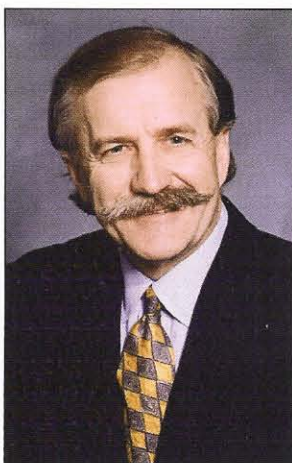


# retaining embryo rights



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**I**T HAS BEEN COMMON PRACTICE FOR STALLION OWNERS TO RETAIN BREEDING rights to their stallion when it was sold. Until recently, that option was not available to mare owners. Now however, with the advent of embryo transplants, the mare owner has the same opportunity. More significantly, multiple embryo transplants in a single breeding season are recognized by several breed registries, making the concept of transferring embryo rights even more attractive. However, since this is still a fairly new practice, industry wide standards have not yet developed. Consequently, it is important to consider some of the issues that may arise in such transactions. Moreover, to avoid future misunderstandings, it is advisable to put the agreements in writing.

The first issue that is usually discussed is the number of embryos that the mare owner would like to retain. Since the technology of embryo transplants cannot guarantee 100 percent full term pregnancies, or for that matter, a live foal, it is advisable for the seller to retain more embryo rights than the number of actual foals expected. Naturally, this is subject to negotiation between the parties.

Of course the timing of the harvesting and transplantation of the embryos is critical. Since mares can only produce a limited number of embryos in a given period of time, the parties need to agree on which party has priority. For example, if both parties have surrogate mares waiting at the same time, only one of the mares can obviously receive the embryo. Also, since the donor mare is often a younger mare still in the prime of its show career, it may be difficult to schedule the timing of the embryo transfer so that it coincides with the wishes of the breeder. Although frozen embryos may be an option, the lower viability rate of frozen embryos usually makes this option less desirable. In any event, these issues need to be addressed and worked out.

The transactional costs of insemination and embryo transplantation need to be agreed upon. The donor mare needs to be taken to a facility knowledgeable and skilled in embryo transplant procedures. The cost of transportation to and from the facility, along with the professional fees and facility fees need to be considered. At the same time, the costs associated with the purchase, collection and transportation of the semen from the stallion owner need to be taken into account. In the event any of these costs are to be shared, the parties should specify and limit the amounts to be shared.

Finally, the parties should plan for the "worst case" scenario. In other words, what happens if the donor mare dies, becomes infertile or otherwise is unable to fulfill the obligations of the agreement. The remedies are of course subject to negotiation between the parties, but whatever is agreed upon should be incorporated into the written agreement. Similarly, consideration should be given to include a provision regarding remedies available to the seller in the event the buyer sells the mare before the contract is fulfilled. This is important because if the mare is sold to a third party without providing for the transfer of embryo rights, it would be difficult to enforce those rights against the new owner.

*Mati Jarve is the managing partner of the Marlton, New Jersey law firm of Jarve Kaplan Granato, LLC. He is certified by the New Jersey Supreme Court as a Civil Trial Attorney and the National Board of Trial Attorneys as a Trial Advocate. Licensed in New Jersey, Pennsylvania and Arizona, he maintains a national practice in civil litigation, including equine related issues. This article is for informational purposes only and is not intended to be legal advice. If you have a specific legal question or problem you should consult with an experienced and knowledgeable equine law attorney. Questions, comments or suggestions can be e-mailed to [mjarve@nj-triallawyers.com](mailto:mjarve@nj-triallawyers.com), by visiting [www.nj-triallawyers.com](http://www.nj-triallawyers.com) or writing to The Way To Go.*