, in Colorado, when the parties arrive at an agreement in an adequate

written document, it gives the buyer a special property and insurable interest in the unborn foal, while still potentially reserving the buyer's right to return or reject the animal.¹ On the other side of the fence, it may also give the seller an insurable interest in the unborn foal and options for finding other unborn foals that may be suitable to the buyer, should something go wrong.² Depending on the drafting, such an agreement can simply identify a potential

foal or it might be much more complex, should either party resort to litigation.³

Stallion owners can safeguard against claims of false advertising, fraud, and breach of contract, by testing with their veterinarian for fertility and ensuring that they have proper provisions in their contracts. Consider getting some professional advice from your veterinarian, your attorney familiar in equine law, and also an accountant about the tax and business planning issues related to horse breeding. Insurance agents can give you information on the types of policies available—which may absorb some of the risks involved if things don't go as planned. Thinking through all these issues ahead of time, will hopefully give you more time to enjoy the horse of your dreams once it arrives, rather than spending your time sorting through legal issues in a courtroom. **H**

¹ Colo. R. Stat. § 4-2-501 (1) (2006).

² Colo. R. Stat. § 4-2-501 (2) (2006).

³ Great Western Sugar Co. v. Pennant Products, Inc., 748 P.2d 1359 (Colo. App. 1987).

Research and drafting assistance was provided by Wendy Monteith, Esq., and Heidi Hande, Esq.

Marc C. Patoile is shareholder with the regional law firm of Folkestad Fazekas Barrick & Patoile, P.C., with offices in Castle Rock, Colorado. He can be reached at 303-688-3045 or patoile@fcolorado.com.

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