GT GreenbergTraurig

Advisory | Equine Law

May 2020

Buying and Selling Horses in Florida: The Bill of Sale Rule

When purchasing or selling a horse in Florida, a host of factors may come into play: the horse's beauty and majesty; its adeptness in clearing two-meter jumps; the chances of winning (without disqualification) the Kentucky Derby. The intricacies of Florida law may be low on the list,but Florida is one of a handful of states with specific, detailed regulations governing the transaction -the effects of which may not be apparent on first read.

A Florida-based seller of horses must comply with Rule 5H-26.004 of the Florida Administrative Code – Florida's "Bill of Sale" Rule. The Bill of Sale Rule requires specific language in a bill of sale for all horse sales, which may be overlooked by some. Under the Rule, with few exceptions, the sale or purchase of a horse *must* be reflected in a written bill of sale with:

1. The name, address, and signature of the Purchaser, the Owner, or their duly authorized agents;
2. The name of the horse, and its sire and dam if known;
3. The breed and registry status of the horse, if applicable and if known;
4. The age of the horse, if known;
5. The date of the sale;

6. The purchase price of the horse;

7. The following statement: "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";

8. The following statement: "As the person signing below on behalf of the Purchaser, I understand that any warranties or representations from 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."

The language is required "at a minimum"; the parties are generally free to add language, but not subtract. While much of the required information appears to be noncontroversial, consideration should be given to the disavowal of all express and implied warranties under the Uniform Commercial Code and common law. The Bill of Sale Rule partially addresses the perceived issue of loose language by a seller that may result in warranties about the horse's condition, behavior, or suitability for a particular rider. Does the seller know that marketing the horse as "a real packer" may create an express warranty that provides the purchaser with a right to return the horse for a full refund if the horse is, after all, not a "packer"? Or, if a seller markets itself as having special knowledge about the suitability of horses for particular riders, that seller may have stepped into Florida's adoption of Uniform Commercial Code (UCC) provisions about express and implied warranties of suitability for a particular purpose.

The Bill of Sale Rule attempts to obviate such post-sale arguments by requiring a seller to disavow, in writing, all verbal warranties, although it does not expressly state such. . Instead, it requires the sale contract, signed by both parties, to include the acknowledgement that "any warranties or representations from the Owner or the Owner's agent…should be stated in writing as part of this bill of sale." In other words, the bill of sale must provide written notice to the buyer that warranties must be included in the bill of sale. If the notice is provided, and no warranties are added to the bill of sale, then all warranties are disavowed and the transaction is complete upon delivery of the horse. Thus, the Bill of Sale Rule legally requires a buyer and seller to utilize a contractual provision common in virtually all areas of commercial relations: an "integration clause," the function of which is to void any promise not contained in the contract itself. The Bill of Sale Rule supplies the language and requires its use "at a minimum," but other language to the same effect may meet the requirements. Courts have not weighed in on that detail.

But where there is *no* integration clause – where the bill of sale does *not* include the Rule's required notice about warranties or at least something close – warranties are *not* disavowed. In that case, a buyer may claim reliance upon earlier-written statements, verbal promises, showings of the horse (potentially with riders who are experienced with and know how to give a forgiving ride to a particular horse), and web pages. In fact, a typical buyer may be relying on the seller's sales pitch, since reliance on a sales pitch is typically exactly what a pitch is meant to induce. But many sellers might be surprised to learn that statements such as "we'll find the best match for you" or "let us match horse and rider to perfection" may result in warranties that the seller *did* in fact find the best match, or *did* play matchmaker to perfection.

First, if warranties are not disavowed in writing, then the parties may face litigation over whether those warranties were provided. Thus, it may be hard to find a proper disavowal of any warranties absent the language of (8), or something very close to it.

Second, use of an improper bill of sale may lead to liability under Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Fla. Stat. (FDUTPA). Under FDUTPA, "Unfair methods of competition,

unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." §501.204(1), Fla. Stat. FDUTPA is an almost general catch-all that captures a variety of problems in commercial relations. Violation of the Bill of Sale Rule is one of them: a related rule provides that a violation of the Bill of Sale Rule or "of any provision of Chapter 5H-26, FAC, resulting in actual damages to a person, shall be considered an unfair and deceptive trade practice pursuant to Chapter 501, Part II, F.S." Rule 5H-26.003(13), Fla. Admin. Code. That is, a violation of FDUTPA may result in damages (return of the purchase price) and injunctive relief (return of the horse). And courts are authorized to award attorneys' fees to the prevailing party in FDUTPA litigation. §501.2105, Fla. Stat.

And there are other cautions. Florida has a statutory "mandatory return" policy. Under section 501.142, Florida Statutes: "Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase…." The retailer may post a "no refunds" policy, or a six-month refund policy…but most disclose it, whatever it is. The statute also warns that it "does not prohibit a local government from enforcing the provisions established by this section." Some local governments even provide their own spin: in Broward County, for example, an ordinance provides for a 30-day refund policy if a retailer fails to post notice of its policy.

Finally, rules and statutes evolve, including in the arena of horse sales. Recently, the Florida Legislature almost changed the Bill of Sale Rule to expressly allow for a continuing-horse-care covenant. In the 2019 legislative session, Senate Bills 1646/1738 (Animal Welfare), would have provided certain new animal protections including an authorization to include in the bill of sale "a covenant for the continuing care of the horse." The covenant would be "annexed to the horse, run[] with the horse, and [be] binding and enforceable upon all future purchasers." In other words, the covenant would follow the horse to all subsequent owners. Although the "covenant must include liability for liquidated damages for a purchaser's failure to comply," the bill did not identify who would bring suit to enforce the covenant or claim and apply the liquidated damages to the horse's post-retirement care. Would the seller, who was interested enough to initially annex the covenant to the horse, be interested enough to sue an owner three steps removed from the initial sale, five years after the fact? Or, instead, would suit be brought by an animal rights advocacy group in the horse's name?

Since the bill did not pass, sellers may not face those particular questions in the immediate future. However, the bill reflects a growing pressure from the various aftercare organizations that are interested in avoiding slaughter by providing for the retirement and retraining of racehorses and show horses and developing a source to pay for the associated costs.

Proper application of Florida's Bill of Sale Rule has the potential to protect both parties. If certain warranties are necessary for the transaction to close, they may be made consistently with the Rule, but they should be made cautiously, and with a review by an experienced attorney.

Author

This GT Advisory was prepared by.:

- John K. Londot | +1 850.425.8539 | londotj@gtlaw.com

Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.¤ Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.