

DISCLOSURE REQUIREMENTS IN A HORSE SALE

Horses sell every day, but when it comes right down to it, most people involved in a horse sale are not exactly sure what facts the seller must disclose. The law creates a fine line between a seller's duty to disclose and a seller's right to remain silent. The general rules are summarized as follows:

- A seller cannot lie or mislead a buyer. However, sellers do not have to disclose every known fact regarding a transaction. A seller generally does not commit fraud by failing to disclose, or remaining silent, about most aspects of a horse sale. Most courts around the nation hold that, with some exceptions, silence will not amount to fraud, especially where the defect could be readily discovered by the buyer or through a routine inspection. However, failure to disclose information may amount to fraud in the following circumstances:
- If the seller agrees in the purchase agreement to disclose all relevant facts, then the seller must disclose such facts to avoid fraud. Silence will not serve as protection to fraud in this situation.
- If the seller and buyer have a confidential or fiduciary relationship, the seller has a duty to disclose all relevant facts. Thus, a trainer has a duty to disclose to his or her customer all relevant facts regarding the transaction, otherwise the trainer could be liable for fraud.
- Where the seller knows the buyer is mistaken to certain facts, the seller must correct the mistaken belief. An example is when the potential buyer of a mare states that they intended to breed the mare next year but the seller knows that the mare was not able to carry a foal due to a problem not discernible from a normal veterinarian examination. Under these circumstances, the seller must clear up the mistaken belief of the buyer in order to avoid fraud.
- If a seller knows the buyer is purchasing a horse for a particular purpose, the buyer must disclose all facts relevant to whether the horse can meet that purpose. Take for example where a family is considering buying a horse for their 8 year old daughter to ride at shows. If the seller knows the horse acts up and is dangerous at shows, they must disclose this fact in order to avoid fraud.
- When the buyer asks a seller a question, the seller has a duty to give a correct response. An incorrect or misleading response constitutes fraud. If the buyer asks the seller if the horse has had any illness in the past, the seller must give a truthful answer.

Sellers can limit themselves, to a certain extent, by including an "as is" statement in the purchase agreement. This statement says that the buyer takes the horse as it is, without any warranties.

The seller may protect themselves from certain statements made prior to the sale by including a merger clause in the purchase agreement. A merger clause says that anything intended to be in the agreement is contained in this agreement, and this agreement contains all provisions of the sale. Things not expressly included will not be considered part of the agreement. Take for example the instance where there is a merger clause in the purchase agreement, and the seller has represented to the buyer that the stallion purchased is breeding sound. If the buyer wishes this to be a warranty of breeding soundness, the buyer should have the warranty specifically included in the purchase agreement.

Buyers should be aware that they too have duties, and must conduct a reasonable inspection of the horse they purchase. A reasonable inspection varies depending on the value and the intended use of the horse. If you purchase a high dollar show horse, you will probably have a duty to have a detailed veterinarian inspection of the horse, possibly including x-rays. If you purchase an expensive mare for breeding purposes, you should have a veterinarian examine the mare for her breeding capacity. However, if you purchase a pleasure riding horse intended only for recreation use, your duty to inspect will be much lower. The amount of inspection required will vary depending upon the custom in your breed or sport, and the intended use.

HOW BUYERS CAN PROTECT THEMSELVES:

- Ask questions. Document the answers to questions.
- Tell the seller what you intend to use the horse for and ask if the horse is suitable for such use. Ask if there are any known conditions which would hamper the horse's performance in this capacity.
- Use a written purchase agreement.
- If there's something that is vital to the sale, such as soundness, breeding capacity, etc., be sure to have it included in the purchase agreement.

- Properly inspect the horse. The level of inspection depends upon the intended use, breed and sport standards. If you are not sure what type of inspection is necessary contact a professional breeder, trainer or equine veterinarian.
- Test the horse's suitability for its intended use.

HOW SELLERS CAN PROTECT THEMSELVES:

- Answer questions truthfully.
- Inform the buyer, especially if the buyer is inexperienced, that they have the option to obtain a veterinarian exam of the horse if they desire.
- Always use a written purchase agreement.
- Include "as is" and merger provisions in the contract. If the buyer requests to have guarantees or warranties included in the contract, determine if you want to be held to those guarantees or warranties.

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