

Checklist of Issues to Consider for Your Bull Lease

By Cari B. Rincker, Esq.

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There are many reasons why a cattleman may choose to lease a bull. Oftentimes, these transactions are done “on a handshake”; however, memorializing the terms of the lease can protect both parties, help articulate a clear agreement, and provide a roadmap for resolving disputes to preserve a business relationship. This article illuminates the salient points that should be considered in your bull lease.

1. **Identification.**

The Bull(s). The lease should be clear on which bull(s) are subject to the lease. If the bull is registered with a breed association, it is recommended to include the breed registration number and a copy of the registration paper as an addendum. Cattlemen should consider putting the approximate weight and body condition score of the bull at the time of the Agreement; in some cases, the bull owner will include a photograph of the bull to illustrate his condition on or around the date of delivery.

The Cows. In most cases, bull leases should be clear on which females the bull will be bred to. In some instances, a detailed list of the cows, their identification numbers, dates of birth and breed may be attached as an addendum to the lease. This may be important for multiple reasons: (1) to show that the bull will not be overworked, (2) to demonstrate that the bull will or will not be used on virgin heifers, or (3) the bull will not be bred to unapproved cows owned by the breeder or third parties.

Bull Use Location(s). The bull lease should be clear where the bull will be housed. Will the bull be on pasture on the breeder’s property? Will the bull transfer among three different properties owned or rented by the breeder?

2. **Delivery.** How is the bull being transported from the bull owner’s property to the breeder’s property? Who is paying for the expense of the transportation and bearing any risk of loss, injury or illness of the bull during the delivery time? Are there penalties for late delivery? Will the bull be transported to a bull stud once a month during the lease? It is also recommended that both parties agree to comply with transportation laws for the truck and trailer and any animal welfare laws that apply to the transportation of livestock, including the “Twenty-Eight Hour Law”.

3. **Term.** The term of the lease and procedures for extending the term should be clear.

4. **Payment Terms.** Bull leases should have unambiguous payment terms. What is the rate, timing for payment, payment method(s) and instructions, and penalty for late payment (including interest). Some bull leases require a security deposit for \$X to help insure the delivery of a healthy bull at the end of the term.

5. **Option to Purchase.** Will the breeder have an option to purchase the bull at the end of the lease or is this a “rent-to-own” contract for a bull?

6. **Insurance.** The bull may be insured to cover risks relating to the death, injury or illness of: (a) the bull, (b) other animals caused, by the bull, or (c) people, caused by the bull. This coverage may be included in the Farmowner’s Comprehensive Liability Policy, coverage by specialized and targeted livestock insurance, or another type of commercial insurance; however, the parties to the bull lease should address this issue.

7. **Representations.** Are the parties making any representations to the other party? For example, the bull owner might be representing the bull’s ownership, breed, pedigree, Expected Progeny Differences (“EPD’s”) according to the breed association, genetic DNA markers, health, fertility, and structural soundness. If the bull owner represents that the bull tested positively for a certain genetic marker then the bull owner should make sure that the lease acknowledges that genetic DNA tests are not 100% accurate and the bull owner is not taking responsibility for any error by the tester. On the flip side, the breeder may represent the health of his/her cowherd, the breed or age of the cows, certain nutrition programs, and that the animal handling practices used on the cattle operation are in compliance with federal and state animal welfare laws.

8. **Record-Keeping.** Are there any record keeping requirements under the lease? For example, is the breeder required to keep any feeding or breeding records? Does the breeder have to supply the bull owner with any data on the progeny (e.g., weaning weight, yearling weight, genetic DNA markers)?

9. **Veterinary Care.** The issue of veterinary care should be addressed in the bull lease. It is recommended that the breeder be required to call the bull owner immediately if a medical issue ensues. Do the parties have a list of approved veterinarians? If there is an emergency, can the breeder use any available veterinarian? Who will pay for reasonable and necessary veterinary expenses?

10. **Care of the Bull.** Parties to a bull lease should consider adding language concerning the care of the bull. Is the breeder required to use certain management techniques or nutrition programs? Is there a penalty if the bull is delivered back to the bull owner at the term malnourished or has experienced a significant loss of weight? Unless otherwise agreed, there should be a clause restricting the breeder from taking the bull to a bull stud or otherwise collecting his semen.

11. **Risk of Loss, Injury or Illness.** Who is bearing the risk of loss, death, injury or illness to: (a) the bull, (b) other animals, caused by the bull, or (c) people, caused by the bull. Is there a penalty if the bull is injured (either with or without the fault of the breeder) so as to make the bull unserviceable to other females (including but not limited to him being crippled, unsound, or injured sheath, penis or scrotum)? As noted above, how should risk of loss, injury or illness be addressed while the bull is being transported between farms and ranches?

12. **Warranty/Guarantee.** Is either party making a warranty or guarantee? Perhaps the bull owner wants to give a warranty that the bull is of a certain breed and free of genetic birth defects. Most breed associations have posted online the genetic testing status of registered bulls, which can be included as an addendum to the lease, illustrating that the bull is pedigree-free, tested-free or assumed-free of genetic birth defects. If a warranty to the bull's fertility is made, then the bull owner should supply a veterinarian approved and signed "Bull Breeding Soundness Evaluation" as proof that the bull is a "Satisfactory Potential Breeder". On the other hand, the breeder may guarantee that the cows are healthy. Warranties on health and fertility are common if the payment terms are directly related to confirmed pregnancies. Conversely, the bull owner may want to specifically state that he does not warrant that the semen is fit for a particular purpose or that the bull's semen will result in the production of a calf or that the progeny will result in congenital birth defects.

13. **Termination.** Under what circumstances can either party terminate the bull lease? For example, many bull leases allow for the termination of the lease if either party materially breaches the contract. Furthermore, there could be a clause saying that either party could terminate the lease giving the other party X days written notice.

14. **Confidentiality.** This issue of confidentiality should be discussed when negotiating a bull lease. If the parties haven't already signed a Non-Disclosure Agreement, do they want the terms of the bull lease to be confidential? Will any exceptions to this confidentiality apply and for how long should the obligation of confidentiality apply?

15. **Dispute Resolution.** Few bull leases address dispute resolution and they should – just ask anyone who has been a party to law suit. Litigation can be long and expensive. Parties should consider having a mediation clause requiring the parties to a bull lease to use an experienced agriculture mediator to help facilitate a settlement of the dispute. If mediation is futile, the parties should consider having a binding arbitration clause under the rules of the American Arbitration Association.

16. **Relationship of Parties.** In most cases, the contract should be clear that the bull owner and breeder are not forming a partnership, joint venture, agency, or any other formal business association. As an exception, if the bull lease includes a provision that the parties will sell the progeny from the bull and split the proceeds, then this *is* a partnership – instead of a "bull lease" the parties should have a "general partnership agreement". Put simply, when two or more people go to business together and share profits then they have formed a partnership. This is an important concept to understand because general partnerships are oftentimes formed in the livestock community, sometimes inadvertently. Partners can legally bind other partners. If it is not your intent to form a partnership then make sure your lease includes a simple clause clarifying that it is a lessor/lessee relationship vs. a partnership.

17. **A Few Other Provisions.** If the bull owner and the breeder are in different states, it is paramount that the contract should say what the choice of law is (e.g., New York, Illinois, Texas). Is there any exclusivity between the parties? Can the agreement be modified in writing?

How will the parties handle Acts of God (e.g., tornado, earthquakes, hurricanes, floods, fire)? Can the bull be subleased?

As you can see, there is no “one-size fits” bull lease that is suitable for every transaction. That’s why it is dangerous for cattle producers to pull a form off the Internet, fill in a few blanks, and hope that it’s “good enough.” Bull leases should be carefully tailored for the unique needs of your operation and the circumstances surrounding a particular transaction. It behooves cattle producers to hire an attorney to help craft a suitable bull lease. Cattle producers can help keep legal costs down by using this checklist and working through all the issues with the other party before consulting an attorney. Even if an attorney is not used as the draftsman, cattlemen should try to memorialize the terms of the bull lease in writing.

For more information contact:

Cari B. Rincker, Esq.

Licensed in New York, Illinois, New Jersey, Connecticut & District of Columbia

Rincker Law, PLLC

New York Office: 535 Fifth Avenue, 4th Floor, New York, NY 10017

Illinois Office: 701 Devonshire Drive C12, Champaign, IL 61820

Office (212) 427-2049

cari@rinckerlaw.com

www.rinckerlaw.com