

A Guide To Leasing

How you can get the most out of the well-received ROA/TBA Free Lease Exchange



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In the current economic climate, the joint initiative taken by the ROA and the TBA, aimed at putting potential lessors (breeders) and lessees (individual owners, partners or syndicates) of racehorses in touch with each other is clearly timely.

It is, perhaps, also timely to advise that a lease is something that requires careful consideration and discussion; to agree one by the shake of a hand or on the back of an envelope is a high-risk strategy.

For example, it is very easy for two parties to agree that the lease is to be for, say, two racing seasons, but should there be an option for renewal? What happens if the horse is injured during (and possibly early in) the term? Does the lessee carry on paying all costs right up to the end of the lease, or is there a provision for returning the horse to its breeder?

What happens if the trainer thinks that the horse is not worth persevering with? What happens if the lessee finds him or herself in financial difficulties and is unable to continue meeting his obligations as an owner?

On costs and prize-money, the starting point in most leases is that the lessee pays all expenses and receives all prize-money. There are, of course, variations on this theme. Sometimes, when prize-money has reached a certain level (for instance when it exceeds the overall costs which the owner has incurred), the lessor (breeder) stands to receive some, or possibly all, of the surplus prize-money. In some cases, the

prize-money might be divided on a straightforward split – whether this is on a 50/50 or some other basis is, in turn, a matter for agreement.

Insurance arrangements

It is vital, obviously, that the parties agree on what the insurance arrangements are. In mortality terms, the lessee does not have an insurable interest as he/she does not own the capital value of the assets.

On the other hand, it is common for the lessor to require the lessee to meet the costs of insuring for mortality, with the proceeds of any claim being paid to the lessor. For these purposes, an initial value obviously has to be agreed. If the value of the animal comes down, then it would be pointless for the lessee to continue paying premiums to the extent that they correspond to an unsustainable value.

If the value goes up, does the lessee (owner) have to incur higher insurance costs, or does the lessor (breeder) have to take out additional cover, if he wants, for any increased value of cover?

What about veterinary costs and the associated insurance implications? It would be typical for a lessee to be required to pay all routine veterinary expenses, but what happens if, during the term of the lease, the horse has to undergo colic surgery?

Who pays for this? If it is the lessee, it might be wise, or indeed it might be an actual

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stipulation of the lease, that the lessee takes out emergency veterinary costs insurance so as to fund surgery costs.

What about third party liability cover? The Animals Act imposes liability, akin to strict liability, on the owners of horses whether or not they are the custodians. Is the lessor or the lessee the actual owner from the point of view of the Animals Act? This is a moot point and it is vital that the trainer, the lessor and the lessee all have appropriate third party insurance cover.

Is the arrangement one where the lessor/breeder hands over the supervision and management of the horse’s racing career for the duration of the lease to the lessee/owner? Or is it an arrangement where the breeder still retains a degree of control?

Who should choose the trainer? What happens if one party wants to change trainer? The lessor may wish to retain some control over the races the horse runs in and it would certainly be normal for a lessor to prohibit the horse from being entered into a claimer or seller without his or her consent. (The mere entry of a horse in a claimer or seller might be inconsistent with the insured value of the horse.)

Right to sell

An issue which leases should cover is that of whether the breeder has a right to sell during the term and whether the owner has a right to buy the horse from the lessor (and in either case in what circumstances and on what terms).

The breeder may wish to stipulate, for instance, that if he receives an offer (or an offer in excess of a certain figure) during the lease which he wants to accept, then he should have

the right to accept it, subject, perhaps, to giving the owners leasing the horse an opportunity to match any offer.

Additionally, if the horse is sold mid-term should a certain percentage of the price offered go to the lessee on the basis that that percentage will be compensation for the early termination of the lease? Should the lessee have some option to buy the horse during or within a certain period after the expiry of the lease at a price determined by some formula – for instance 80% of independently appraised value? Alternatively, should the lessee have a pre-emptive right of purchase (i.e. a right of first refusal)?

The lease ought to specify who is responsible for registrations with Weatherbys or the BHA and other relevant bodies. Obviously, the lessee has to be a registered owner and has to have registered colours, but there is also a requirement for the lease itself to be registered with Weatherbys, and the lease should impose the obligation to register on one or other of the parties.

Right to sub-let

A person who leases something from someone will normally have a right to sub-let the leased item to someone else and also the right to assign the benefit of his lease to someone else. It would be typical for a lessor not to want a lessee to have a right to sub-let or to assign. If this is the position, then there should be a suitable prohibition in the lease.

In contracts, it is typical not only to specify what constitutes a breach of the contract but also to specify what are the consequences of and remedies for a breach. It does not always clarify matters to state that a given act or failure to act constitutes a breach of contract. It is more helpful to say that if the lessee does or fails to do one thing, then the horse will have to be returned to the lessor and/or a certain sum of money will have to be paid to the lessor.

When leasing a horse, a breeder may wish to retain some control over where it runs

