

Solve your problems while there are none

Equine co-ownership agreements



The right partnership for you

Other than the direct co-ownership, the shared ownership of a horse may take many forms, such as a corporation, a partnership, a trust or another entity through which the owners may indirectly own or hold various interests in the horse. The choice of the right vehicle for the ownership should be thoroughly considered before the final investment is made. For the purpose of this article, we will address some of the main issues that the partners will face in the context of a basic direct co-ownership. It is important to point out that there is no 'one size fits all' co-ownership agreement. Each agreement should be customized to fit the particularities of each co-ownership. We have summarized below some of the basic elements that should be discussed by the parties and addressed in the co-ownership agreement. A well planned purchase will prevent a lot of trouble in the long run, and will greatly facilitate the drafting of a good co-ownership agreement.

Agreeable to all parties

Just as with a marriage contract with your spouse or a shareholder's agreement with your business associates, a written co-ownership agreement is always strongly recommended when you plan on partnering with someone to purchase and own a horse. Such an agreement should be executed prior to buying the horse and will ensure that each party knows and understands from the get-go its rights and obligations. In most jurisdictions, a legislative framework is in place governing the co-ownership. Without a co-ownership agreement, should a dispute occur, the courts will rule based on the applicable laws, with outcomes that may not please the parties. When a valid co-ownership agreement is in place, the courts will rule on the applicable terms and conditions of said agreement and hence on a set of rules that are agreeable to all parties.

Co-ownership in the equine industry may offer many benefits to all parties involved, whether it be by sharing the costs, the risks or the workload, uniting the parties' complementary expertise or putting one's wealth in service of someone else's given talent in sport. At the beginning of the adventure, the co-owners can often only see a clear blue sky over a sea of opportunities, and that is exactly why it is the best time to plan ahead for possible challenges and hardships.

Purposes and goals

Disagreements between co-owners often result from a misunderstanding of each party's aspirations. If a horse is bought as a high level sport prospect, it will most probably be on the road for extended periods of time and be put into a very strict and demanding training programme, leaving very few opportunities for the amateur co-owner to enjoy the ride. On the other hand, the co-owner with high expectations for that same horse may no longer be interested in keeping it once it becomes evident that it has reached its peak as a mid-level amateur horse. If a breeder and a rider buy an exceptional stallion prospect, what will happen when its breeding duties interfere with its sport career? The purposes of the purchase as well as the goals of each co-owner should be discussed and well understood before any commitment is made.



MR. L.M. SCHELSTRAETE

Active in the fields of company law and equine law. Within the equine law practice, Luc Schelstraete provides services to Dutch yet often also foreign equine businesses, riders, horse owners and equine authorities.

Shares of ownership

In most jurisdictions, the shares of all co-owners are presumed equal unless agreed otherwise. The agreement should set forth the share of each of the co-owners in the horse. In some cases, the shares of the co-owners may vary in time based on various factors. If a breeder and a trainer agreed on trading training services for a share in the horse, the share of the trainer may increase over time, in proportion with the amount of work accomplished. In such event, all the factors affecting the variation of the share should be clearly stated so that there could be no ambiguity as to each co-owners' share at any given time. The right of ownership may also be broken down in a way that the shares of each co-owner do not include exactly the same rights. For example, one co-owner may hold the exclusive breeding rights to a mare while the other holds the rights to its sport career. While very interesting in some situations, this possibility also involves challenges as some of the rights of each co-owner may interfere with each other. The terms and conditions under which each co-owner may exercise its rights need to be clearly defined.

Use of the horse

Typically, unless agreed otherwise, each co-owner has the right to use and enjoy the horse as an owner would do, provided that his use does not affect the rights of the other co-owner or the destination of the horse. If the co-owners have agreed that the horse is to be ridden by only one designated rider, or if they have otherwise agreed that the rights of each of the co-owners to use the horse is not the same, it must be clearly stated in an agreement.

Expenses

One of the most significant issues facing the co-owners will be the costs related to the care, training and showing of the horse. When it comes to paying for the costs, equal does not always mean fair. The costs assumed by each co-owner may vary depending on different considerations such as their share, use of the horse, other contributions, etc. Also, the situation of the parties and the horse may change over time, resulting in a party being unable to pay its share of the current expenses or of a major unexpected expense.

Revenues

A successful competition horse may earn a significant amount in prize money throughout its career. The agreement should clearly state

how these revenues will be either used or shared between the parties. Often, the prize money will first be used to pay the expenses and lower the parties' out-of-pocket payments. However, it can also be agreed that the prize money will be payable, in whole or in part, to the rider or the trainer of the horse as retribution for their services.

Decision making

All decisions pertaining to the horse will generally be determined by way of a majority decision of the co-owners. However, the parties may agree otherwise and establish a different decision making process, such as naming a manager party or sharing the decision powers according to the issue at stake or the emergency of the situation. The parties may also decide in advance on certain questions, which decisions will stand unless decided otherwise by all parties. For instance, the co-owners may decide in advance on the choice of professionals (veterinarians, farrier, trainer, rider) or the boarding of the horse. The parties may also agree on a mediation or arbitration process in the case they are unable to agree on any significant decision.

Purchase and sale

Some horses are bought as an investment and are intended to be resold at a profit in the future. Even if such is not the original intent of the co-owners, contexts may change and a co-owner may become interested in selling the horse, for instance after receiving an unsolicited offer to purchase that he cannot refuse. In any event, co-owners may disagree on the terms and timing of the sale of a horse. It is possible to provide for such occurrences with various provisions which will generally result in the other co-owner having the opportunity to purchase the share of the prospective seller. It is also advisable to include a provision allowing the prospective seller, under specific conditions, to force the other co-owner into selling its share to the prospective buyer when said co-owner blocks an otherwise profitable sale.

Termination and partition

No matter how complete and well-conceived an agreement may be, an irreconcilable conflict between the co-owners may always arise. In such event, it is important that the agreement contains mechanisms to terminate the co-ownership in an efficient and orderly fashion. Various mechanisms may be applied,

most of which will result in one of the co-owners purchasing the share of the other, or otherwise in the sale of the horse to a third party. It is essential to describe with precision the events triggering such mechanism as well as the procedure to be followed. A good termination provision should protect as much as possible the value of the share of each co-owner.

In conclusion

As mentioned previously, this is in no way an exhaustive list of the matters to be addressed in a co-ownership agreement. A reputable equine lawyer will be able to guide you in your reflection process and help you draft a co-ownership agreement customized to your situation. Should you have any question or need any additional information, please do not hesitate to contact us at +1-418 838-5547 or jpcote@ksalex.ca. You can find more information about KSA Avocats at ksalex.ca. <



Article written by Julien-Pierre Côté, lawyer at KSA Avocats.



If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us via info@europeanequinelawyers.com or by telephone +31-(0)135114420.

