

Thursday, October 15, 2009

Equine Law Update

Fennemore Craig proudly presents its first Equine Law Practice newsletter. In addition to owning horses and participating in various equine disciplines, our practice group attorneys have experience in numerous aspects of the equine industry and provide legal services needed by today's equine owners and businesses. We assist in many areas, including acquisition, sale and leasing of horse properties, immigration for equine athletes and professionals, labor and employment counsel, litigation, management and training agreements, sale and leasing of horses, trademarks, trade names and patents, and tax law. For more information, go to <http://www.fclaw.com/equine-law>.

This newsletter will be sent periodically to inform clients and friends of the firm about equine related issues.

Leasing Your Horse – Don't Load the Horse On The Trailer Yet!

By Sharon J. Oscar

Horse leasing has always been popular, both for the horse owner and the lessee. The owner gets relief from the financial aspects or horse ownership and, in many cases, gets the satisfaction of knowing that the horse is being ridden or shown by someone who will do a good job, so value is added to the horse. The lessee gets to ride and perhaps show a horse that they would not otherwise be able to find or afford to buy. Win-Win, right? Perhaps.

Horses are leased for a variety of purposes. One owner may lease a trail horse of "nominal" monetary value to a friend, while another may lease a valuable Grand Prix Jumper prospect to a rider wanting to enter the international arena of show jumping. Yet another person may lease an Arabian western pleasure horse for both the exposure of the horse's blood lines at the Arabian shows in hopes of selling offspring of the sire and for the exposure of the horse in increasing its value for sale purposes.

As a general rule, the days of a handshake or a one-page lease should be over. Unfortunately for many, those practices still exist. While the equine industry has become more sophisticated in recent years, the old ways die hard. An insufficient lease may lead to expensive litigation if a problem arises. So, you may want to spend a little money on an attorney at the outset.

Make sure that you have a written lease that covers all bases. Your horse is a financial and emotional asset. Many form leases or leases that are thrown together quickly fail to take into account matters that you may take for granted. As a horse owner, take nothing for granted.

Consider the following:

- Who is the lessee? Make sure it is not a minor who does not have the legal capacity to sign a contract. Are you in "community property" state? If so, then you need to take into account the marital status of the lessee and whether you are able to reach community assets if necessary.



quick links

- [Equine Law Practice](#)
- [Unsubscribe](#)
- [Acrobat Reader](#)

Phoenix
3003 N. Central Ave.
Suite 2600
Phoenix, AZ 85012
(602) 916-5000

Tucson
One S. Church Ave.
Suite 1000
Tucson, AZ 85701
(520) 879-6800

Nogales
420 W. Mariposa Rd.
Suite 200
Nogales, AZ 85621
(520) 281-3480

Las Vegas
300 S. Fourth St.
Suite 1400
Las Vegas, NV 89101
(702) 692-8000

Denver
1700 Lincoln St.
Suite 2900
Denver, CO 80203
(303) 291-3200

- What is the term - the length of time - for the lease? Can the lease be renewed; if so, how?
- Is there an option to purchase the horse? If so, do lease payments apply toward the purchase price?
- How much is the rent and how often is it to be paid?
- Show sufficient identification for the horse: breed, registry, height, color, sex, registration numbers and name. If the horse is a stallion, can the lessee use it for breeding? What are the stipulations? Will you have a separate breeding contract? Breeding brings on numerous other issues to address.
- Get the home address and emergency contact numbers for the lessee, the name and address of the facility where the horse will be kept, along with the name, address and phone number of the trainer (and, in some cases, the barn manager).
- Consult with your insurance agent before the lease is signed and before the horse is transferred. Your agent will need information on the lessee and the horse facility. Also determine who is going to pay the premium for the. If the lessee, perhaps have the lessee pay you as owner up front, then you can pay the insurance premium in any installments that are due.
- The lessee should be responsible for “routine” maintenance (veterinarian, farrier.) As owner, you may want to set a schedule or speak with the trainer about the schedule. Discuss what is considered “routine” for that particular horse. Determine who is responsible and who makes decisions regarding serious illness of or injury to the horse. Do you as owner want the right to approve the vet or farrier?
- Make sure that the facility is well-maintained and that your horse will get the kind of care and board it deserves. Determine how often the horse is fed and what it is fed, and outline any special needs the horse may have.
- Who is authorized to ride the horse – just the lessee or the lessee’s family, the trainer and the trainer’s assistants? Who is authorized to show the horse?
- Lessee should be responsible for all horse show expenses and for appropriate hauling to and from the shows, unless agreed otherwise.
- What types of shows can the horse go to; in what disciplines and at what levels? You may negotiate this again during the lease term as the horse progresses (or regresses).
- Make sure you have adequate release and indemnity language. Will you require liability insurance?
- What happens if the lessee defaults under the lease? What are your remedies as owner?
- Set up a procedure for notices to each other and the trainer.

The above list is not exhaustive, but should get you as an owner thinking of all of the possibilities – the combinations and permutations of what can happen when you let go of possession of your horse.

Your horse, regardless of discipline or breed, is important to you, your family, and your business. Make sure that through a well-crafted lease you give your horse the consideration needed for its comfort, health and training, and that you give yourself and your family or business the consideration needed for your protection and financial and emotional well-being.

Immigration an Issue for International Athletes Preparing for the 2010 World Equestrian Games

By Matthew J. Martinez

With the 2008 Olympics behind us, the world's elite riders have begun to set their sights on the 2010 World Equestrian Games in Lexington, Kentucky. While most of those who will compete in the Games will travel to the U.S. closer to the actual start date, some may prefer to come to the U.S. much earlier in order to begin training and to take advantage of several opportunities for high-level competition.

The question we are most often asked is whether it is possible to come to the U.S. as early as 2009 to train and compete until the Games in 2010? The answer is a resounding "yes." What you need is an athlete's visa, which would be either the O-1 (valid initially for up to 3 years) or the P-1 (valid initially for up to 5 years). And what about your grooms? They, too, can come as your "essential support personnel", provided the requisite relationship exists between rider and groom.

To qualify for either of these visas, you need a sponsor (which does not necessarily have to be an employer) and a reasonably detailed competition and training itinerary. You must also be able to establish that you are either at the top of your sport in your country, or that you are internationally recognized in your sport.

O-1 Visa

To qualify for O-1 status, you must establish that you are one of a small percentage *who has "risen to the very top" of your field of endeavor*, which must be supported by showing at least three of the following:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- Membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- Published material in professional or major trade publications or other major media about you;
- Participation, either individually or on a panel, as a judge of the work of others;
- Original scientific, scholarly, artistic, athletic or business-related contributions of major significance in the field;
- Authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
- High salary or other significantly high remuneration for services, in relation to others in the field; or
- Other comparable evidence.

P-1 Visa

The key to qualifying for P-1 status is establishing that you are "internationally recognized" in your field, which means a high level of achievement, evidenced by a degree of skill and recognition substantially above that ordinarily encountered so that the achievement is renowned or well known in more than one country. Such international recognition must be supported by showing at least two of the following:

- International ranking;
- Significant honors/awards in the sport;
- Written statement from the sports media or a recognized expert;
- Written statement from a major US sports league or official of the sport's governing body;
- Participation in international competition with a national team;
- Significant participation in a prior US major league season.

In conclusion, there are options available for equestrian athletes who desire time to train and compete in the U.S. on a long-term basis. Whether you are a rider seeking to come to prepare for the 2010 World Equestrian Games, or whether you simply enjoy competing in the U.S., an athlete's visa may be the solution if you can meet the qualifications listed above.

This Article is not intended to provide or replace specific legal advice, and we encourage you to obtain legal advice.

Fennemore Craig's Equine Law Practice provides assistance with all aspects of equine law. For information please contact the Equine Law Practice chair, Sharon J. Oscar, at (602) 916-5473 or soscar@fclaw.com. Information can also be found at www.fennemorecraig.com.

Sharon J. Oscar is the firm's Equine Law Practice Group Chair. She handles a variety of equine-related contracts, including training and management contracts, releases and indemnities, horse show-related contracts, the sale and leasing of horses, as well as the sale, acquisition and leasing of horse properties. She manages the Practice Group, assisting the clients in determining which Fennemore Craig attorneys can best represent the clients' interests, whether in entity formation, immigration, litigation, real estate, syndications or tax counseling, among other areas. She earned her B.A. (1972) from the University of Arizona and her J.D. (1975) from Ohio Northern University College of Law.

Matthew J. Martinez practices in the area of immigration and nationality law, providing immigration-related counsel for multinational corporations, academic institutions, information technology providers and users, foreign investors, performers, professional athletes, manufacturers and individuals from numerous countries. He has extensive experience representing employers and athletes in the equine industry, including companies and individuals involved in thoroughbred horse racing, equestrian competition, and equine transport. He earned his B.S. (1995) and his J.D. (1999) from Brigham Young University.



Sharon J. Oscar
Director
602.916.5473
soscar@fclaw.com



Matthew J. Martinez
Of Counsel
602.916.5446
mmartinez@fclaw.com