

CHECKLIST FOR MULT-OWNER SYNDICATION AGREEMENTS

Syndication agreements, like horses, come in all shapes and sizes. Knowing which one is right for you depends on a number of separate and distinct factors such as: purpose/goals of the syndication, the number of syndication investors, the price of the syndicated horse, and the monetary value of each fractional interest in the horse. The “single owner/single rider” syndication typically requires simpler contract provisions. Multiple-investor syndications, however, complicate the terms and conditions of the investment and therefore may require more detailed provisions. Either way, it is highly recommended that the terms and conditions of the venture be memorialized in an effective and enforceable agreement to minimize the risk of future disputes.

In the multi-investor syndication, it is recommended that the rider and investors transfer ownership of the horse to an LLC created for this purpose. This is a very simple process that will provide liability protection and the creation of an Operating Agreement to set forth the rights and obligations of the parties. This checklist demonstrates a number of key issues for any syndication agreement that the parties should address prior to commencing any syndication arrangement. The answers to these issues can be provided to the drafter of the syndication contract to ensure that the parties’ intentions are properly included.

This checklist was developed with the assistance of Yvonne Ocrant, an attorney experienced in equine law matters. It is provided for educational purposes only, and is intended to demonstrate a number of material issues addressed by a properly drafted syndication agreement. This checklist is not intended to be all-inclusive, is not to be used as a “form” document, and is not offered as legal advice.

I. FORMATION OF A LLC

1. What is the name of your LLC?
2. In which state will the LLC be formed?
3. Who will be the registered agent for the LLC?

II. SYNDICATION MEMBERSHIP

1. What % ownership (“Fractional Interest”) will each member have in the horse?
2. What is the price for each Fractional Interest?
3. What is the Annual Maintenance Fee for the horse?
4. Can Fractional Interests be transferred, and if so, what are the terms and conditions of a transfer of a Member’s Fractional Interest?
5. What happens to a Member’s Fractional Interest if they default on their Annual Maintenance Fee obligations under the agreement?
6. What happens to a member’s Fractional Interest if they die, become incapacitated, file for bankruptcy, or divorce a spouse with a shared ownership of the Fractional Interest?

III. MANAGEMENT

1. If the LLC owns the horse, who will be the Manager of the LLC? The rider?
2. What are the rights and duties of the Manager?
3. Care and maintenance of the horse?

4. Who has the right to make final competition decisions?
5. Who pays the horse's expenses?
6. Who maintains the LLC's records, bookkeeping, and accounting?
7. What are the Member's reporting requirements to the Members?
8. Is the Manager, if he/she is the rider, expected to promote the Members' ownership in the horse? If so, how?
9. How are competition credentials offered to the Members when there are more Members than credentials allowed for the horse's competition?
10. What are the powers of the Manager regarding the LLC's business, i.e. opening bank accounts, purchasing insurance for the LLC, entering into contracts for the LLC, and retaining accountants, attorneys, and other necessary agents?
11. Is there any limit to the Manager's rights, i.e. do these actions require a 50% consent of the Membership?
12. If the Manager is also the rider, what happens if the rider takes time off from training and/or competition?
13. How is a vacancy in the Manager position filled?
14. What if the Manager wants to resign his/her position? How is this done?
15. How will Member meetings be held, i.e. phone, e-mail, or otherwise?
16. How is a Special Meeting called? Who can call a Special Meeting?
17. What actions require a vote and how is a vote of the Members taken?

IV. SALE OF THE HORSE

1. Who has final decision-making authority on a purchase offer?
2. Does the Manager have the right of first refusal to buy the horse?
3. Do the Member's have a right of first refusal, and if so, is this before or after the Manager's right to buy the horse?
4. How are the sale proceeds distributed?

V. TAXES

1. Who is responsible to file the LLC tax returns?
2. Who makes the tax elections and what elections are to be made?
3. Who is designated as the "Tax Matters Member" as required by Tax Code?

VI. DISSOLUTION

1. Under what conditions is the LLC dissolved?
2. What "winding up" and dissolution steps are to be taken with regard to selling the horse, filing the dissolution documents, and distributing the horse sale proceeds and any other assets of the LLC?

VII. MISCELLANEOUS MATTERS

1. Will horse insurance be purchased for major medical and mortality and if so, how much and who is the beneficiary?
2. Can each Member purchase insurance for the value of their individual Fractional Interest?
3. What happens to the LLC if the horse is injured and is euthanized or dies as a result of its injuries?

4. What happens to the LLC if the horse is injured, not euthanized, but no longer suitable for its intended purpose?
5. Who retains possession of any money, grants, merchandise, products, trophies, discounts, or other awards resulting from the horse's competitions?
6. Do the parties want the terms of the agreement to remain confidential?
7. Which State's laws shall govern the interpretation and enforcement of the agreement in the event of a dispute?
8. Do the parties want to agree to a mandatory arbitration provision so that any disputes have to be resolved by arbitration and stay out of the court system?