

## *The Pitfalls and Challenges of Equine Sales*

By Mary Westman

The sale and purchase of a horse is considered a “sale of goods” and governed by Oklahoma Statutes, Title 12A, Uniform Commercial Code. Unfortunately, many of these transactions are not reduced to writing and result in a host of disputes. Many handshake deals are found to be unenforceable because the purchase price was over \$500.00. Elation over that new barrel racing horse turns quickly to disappointment when the new buyer, who did not obtain a pre-purchase exam, finds out the horse’s hocks are shot and cannot compete. While on the surface, it seems the sale of a horse should be fairly straight forward, in a few short paragraphs, I’ll illustrate for you why that is not the case.

To begin, accurately identifying the horse bargained for and delivered can be a challenge. Today, many interstate horse sales are conducted sight unseen. At best the buyer may get a few pictures of a horse purportedly to be the horse being purchased. But how can the buyer be sure the horse that gets off the transport van is actually the horse he or she bargained for? While some horses may have unique characteristics setting it clearly apart from all the other horses in the world, in reality the vast majority do not, and it can be very difficult to distinguish one bay Morgan horse from another. You would be correct to suggest that tattoos, microchips and branding could help distinguish that new prize stallion; however, except for a few equine industry performance associations, these methods of identification are not universally or even frequently used. Moreover, even microchips are not fool proof. Unscrupulous transporters can easily remove the microchip from a \$100,000 cutting champion and place it in another not-so-talented nor valuable but similar looking gelding.

Even if the identity of the horse is not an issue, is title to the horse an issue? Could there be an agister's liens on the horse? How would you know? What the heck is an agister's lien anyway? Where would you even look for a lien on a horse? Do lien holders bother to file liens so the would-be buyer can find them? Sellers can only convey the title possessed so how can you be sure the title to your new filly is unencumbered? We've only covered identification of the horse and seller's title, and we already have a headache.

Next, can the buyer sue a seller who proudly boasts, "My stallion is a great prospect for your breeding program"? Is that a warranty, or is it considered common horse industry puffing? No one ever exaggerates when trying to sell his or her horse, right? Wrong! What should a buyer do to ensure the horse is fit for his or her particular or even an ordinary purpose when the seller has disclaimed all implied and express warranties? What if a buyer is contemplating the purchase of a young Thoroughbred believed to be the next American Pharoah or, dare we suggest, the next Secretariat? Are there specific warranties a buyer should look for from the seller? Absolutely! The prudent buyer should insist on the seller warranting this promising racing prospect is free of certain physiological anomalies that, if present, would certainly guarantee a short-lived run for the Triple Crown.

We've focused so far on the equine sale from the buyer's perspective but what about from the seller's perspective? What if the buyer insists on taking the horse for a "test ride"? Could that prove to be a liability risk for the seller? If so, how can the seller facilitate the buyer's evaluation of the horse while minimizing risk to the seller?

And then there is the dreaded risk of loss considerations. Does the risk of loss pass to the buyer when title passes? What happens if the buyer is delayed in coming to pick up his or

her new colt? Who's responsible when the colt experiences a bout of colic and needs emergency surgery? Remember when I mentioned the frequency of interstate horse sales? Who bears the risk of loss if the horse is injured during transport? What if the horse is stolen? Unfortunately, horse rustling is still a possibility with horses sold either to unsuspecting buyers or even slaughter houses.

Did you know the rules are different for merchant and non-merchant sellers? Furthermore, in the horse industry, it can be difficult to determine who is a merchant engaging in the sale of horses and who is not. Is Aunt Sally a merchant when she regularly sells horses to fund her efforts to find that perfect trail horse, or is a merchant status reserved for the large breeding barns down in Purcell, Oklahoma? These questions reflect just a few of common horse industry practices that impact risk of loss.

Moving on to the actual purchase, when is payment received - before delivery, at delivery or even over time? In the context of interstate sales, who is responsible for sales tax? How would you determine if sales tax even applies? And oh yes, back to the issue of risk of loss, how does the method and timing of payment impact the risk of loss?

Further, international sales interject another set of issues to be considered such as currency, import/export regulations, transportation costs, tariffs, quarantine, vaccinations or residence of the seller for purposes of calculating taxes on gains, etc. What law governs interstate or international horse sale agreements? Would you prefer one to the other depending on whether you are the seller or the buyer?

We've talked a lot about the mechanics of the purchase and sale of a horse but what about the all-important price term? If you are the seller how do you place a dollar value on

your horse? Even if you aren't selling a horse this is something you may need to do for a variety of reasons such as to insure your horse or maybe to claim damages in the event of a law suit. While there is no hard and fast formula for computing a horse's value, the consensus is a horse's value is its fair market value.<sup>i</sup> However, because each horse is different, there is no concrete methodology to determine fair market value, and in the event of a lawsuit, expert testimony is often required.<sup>ii</sup> So how does one go about determining a horse's fair market value? Is there a discrete list of factors consistently utilized to come up with that magic price point? Simply put, of course not! Factors are very breed and even discipline specific.

As promised, these few paragraphs illustrate just a few of the pitfalls and challenges with equine sales. To be sure this just scratches the surface as I have made no mention of syndication, fractional interests, leasing, racing regulations, bloodstock agents, auction house rules, selling breeding rights or reserving breeding rights to name just a few additional possible transaction variables. This short article poses many questions and offers few answers for one simple reason – each sale is so unique it would be impossible to provide one right answer.

An equine sale transaction requires more than just the standard terms of the purchase and sale agreement, it also requires terms that are unique to the local, regional, national and even international equine industry. Breed associations, sport or riding federations, state regulatory bodies, equine industry lobbying associations and equine welfare advocacy groups all play a role in the evolving body of equine law. Staying active and current with the industry is the best way to ensure a good outcome for those participating in an equine sale transaction.

The equine industry is exciting and dynamic, and for me, both a Morgan horse breeder and an attorney practicing equine law, nothing could be more satisfying.

*This article does not constitute legal advice and is intended to be used for educational purposes only.*

#### About the Author

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<sup>i</sup> FRANK T. BECKER, EQUINE LAW 285-286 (2013).

<sup>ii</sup> Id.