

Breeding Contracts: Read the Fine Print

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Spring -- a time for new beginnings and unrealized potential -- might be the most enjoyable season of the year for a mare owner. The sight of a healthy foal romping with its dam in the field can easily push aside memories of the endless hours of hard work that got you to that point, at least until it is time to start again.

An essential, but sometimes overlooked, part of the breeding process is the contract used to finalize the mating of your mare with a selected stallion. After putting in a substantial amount of time and effort picking a stallion, then getting an initial commitment from the stallion manager, it is tempting simply to give the breeding contract a cursory reading, sign it, and drop the document in the mail.

Haste often truly makes waste in situations like these, however, and time spent familiarizing yourself with the terms of the contract before you sign will be well spent. The intent of this article is to present to you as a mare owner an overview of some, but certainly not all, of the important provisions and concepts you might encounter in a breeding contract. However, this article should not be a substitute for review of the breeding contract by an attorney (preferably one with expertise in equine matters).

Stud Fees

The amount of the stud fee, and the circumstances under which it must be paid, are of vital importance to the owners of both mare and stallion. The amount of the stud fee is straightforward, and should be set out in the contract.

The majority of breeding contracts specify that the stud fee is payable on a "live foal" basis. Under a live foal contract, the mare owner is responsible for the entire stud fee if, and when, the mare produces a live foal. The term "live foal" generally is understood to mean a foal which is able to stand and nurse without assistance. The owner of the stallion assumes the risk that the breeding will not produce a live foal.

Depending on the specifics of the contract, you might be required to pay the full stud fee in the fall of the year in which the mare is bred, with a refund if the mare does not produce a live foal the following spring. Another contract might state that the stud fee is not due until the mare actually produces a live foal. A veterinarian's certificate attesting to the fact that the mare did not produce a live foal must be submitted to the stallion owner or manager either to receive a refund of the stud fee if already paid or to avoid responsibility for the stud fee if not paid the previous fall. (Depending on the contract, the owner of a mare which does not produce a live foal might be entitled to a return breeding to the stallion at no cost rather than a refund of the stud fee.)

Most breeding contracts also require that the mare owner submit the veterinarian's certificate within a set period of time -- sometimes as short as 15 days -- after the mare fails to produce a live foal. If you

miss the prescribed deadline, you remain obligated to pay the stud fee regardless of whether your mare produced a live foal.

It is possible that the breeding contract simply makes payment of the stud fee contingent on a live foal, with no other explanation. Presented with such an ambiguous contract, you should insist that "live foal" be defined to your satisfaction, and that the payment schedule be set out in detail. The contract also should specify whether the birth of twins constitutes production of a "live foal" for stud fee purposes.

A variation of the live foal agreement is a "guaranteed in foal" contract. Different stallions have different guarantees, so it is important to know exactly what is guaranteed. If your breeding contract contains this provision, the stallion owner assumes the risk that your mare will get in foal from the breeding, but you assume the risk that the mare will produce a live foal 11 months later.

Under such an agreement, the mare owner is responsible for the full stud fee if the mare is in foal at some specified time (typically 45-60 days) after she is last bred to the stallion. If the mare loses her foal after that date, or fails to produce a live foal, there is no obligation to refund the stud fee. Once again, a veterinarian's certificate attesting to the fact that the mare is not in foal on the specified date is necessary to avoid responsibility for the stud fee.

A less common stud fee arrangement is the "no guarantee" or "non-refundable" contract. In this contract, the stallion owner assumes none of the risk, and the mare owner is responsible for the stud fee regardless of whether the mare conceives. No guarantee contracts are most common for well-established, proven stallions whose reputations and popularity allow their managers to call all the shots when negotiating with mare owners.

If you choose a stallion that does not offer a live foal guarantee, buying live foal insurance is an option.

Finally, a few breeding contracts attempt to split the responsibility, designating a portion of the stud fee as non-refundable, while making payment of the rest of the fee contingent on production of a live foal.

Health of the Mare

It is understood, and most breeding contracts specifically require, that any mare sent to a stallion must be in good general health and in sound breeding condition. The contract might require that a veterinarian's certificate accompany the mare to the breeding shed. Mare owners also might have to submit an information sheet for the mare, setting out the animal's health and breeding history, vaccination schedules, and other pertinent information.

Contracts generally give the stallion manager the right to refuse to breed any mare if the breeding would endanger the health or welfare of the stallion. This provision could include mares which are vicious or unmanageable, as well as mares which are sick.

Health of the Stallion

A wide variety of circumstances can arise that make it impossible for a stallion manager to fulfill his or her contractual obligations to mare owners. The stallion might die, be injured, or become too ill to breed. He might be sold and moved out of the area. He might become infertile, or the size of his book might be reduced because of health problems. Under those or similar circumstances, most breeding contracts become null and void, and neither the stallion manager nor the mare owner has any obligation to the other party. Some contracts give the mare owner access to another stallion, if feasible.

Substitution of Mares

So what happens if you book a mare to a stallion and the mare gets sick or dies? Can you substitute another mare under those circumstances? Maybe, depending on the contract and the timing.

Many breeding contracts allow a mare owner to substitute one mare for another, if the mare originally booked to the stallion dies or becomes unfit for breeding before she is bred to the stallion for the first time in a season. Mare owners generally are prohibited from substituting one mare for another if the mare originally booked to the stallion already has been bred at least once to the horse. If the contract allows substitution of one mare for another, a veterinarian's certificate stating that the original mare cannot be bred is required.

Occasionally when a manager is trying to fill the book of a young stallion, a mare owner will be required to breed a substitute mare to the horse if the original mare cannot be bred for some reason.

Security Agreement

Nearly all breeding contracts include a security agreement that gives the stallion owner or manager a way to force payment of the stud fee if the mare owner tries to get out of the obligation. Your signature on a contract with such a provision transfers a security interest in the mare, in the foal resulting from the breeding, both before and after birth, and in the foal's registration documents, to the stallion owner or manager. Many contracts also allow the stallion owner or manager to retain the breeding certificate until the stud fee is paid.

The implication of such security agreements is two-fold. First, by retaining a security interest in the mare and foal, and in the foal's registration papers, the stallion owner or manager can more easily repossess and sell the mare and foal if necessary to pay the bill. Second, without a breeding certificate, the owner of the mare might have difficulty registering the foal. Depending on the rules of the particular breed registry, registration might be impossible. Both possibilities are powerful incentives for a mare owner to pay the agreed-upon stud fee.

Other Provisions

You also should expect to find the following provisions in a typical breeding contract:

- Complete identification of the stallion, mare, mare owner, and stallion owner or manager, and farm where the stallion stands;

- Addresses and emergency contact numbers for all the parties to the contract;
- A statement that the stallion owner or manager has a good and marketable title to the season being sold, and that there are no liens on the season;
- Waivers of liability for the stallion owner or manager and the owner of the farm where the stallion stands in the event the mare is injured;
- The earliest and latest dates on which a mare can be bred;
- Estimated expenses for board, veterinary care, farrier service, and other costs if the mare will be boarded at the farm where the stallion stands; and,
- In states where it is required by law that limits a farm owner's liability, a notice about inherent risks in equine activities.

Raising a foal can be a daunting but exciting job. Understanding a breeding contract before you sign it removes one level of uncertainty from the task of producing a healthy foal for pleasure or sale.