

# HORSE SALES DISPUTES WAITING TO HAPPEN... AND HOW TO AVOID THEM

By Julie I. Fershtman, Attorney at Law  
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**W**hen people buy and sell horses, disputes – and sometimes lawsuits – can follow. These conflicts are often avoidable. As a lawyer who drafts contracts and has tried equine contract cases in two states, I write to discuss some problems that can occur in equine sale transactions and suggestions for avoiding them.

## PROBLEM:

### Buying and Selling Horses on a Handshake

Oddly, people in the horse industry still deal on a handshake. The same person who expects a receipt from the restaurant after buying an inexpensive lunch might later buy a horse for thousands of dollars and seek absolutely nothing in writing. The problem is, with nothing in writing, sales disputes can become complicated and costly to resolve because the parties cannot agree on the contract's terms.

Fortunately, these days it is easier than ever to document an equine sale. Written contracts can potentially protect buyers and sellers in equine transactions. Here are a few examples:

- **Description of the horse sold.** The sale contract can describe the horse being sold, such as the registered name, breed, registration numbers, markings, age, brands or tattoos, and height. At the very least, this could prevent the problem of a buyer who has purchased a horse off of a website, sight unseen, only to suspect that a different horse was delivered later on.

- **Papers.** My office frequently receives calls from buyers who never received registration papers, but no contract exists to confirm that the seller even had them. Buyers can protect themselves by specifying in the contract that the seller has the registration papers and will transfer them to the buyer within a specified period of

time. The contract can even attach a copy of them.

- **Soundness and Veterinary History.** If a seller insists that the horse offered for sale is completely sound with no vices or bad habits, he or she should not hesitate to put it in writing if the buyer asks. Otherwise, it can be difficult to prove that the seller made these promises.

- **Payments.** Sellers can take extra precautions when selling horses on an installment basis. For example, when the buyer promises to pay one-half of the purchase price now and the rest later, sellers can insist that the contract specify, at a minimum, what was paid, what remains to be paid, when payments are due, and to whom payments must be sent. This can prevent the problem of buyers who insist they are paid in full when he or she only paid a fraction of the price but have possession the horse.

As I have written in my *Equine Law & Horse Sense* book series, a simple equine sale contract can sometimes take as little as five minutes to prepare. A simple contract can be signed by all parties and set forth, at a minimum: (1) the names, addresses, and contact information of the buyer, seller, and sales agent (if any); (2) a clear description of the horse sold; (3) a promise that the seller owns the horse and has the legal authority to sell it to the buyer; (4) the full purchase price; (5) the date the seller was paid; and (6) that the seller was paid in full (or the remaining sum that is due and when it must be paid). Certainly, more thorough and detailed contracts take more time and, for the protection of the parties, can be drafted or reviewed by a knowledgeable lawyer.

## PROBLEM:

### Buying a Horse With Cash

Cash sales are surprisingly common in the horse industry.

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try. The problem is, sales of this type often create disputes, especially when they are not confirmed in a carefully written contract, because the parties have no record of the amount exchanged. Buyers who pay with a check, by comparison, will at least have their cancelled check as proof of what was paid to the seller.

### PROBLEM: No Veterinary Examination

Pre-purchase veterinary examinations can help evaluate a horse's overall health and condition. Some buyers also seek drug screen exams. Buyers who seek details regarding the fitness and suitability of a horse offered for sale, especially before parting with their money, can find these examinations very informative and worth the added expense. If the seller allows the buyer to arrange for a pre-purchase veterinary examination, the contract can specify this as well as when the exam must be completed.

### Avoiding Disputes

The phrase caveat emptor (buyer beware) is not meant to suggest that buyers have no legal rights when they feel cheated in an equine sale. They do. Buyers can, and sometimes do, sue sellers for breach of contract, fraud, violations of deceptive trade practice laws, and other things. As a lawyer, I have helped buyers win these cases. I have also defended sellers against these claims. While it is true that a written contract cannot prevent all disputes from occurring, the fact is that without one, legal disputes are often more expensive to resolve and the outcome is rarely certain.

*This article does not constitute legal advice. When questions arise based on specific situations, direct them to a knowledgeable attorney.*

### About the Author

Julie Fershtman, a lawyer for over 26 years, is one of the nation's most experienced Equine Law practitioners. A shareholder with the law firm Foster Swift, she has successfully tried equine cases in 4 states, has drafted hundreds of equine industry contracts, is a Fellow of the American College of Equine Attorneys, is the author of 2 books on Equine Law, and is listed in The Best Lawyers in America, 2013.

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