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Alert | Equine Industry Group

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Saddling Up With Dual Agents

Horse sales can be complex, time consuming, and involve a significant amount of work on the part of a trainer or other knowledgeable individual to facilitate the transaction and help ensure that both buyer and seller adequately understand the transaction and the horse involved. And for this investment of time, hard work, and industry knowledge, that person – the "agent" – typically receives a commission based in most cases on a percentage of the overall purchase price of the horse. Agents can be invaluable in ensuring that the transaction goes smoothly and that both buyer and seller get what they bargained for and are satisfied with the transaction.

However, problems can arise when a single person serves as an agent on behalf of both buyer and seller, a situation known as "dual agency." Dual agency presents an inherent conflict of interest, and while many dual agents navigate those conflicts appropriately and with integrity, some do not, leading to adverse outcomes where the interests of buyer, seller, and in some cases both are not properly represented. Sometimes the fact that an agent is acting as a dual agent is unknown to one or both sides of the transaction. The adverse outcomes can be financial, such as undisclosed kickbacks or even different prices being negotiated with the seller and the buyer, with the agent pocketing the difference, or problems with the quality or value of the horse itself. The issue became increasingly problematic at the beginning of the twenty-first century, leading some states to pass legislation to address the issue head-on.

Several states, including Florida, California, and Kentucky, enacted laws as part of their efforts to regulate the sale and purchase of horses that addressed the potential conflict created by dual agency in equine sales and the problems it could create. In addition to requiring disclosure of the purchase price on the bill

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of sale, these regulations require the disclosure of dual agency relationships, to try to ensure that all parties are aware that the “agent” is representing both sides in the transaction.

In Florida, for example, a person may not act as a dual agent in an equine sale without:

(a) The prior knowledge of both the Purchaser and the Owner; and

(b) Written consent of both the Purchaser and the Owner.[1]

In addition, a person who acts as an agent in an equine purchase transaction—whether on behalf of the buyer or seller, or serving as dual agent—may not receive a commission valued over $500.00 unless:

(a) The agent receiving, and the person or entity making, the payment disclose in writing the payment to both the Purchaser and Owner; and

(b) Each principal for whom the agent is acting consents in writing to the payment.[2]

In order to be enforceable, any contract or agreement for the payment of a commission for a dual agent must specifically be in writing and signed by the party against whom enforcement is sought.[3]

Upon request by their principals, dual agents in Florida must also furnish certain information, including copies of all financial records and financial documents in their possession or control pertaining to the transaction – with a limited exception for work product used internally to evaluate the subject horse.[4]

Agents who fail to comply with the above provisions may find their commissions contracts unenforceable or that they are subject to liability under statutes like Florida’s Deceptive and Unfair Trade Practices Act.[5] Bottom line, when it comes to dual agents, full and fair disclosures benefits everyone: buyer, seller, and agent.

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[1] Fla. Admin Code Ann. R. 5H-26.003(2).
[2] Fla. Admin Code Ann. R. 5H-26.003(3).
[3] Fla. Admin Code Ann. R. 5H-26.003(7).
[4] Fla. Admin Code Ann. R. 5H-26.003(4).
[5] Violations of FLA. ADMIN. CODE ANN. R. 5H-26.001–26.004, are deemed unfair and deceptive trade practices under Chapter 501, Part II, Fla. Stat. See FLA. ADMIN. CODE ANN. R. 5H-26.003(13).

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