

AVOID THE BREEDING BOONDOGGLES

As the upcoming breeding season approaches, I think about all of the bad deals I've seen in the horse business. What's the connection? The number of lengthy, costly and factually and legally messy cases I've seen involving a verbal, or poorly written breeding contract "gone bad".

"Gone bad" is not actually the right description. "Gone any way but expected" is probably more accurate. If you think about the complexities of breeding arrangements, you'll see why contracts not only should always be in writing, but also what details should be discussed between the parties. If nothing else, use the following outline in your breeding contract negotiations and then be sure all terms are covered in your written agreement. In that manner, you will have discussed the issues ahead of time, and hopefully come to an agreement as to how certain situations will be handled BEFORE they turn into a legal problem.

Here's just some of the questions you should address.

a. Will the breeding involve live cover or artificial insemination?

1. If live cover:

- a. What am I charging, who is the stallion, and what is the time frame the services will be provided?
- b. Where will it occur and will it involve transportation charges? Who's responsible?
- c. Who will be handling the horses and should there be a handling charge? Who pays?
- d. Will the mare be boarded at my facility and if so, what special factors do we need to consider? (See Section 3 below)
- e. What paperwork am I required to complete at the time of birth, and do I need extra charges to cover time and expense involved in same?
- f. If I'm not paid, what rights do I have with respect to registration requirements?

2. If artificial insemination:

- a. Is it allowed under a particular breed's rules?
- b. What am I charging, who is the stallion, and what is the time frame the services will be provided?
- c. Who will collect and ship?
- d. What costs are involved and who will pay?
- e. Who will coordinate timing of collection and shipment requirements, and how much advance notice will I require?
- f. What will I include as my "standard shipment"; and are there refundable fees I should consider (for example, the semen shipping containers)

- g. What special tests are required to verify this semen is from this stallion?
- b. What are the breeding guarantees?**
1. Who is responsible for costs to confirm pregnancy?
 2. What costs are reasonable?
 3. Who selects the treating veterinarian?
 4. Are the costs prepaid? By whom?
 5. What paperwork am I required to complete at the time of birth, and do I need extra charges to cover time and expense involved in same?
 6. Will I offer a live foal guarantee? How do we define “live foal”? Should we require a veterinarian certificate of live birth?
 7. If a mare doesn’t settle in this season, what are the breed-back rights of the mare owner?
 8. Is there an expiration period on these breed back rights if the mare doesn’t settle in two seasons?
 9. Can the mare owner substitute another mare? Do I have a right of refusal as to the substitution?
 10. What if I want to sell the stallion before the mare owner can exercise those breed-back rights?
 11. Does the stallion buyer have to honor old unfulfilled breeding contracts? For how long?
 12. Does there need to be something in writing notifying the mare owners of the new stallion owner?
 13. Should the purchase price of the stallion include these factors? Is the pricing consideration favorable or negative?
- 3. If mare and foal are to be boarded until birth:**
- a. Will the mare be boarded at my facility?
 - b. If so, for how long?
 - c. At standard or premium fees?
 - d. What do those fees include pre-birth? What do those fees include for birth? What do those fees include post-birth, for both mare and foal?
 - e. What medical papers should I require before allowing the mare onto my property?
 - f. What right do I have to obtain vaccinations and medical treatment while the mare is on my property?
 - g. Who decides if emergency treatment is required, and who pays?
 - h. What liability do I have while the mare is on my property?
 - i. What liability does the mare owner have if the mare or foal damages my property or injures someone on my property?
 - j. Does my insurance cover all exposures? Does the mare owner’s insurance cover all exposures?
 - k. What rights do I have for non-payment?

As you can see, the issues are complex. Add to this the sale of embryos, or use of surrogate mares, or issues of mare swap for first or third foal terms, and you can easily understand why these agreements need to be in writing. For this reason, where parties enter into breeding arrangements without discussion of these many issues, misunderstandings are not only common, but expected. There is no such thing as a “standard breeding contract”. Each contract or agreement can be as varied as the terms and conditions above indicate.

In addition, most of these agreements HAVE to be in writing in order to be enforceable under each state’s “Statute of Frauds”. This statute requires all contracts incapable of performance within one year to be in writing. If a mare does not settle in that first season, and you have a live foal guarantee, you now have a two or three year contract.

In conclusion, don’t let the excitement of the breeding decision divert you from the need to be particular in the details. Don’t use verbal agreements or short and incomplete written agreements. Instead, be sure you have some form of documentation that addresses, at a minimum, those considerations listed above. In this manner, you can truly enjoy the pleasure of the new foal’s arrival without worry as to any legal mess surrounding that breeding and birth.

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