

To Lease or Not To Lease? What is the question?

As the new competition season is rapidly approaching, many competitors consider leasing a horse rather than purchasing (or selling) one outright. There are many reasons to lease, but there are also many pitfalls for the unwary. Here is my “Top Ten” list of questions to answer before you take the plunge:

- 1- So, what am I called? One of the biggest mistakes people make is to sign a lease agreement without understanding the terminology being used. The person who owns the horse and is collecting the fee is called the “Lessor.” The person who is leasing the horse and paying the fee for the privilege of using the horse for the lease period is called the “Lessee.”
- 2- You break it, you buy it? As a general proposition, the Lessee is not the “absolute insurer” of the horse unless that responsibility is spelled out in writing in the lease agreement. If the lease agreement doesn’t specifically shift that risk to the Lessee, then the Lessor’s interest in the horse may not be protected. On the other hand, if the horse breaks during the term of the lease, the Lessee should understand how much they are on the hook for. The full value of the horse? The diminution in its value? The full cost of rehabilitation? One way to shift the risk of a total loss is to require the Lessee to purchase mortality insurance (with major medical coverage), in case the horse dies. In this way, the owner/Lessor will be compensated for the horse. But this still leaves the possibility that the Lessee has no horse and is out the lease fee. There are two ways to address this: one is the agreement can specify that if the horse dies and the insurance pays out to the Lessor, the Lessor will reimburse the Lessee the lease fee (or some portion of it); another is the Lessee can purchase “Lease Insurance” that insures the lease fee in the event the horse dies during the lease period.
- 3- You break it, you fix it? The Lessor’s worst nightmare is the horse that goes out on lease and breaks, followed by the worry that the Lessee will not properly rehabilitate the horse and render it permanently damaged. Most owners, upon hearing their horse has been hurt, want to “take it back” and do the rehab themselves. But I’ve seen very few lease agreements that specifically address this issue, leaving the question open if the unfortunate occurs. Expectations should be spelled out clearly.
- 4- Right of return? Does the Lessee have any right to return the horse to the Lessor during the term of the lease for any reason? Lessee’s should be careful, because a Lessor’s offer to “take back” the horse may not amount to an agreement to cancel the lease, leaving the Lessee with no horse but still bearing the cost of its board, shoeing, etc.



- 5- What guarantee? Like with the sale of a horse, you can lease a horse “as is.” Do you or do you not have some kind of guarantee that this horse is going to work for you? Be clear about how much “due diligence” you should perform before making a commitment. Likewise, Lessors should be careful about unintentionally creating warranties.
- 6- Purchase option? It is not uncommon for a lease agreement to include a “purchase option,” whereby the lease fee paid by the Lessee will be applied to an agreed upon purchase price for the horse if the “option” is exercised before a certain date. There is certainly nothing wrong with this type of arrangement, so long as the “lease fee” is a fair fee for the period of the lease. It is generally not a good idea for the Lessee/potential purchaser to structure an installment purchase agreement as a “lease with purchase option” because at the end of the lease period you will have no vested financial interest in the horse. If you know you are going to buy the horse, then just commit to buy it. Of course, the flipside of this is that the “lease with purchase option” is the much safer bet for the owner/potential seller of the horse, because if the Lessee never comes up with the balance of the purchase price, the Lessor/owner takes back the horse free and clear with no strings attached. So, whatever side of the deal you are on, know what you are getting yourself into.
- 7- Ticking Time-bomb? It might be wise to evaluate what that horse has been doing lately and what kind of maintenance has been done. Horses are not machines, and if the horse has been ridden hard and put up wet, then the Lessee may not get much use out of the horse before it breaks.
- 8- How about “reasonable wear and tear”? I’ve seen some leases that require the Lessee to return the horse in “the same condition” as at the start of the lease. This statement makes no sense. Obviously, what is intended is that the horse will be returned in substantially the same condition, reasonable wear and tear expected and accepted. But it is important that everyone to the transaction be on the same page about the Lessor’s expectations, because I have seen disputes over whether a new scar on the horse’s leg was a breach of the lease because it hadn’t been there at the start of the lease.
- 9- Is leasing a good idea? That is hard to say. At the end of the day, with horses we have no guarantees. Leasing a horse can be riskier for the owner, but it can also be a risk worth taking if there is more money to be made on consecutive leases of the horse than on an outright sale. Ultimately, leasing a horse can be less of a financial commitment (than an outright purchase) for the Lessee, but it provides no better security: you can buy a horse today and it can break tomorrow; likewise you can lease a horse today and it can break tomorrow. Either way, you can spend a lot of money for nothing. But that’s the nature of the sport.



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10- So how important is a written contract? While you might think that my answer to that question would be obvious, I'll throw a little uncertainty into the picture and give you an answer you may not expect: depending on what you are talking about, a written lease agreement may be a waste of the paper it's written on. High dollar, long term lease – get it in writing! But sometimes no written contract works out better than a badly written contract. So keep that in mind. But if you are leasing a horse for not a lot of money, for a very short term (especially if the horse is not leaving the care of the owner or the owner's trainer), then the terms of the contract may not be complex enough to justify writing down. If the horse is supposed to meet you at the ring, and it does, and you show it, then you have to pay the fee. Sometimes things ARE that simple.

