
Equine Transaction Laws

An Educational Summary



TRICIA BOOKER/USHJA ARCHIVES

What You Need To Know

The sale or lease of a sport horse is a major business transaction and yet horse deals often are made without the legally required documentation that is designed to protect all parties involved.

While knowledge is power, ignorance is not a defense. If you are a professional representing buyers and sellers – or if you are a buyer or seller – you need to know the laws governing equine transactions. Understanding and following the law can help you avoid liability, damages, and other fees imposed for transactions gone awry. It will also increase the likelihood of a successful purchase or sale.

A Summary of Legal Requirements in Three Key States

California State Law

A bill of sale is required in purchases in excess of \$10,000 and must include:

- a. Purchase price
- b. Signature of buyer, seller, or such party's duly authorized agent.

Further restrictions

- a. Dual agency is prohibited unless both buyer and seller agree in writing
- b. It is unlawful for an agent to receive payment or any item valued in excess of \$500 from anyone other than his principal unless:
 - it is disclosed in writing to both buyer and seller, and
 - the agent's principal consents in writing to the payment'

A written contract or agreement setting forth any commission structure and a bill of sale are required for payment of commissions, otherwise payment of commissions is not enforceable.

Possible consequences

- a. Treble damages

Kentucky State Law

A bill of sale is required in purchases in excess of \$10,000 and must include:

- a. Purchase price
- c. Signature of buyer, seller, or such party's duly authorized agent.

Further restrictions:

- a. Dual agency is prohibited unless both buyer and seller agree in writing
- b. It is unlawful for an agent to receive payment or any item valued in excess of \$500 from anyone other than his principal unless:
 - it is disclosed in writing to both buyer and seller; and
 - the agent's principal consents in writing to the payment

Possible consequences

- a. Treble damages, award of cost of the suit, reasonable litigation expenses and attorney's fees

DISCLAIMER

The information and sample documents in this booklet are offered solely as an informational and educational service to the USHJA community and the general public. The content is not intended to provide nor does it constitute legal advice or legal opinions and should not be relied upon as legal advice or opinion. These materials are intended, but not promised or guaranteed to be current, complete, or up-to-date and users should be aware that the content and specific laws cited are subject to change. The publication and/or use of the information does not create or constitute an attorney-client relationship and the information and sample documents should not be relied upon or used in transactions without first seeking the advice of an attorney licensed to practice in the appropriate jurisdiction.

Florida State Law

A bill of sale is required in purchases in excess of \$10,000 and must include, at a minimum:

- a. The name, address, and signature of the purchaser, owner or his duly authorized agent
- b. The name of the horse, and its sire and dam, if known
- c. Breed and registry status of the horse, if applicable and known
- d. The age of the horse, if known
- e. The date of the sale
- f. The purchase price
- g. The following statements:

"As the person signing below on behalf of the Owner, I hereby confirm that I am the lawful owner of this horse (or the Owner's duly authorized agent), and I am authorized to convey legal title to the horse pursuant to this bill of sale"

"As the person signing below on behalf of the Purchaser, I understand that any warranties or representations for the Owner or the Owner's agent that I am relying upon in acquiring this horse, including warranties or representations with respect to the horse's age, medical condition, prior medical treatments, and the existence of any liens or encumbrances, should be stated in writing as part of this bill of sale."

Further restrictions

- a. Dual agency is prohibited unless both buyer and seller agree in writing
- b. It is unlawful for an agent to receive payment or any item valued in excess of \$500 from anyone other than his principal unless:
 - it is disclosed in writing to both buyer and seller
 - the agent's principal consents in writing to the payment
- c. Anyone serving as a dual agent must, upon request by his principal, furnish copies of all financial documents in the control of the agent pertaining to the transaction
- d. A written contract stating commission structure is required for payment of commissions, otherwise payment of commissions is not enforceable
- e. An owner or an agent that has subjected a horse to one or more of the following treatments within 7 days prior to the private sale of a horse or any interest therein shall disclose this fact to the purchaser.
 - extracorporeal shock wave or radio pulse therapy
 - acupuncture, electro-stimulation or both with the intent or effect of altering laryngeal function of the horse

Possible consequences

- Actual damages, attorney's fees and court costs, and civil penalties up to \$10,000.



TRICIA BOOKER/USHUA ARCHIVES

A Summary of Requirements Outside of State Law

Uniform Commercial Code Covering Horse Transactions

The Uniform Commercial Code (“UCC”) is a comprehensive body of laws governing commercial transactions in the United States.

These laws regulate sales by merchants and a seller would be deemed a merchant if he holds himself out as having knowledge or skill peculiar to the goods involved in the transaction. In addition, merchant status can be imputed to the seller if he employs an intermediary (broker, agent, trainer, or knowledgeable friend) to make the sale. If the seller is found to be a merchant, the transaction will carry implied warranties of merchantability and fitness for a particular purpose.

State Consumer Protection Act and Consumer Protection Laws (“CPAs”)

Every state has common law fraud statutes which exist to address deceptive and unfair practices. CPAs seek to protect a buyer from the perceived imbalance of knowledge and experience held by sellers in the equine industry. CPAs overrule a defense that the challenged action is accepted practice or customary in the industry.

Possible consequences

- Punitive damages and payment of attorney’s fees

DEFINITION OF TERMS:

AGENCY: The fiduciary responsibility of an agent is to ensure the transaction meets the best interest of the client.

DUAL AGENCY: A Dual Agency situation exists when an individual (trainer, coach, agent or other) represents a purchaser in a purchase or lease transaction and receives compensation as such and who also receives compensation directly or indirectly from the seller or another individual in the transaction. This is a situation that needs to be disclosed and agreed upon by the seller and purchaser.

Below are checklists for the three most important contractual agreements you will need when buying or selling a horse. For sample contracts scan the QR code.



Agent Disclosure Agreement Checklist

- Date of agreement*
- Names and Addresses of Agent*
- Names and Addresses of Purchaser*
- Statement of Agent's expertise in the industry and purchase/sale of horses*
- Statement of Agent's intent to act as agent for the purchaser for the horse(s)*
- Statement of Agent's agreement to locate suitable horses for future purchase and to negotiate the purchase.*
- Statement of requirements for purchase outlined by the Purchaser*
- Agent acknowledgment of acting as Purchaser's fiduciary with respect to his obligation under this Agreement.*
- Statement of what acts or omissions would constitute a breach of Agent's duties including but not limited to: (a) communicating any false or misleading information to Purchaser regarding the horse under Purchaser's consideration; (b) failing to disclose to Purchaser the true price at which any horse under consideration by Purchaser has been offered for sale; (c) arranging with any person or persons the sale of a horse to Purchaser at an inflated price; (d) entering into any other agreement with any person with respect to any transaction involving the sale of a horse to Purchaser, other than an agreement which has been fully disclosed to Purchaser and which Purchaser has consented to in writing; (e) failing to disclose to Purchaser any ownership interest of Agent in any horse Purchaser has under consideration; or, (f) otherwise acting in any manner contrary to the best interests of Purchaser.*
- Agent acknowledgment of duty to disclose to Purchaser any adverse/dual interest Agent has in a transaction*
- Statement of whom Agent is employed by concerning the horse under consideration and Agent's compensation for those services.*
- Statement that agent is not employed by any other persons or entities regarding a horse under consideration by Purchaser and is not being paid any additional compensation other than that expressly mentioned in agreement.*
- Agent's remuneration including commissions for services in connection with the purchase*
- Statement of when Agent payments by Purchaser will be made and in what manner*
- Agent acknowledgment that failing to disclose and receive consent from Purchaser for any adverse/dual interest Agent may have in a transaction concerning the subject matter of this Agreement, including but not limited to acting as a dual agent, may constitute fraud and subject Agent to civil and/or criminal prosecution.*
- Signature of Agent*
Date of Signature
- Signature of Purchaser*
Date of Signature

Purchase-Sale agreement *Checklist*

- Date of agreement***
- Names and Addresses of Seller and Seller's Agent***
- Names and Addresses of Purchaser and Purchaser's Agent***
- Detailed Description of the Horse being sold***
Name/Color/Markings/Breed/Sire/Dam
Sex/Tattoo/Age/Passports/Registry Papers.

- Purchase Price***
Date of when payment is to be made.
Statement of who is responsible for payment.
Statement of who is responsible for paying commissions.
Statement of who is receiving commissions.

- Transfer of Possession***
Statement of when and where horse will be delivered.

- Purchase Contingency***
Veterinary Examination.

Obligation to purchase subject to an inspection and written certification by a licensed veterinarian selected and paid for by the Purchaser.

Certification states Purchaser's satisfaction.

State if horse is in good physical condition and fit for the intended purpose or use.

List name of veterinarian and timeline for examination /inspection.

Seller's Representations and Warranties

Statement of Horse's Physical Condition.

List any and all known medical conditions, vices, and medical treatments:

Veterinary Records and Examination.

Seller provides copies and/or access to Horse's vaccination records as well as any other records. If Purchaser fails to timely secure documentation and review records prior to the sale and transfer of Horse, it is at Purchaser's own peril, and Purchaser waives the right to condition the validity of sale on the basis of non-disclosure of said records.

Statement of authority to enter into agreement and execute sale.

Seller statement of horse's behavior.

List all known behavior issues.

Transfer of Possession and Registration.

Upon Seller's receipt of the full Purchase Price, Seller promises to deliver possession of the Horse and provide Purchaser with Horse's registration papers, if any, and documents necessary to transfer registration of the Horse.

Statement of which state the parties have mutually agreed that this Agreement shall be construed in accordance with and governed by

Signature of Seller

Date of Signature

Signature of Purchaser

Date of Signature

Bill of Sale Checklist

- Detailed Description of the Horse*
- Name*
- Color*
- Markings*
- Breed*
- Sire/Dam*
- Sex*
- Age*
- Statement of authority to enter into agreement and execute sale*
- As is, where is and with all faults*
- Purchaser acknowledges that he/she has conducted inspections as appropriate, including the use of a qualified veterinarian, and is satisfied with the Horse's condition.*
- Acknowledge the Purchaser has had the opportunity to have a pre-purchase examination performed on the Horse by a veterinarian of Purchaser's selection at Purchaser option and expense.*
- Acknowledgment that the execution, delivery, and performance of the Bill of Sale is legal and does not require the additional consent of any person, governmental agency, or any other body of any kind."*
- Acknowledgement of delivery and agreed upon date*
- Seller acknowledges that the Horse has been delivered into the possession of Purchaser on or before the date of this Bill of Sale.*
- Acknowledgement that the sale is agreed to be final with no warranties, guarantees or other promises.*
- Purchaser assumes all risks, responsibilities, and liabilities on the Horse upon execution of this document.*
- Consideration, Commission, and Other Remuneration.*
- Statement of price and payment agreements*
- Purchaser is responsible for payment of a commission to his agent and Seller is responsible for payment of a commission to his agent.*
- List names of persons or entities receiving commissions*
- Statement of which state the parties have mutually agreed that this Bill of Sale shall be construed in accordance with and governed by*
- Signature of Seller and Date*
- Seller's Address*
- Signature of Purchaser and Date*
- Purchaser's Address*



ANGELA PRICHARD



Empowerment Through Education

By Whitney Allen

Buying or selling a horse can be daunting. Finding the right horse for the right owner/rider is challenging in and of itself. Add in agents, veterinarian examinations and price negotiations, and you can quickly find yourself in a vulnerable position with more questions than answers. You might even find yourself on the wrong side of the law.

Many people enter into these transactions with little to no knowledge of the laws or their rights. As a corollary, if you were to find a house you wanted to purchase, you would be certain to require a contract from the seller that would outline the full scope of the purchase agreement. You would be entitled to know how much commission your real estate agent is making from the sale, and you would be entitled to full disclosure, documentation and memorialization through a legally binding agreement.

An equine investment should require the same standards of fiduciary responsibility. The financial and personal risk can be as great as purchasing a home.

As with any endeavor, the best way to prepare and protect yourself is through education. To help people better understand the laws regarding equine transactions, the USHJA Owner's Task Force is launching an educational campaign surrounding this issue. Through this campaign, members will learn about legal requirements and will have access to sample contracts to support their purchase process.

"Time after time we see transactions where owners and agents don't even realize they are not in compliance with the

law. The Equine Transaction Laws Campaign is designed to improve awareness of legal requirements and empower people to know and do right by each other," said Debbie Bass, chair of the USHJA Owner's Task Force.

The Equine Transaction Laws campaign was launched at the 2014 USHJA Annual Meeting with the presentation of the Equine Transaction Laws Booklet. Along with a checklist for recommended contracts, the booklet provides a summary of the laws in Kentucky, Florida and California. These states have the most stringent requirements and serve as a safe prototype for all equine transactions.

In addition to potential state requirements, there is the Uniform Commercial Code covering horse transactions that is a comprehensive body of laws governing commercial transactions in the United States.

There are also the State Consumer Protection Act and Consumer Protection Laws. Every state has common law fraud statutes, which exist to address deceptive and unfair trade practices.

All members are encouraged to download a copy of the Equine Transaction Laws Booklet and educate themselves about the laws and standards for buying and selling horses.

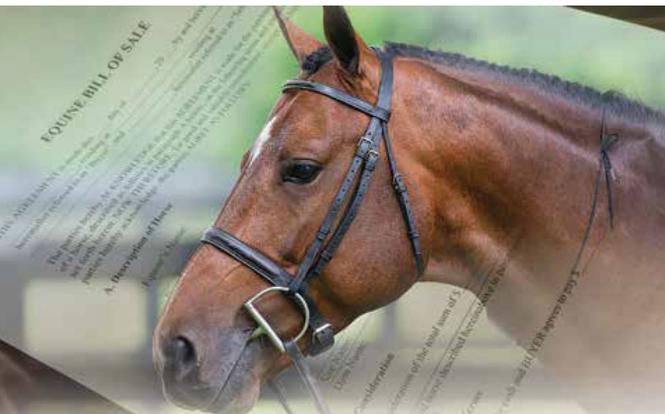
This information is offered solely as an educational service to the USHJA community and the general public. This content is not intended to provide nor does it constitute legal advice or legal opinions and should not be relied upon as legal advice or opinion.

DID YOU KNOW? AN AGENT DISCLOSURE AGREEMENT SHOULD INCLUDE:

- Statement of Agent's expertise in the industry and purchase/sale of horses
- Statement of Agent's intent to act as Agent for the purchaser for the horse(s)
- Statement of Agent's agreement to locate suitable horses for future purchase and to negotiate the purchases
- Statement of requirements for purchase outlined by the Purchaser
- Agent acknowledgment of acting as Purchaser's fiduciary with respect to his obligation under this Agreement
- Statement of what acts or omissions would constitute a breach of Agent's duties
- Agent acknowledgment of duty to disclose to Purchaser any adverse/dual interest Agent has in a transaction
- Statement of who employs the Agent with regard to the horse under consideration, and the Agent's compensation for those services
- Statement that Agent is not employed by any other persons or entities regarding a horse under consideration by Purchaser and is not being paid any additional compensation other than that expressly mentioned in agreement
- Agent's remuneration, including commissions for services in connection with the purchase
- Statement of when Agent payments by Purchaser will be made and in what manner
- Agent acknowledgment that failing to disclose and receive consent from Purchaser for any adverse/dual interest Agent may have in a transaction concerning the subject matter of this Agreement, including but not limited to acting as a dual Agent, may constitute fraud and subject Agent to civil and/or criminal prosecution

Throughout the year, the USHJA will be providing educational materials on this important topic through USHJA In Stride and USHJA Enews. Please visit the USHJA website (www.ushja.org) and click on "Resources" to download sample contracts and the educational summary booklet. You can also access this information by scanning this QR code on your mobile device.





The Importance of the Bill of Sale

By Whitney Allen

A clear, transparent and comprehensive Bill of Sale is of the utmost importance when buying or selling a horse, whether for a client or for yourself.

In the January and March, 2015 issues of *USHJA In Stride*, we explained what is needed for an Agent Disclosure Agreement, which is recommended when the buyer or the seller is using an agent to broker a sale; and a Purchase-Sale Agreement, which outlines the details of the understanding between buyer and seller regarding the price, the animal's history, veterinary examination, etc., for the sale.

The third and final agreement highlighted in the Equine Transaction Laws Summary is the Bill of Sale. Required by law in California, Florida and Kentucky when the purchase is in excess of \$10,000, the Bill of Sale is recommended for all sales, regardless of the state in which you live or the value of the sale.

Tom Brennan, a trainer who serves on the USHJA Board of Directors, offers some insight on the importance of a Bill of Sale: "No matter what version of this document you use, make sure you and your client understand it and are fully comfortable with what you are agreeing to. Do not sign anything [with which you are uncomfortable] and seek professional help if you don't understand it!"

"Any good agreement will include clauses to protect both parties involved," Brennan continued. "Horses are dynamic animals that are strongly influenced by their environment, routine, quality of care, handling and training, as well as infinite physical conditions. For this reason, a Bill of Sale cannot make any guarantees, in my opinion. It should be made utterly clear to everyone that the horse you are buying or selling today will absolutely not be the horse you see at a show or have in six months. This is not a positive or a negative; it's just the nature of the animal changing programs and locations."

The information is offered solely as an educational service to the USHJA community and the general public. This content is not intended to provide nor does it constitute legal advice or legal opinions and should not be relied upon as legal advice or opinion.

THE KEY ELEMENTS OF A BILL OF SALE AGREEMENT:

- Detailed description of the Horse (name/color/markings/breed/sire/dam/sex/age)
- Statement of authority to enter into agreement and execute the sale
- "As-is," "where-is" and "with-all-faults" clauses
- Purchaser acknowledgement that he/she has conducted inspections as appropriate, including the use of a qualified veterinarian, and is satisfied with the Horse's condition
- Acknowledgement that the Purchaser has had the opportunity to have a pre-purchase examination performed on the Horse by a veterinarian of the Purchaser's selection, at the Purchaser's option and expense
- Acknowledgment that the execution, delivery and performance of the Bill of Sale is legal and does not require the additional consent of any person, governmental agency or any other body of any kind
- Acknowledgement of delivery and agreed-upon date for same
- Seller acknowledgement that the Horse has been delivered into the possession of the Purchaser on or before the date of this Bill of Sale
- Acknowledgement that the sale is agreed to be final with no warranties, guarantees or other promises
- Acknowledgment that the Purchaser assumes all risks, responsibilities, and liabilities on the Horse upon execution of this document
- Consideration, commission and other remuneration—statement of price and payment agreements
- Acknowledgement that the Purchaser is responsible for payment of a commission to his Agent, and that the Seller is responsible for payment of a commission to his Agent
- List of the names of persons or entities receiving commissions
- Names of the states whose laws govern or guide this Bill of Sale, by mutual agreement between the parties
- Signature of the Seller and the date
- Seller's address
- Signature of the Purchaser and the date
- Purchaser's address

For more information about the Equine Transaction Summary, please visit www.ushja.org/ETS.



More Than Just a Handshake

By Whitney Allen

Buying or selling a horse can be daunting. Finding the right horse for the right owner/rider is challenging in and of itself. Add agents, veterinarian examinations and price negotiations, and you can quickly find yourself in a vulnerable position with more questions than answers. You might even find yourself on the wrong side of the law.

In today's ever-changing sea of laws, regulations and industry norms, it's imperative for buyers and sellers alike to educate themselves and have the right tools for decision-making.

In the 2015 January issue of *USHJA In Stride*, the Equine Transaction Laws Educational Campaign was introduced. Developed by the USHJA Owner's Task Force, it provides buyers and sellers with the resources needed to execute an open sales process, including three key agreements: the Agent Disclosure Agreement, the Purchase-Sale Agreement and the Bill of Sale. The introductory article, "Empowerment Through Education," provided an overview of the campaign and highlighted the key components of the Agent Disclosure Agreement.

The next step is to execute a Purchase-Sale Agreement. This agreement should be detailed in nature and clearly describe the animal being sold. It should include a physical description, known vices, injuries or illnesses as well as any existing behavioral issues. The agreement should also include the agreed-upon sale price, a statement of who will be receiving commissions and the transfer-of-possession plans.

This information is offered solely as an educational service to the USHJA community and the general public. This content is not intended to provide nor does it constitute legal advice or legal opinions and should not be relied upon as legal advice or opinion.

THE KEY ELEMENTS OF A PURCHASE-SALE AGREEMENT ARE:

- Date of Agreement
- Names and Addresses of Seller and Seller's Agent
- Names and Addresses of Purchaser and Purchaser's Agent
- Detailed Description of the horse being sold
 - ◆ Name/Color/Markings/Breed/Sire/Dam/Sex/Tattoo/Age
- Documents to support/descriptions
 - ◆ Passport/ Registry Papers
- Purchase Price
 - ◆ Date when payment is to be made
 - ◆ Statement of who is responsible for payment
 - ◆ Statement of who is responsible for paying commissions
 - ◆ Statement of who is receiving commissions
- Transfer of Possession
 - ◆ Statement of when and where horse will be delivered
- Purchase Contingency
 - ◆ Veterinary Examination
- Obligation to purchase subject to an inspection and written certification by a licensed veterinarian selected and paid for by the Purchaser
 - ◆ Certification that states Purchaser's satisfaction
 - ◆ Statement of whether horse is in good physical condition and fit for the intended purpose or use
 - ◆ Veterinarian's name and timeline for examination/inspection
- Seller's Representations and Warranties
 - ◆ Statement of horse's physical condition
 - ◆ List of any and all known medical conditions, vices and medical treatments
 - ◆ Veterinary Records and Examination
 - ◆ Seller provides copies and/or access to horse's vaccination records, as well as any other records
 - ◆ If Purchaser fails to secure documentation and review records in a timely fashion prior to the execution of the sale and transfer of horse, it's at Seller's own peril and he/she waives the right to condition the validity of sale on the basis of non-disclosure of said records
 - ◆ Seller statement of horse's behavior
 - ◆ List of all known behavior issues
 - ◆ Transfer of Possession and Registration
 - ◆ Upon Seller's receipt of the full Purchase Price, Seller promises to deliver possession of the horse and provide Purchaser with horse's registration papers, if any, and documents necessary to transfer registration
- Statement of authority to enter into agreement and execute sale
- Statement of the location in which the parties have mutually agreed that this Agreement shall be drawn up, with the understanding that all local governing laws and regulations apply
- Signature of Seller
 - ◆ Date of Signature
- Signature of Purchaser
 - ◆ Date of Signature

*While required by law in some states, this agreement should be considered a **Best Practice** for all horse transactions when brokering the sales process. Sample agreements are available on the USHJA website in the Owner's Resource Guide, located under the "Resources" tab.*



UNITED STATES

HUNTER JUMPER ASSOCIATION™

UNITED STATES HUNTER JUMPER ASSOCIATION
3870 CIGAR LANE • LEXINGTON, KENTUCKY 40511
P: (859) 225-6700 • F: (859) 258-9033
USHJA.ORG