

Alert | Equine Industry Group



March 2021

Hold Your Horses: Ensuring Equine Purchase and Sale Agreements Comply with Applicable Laws and Protect the Parties

In addition to the requirements of [Rule 5H-26.004](#), discussed in a prior [GT Advisory on the Florida Bill of Sale Rule](#), equine buyers and sellers should consider including various provisions in their equine purchase and sales agreements.

Among other things, these agreements generally should:

- Sufficiently identify the horse. Different jurisdictions may impose varying requirements, but generally, the horse's name, age, sire and dam, and breed registry status should be included.
- Sufficiently identify the owner or seller, as well as the purchaser, or their agents, if applicable, including their respective contact information.
- Specify the purchase price, payment method, and timing. This includes whether any portion of the purchase price is in-kind.
- Specify when and how the horse will be delivered or made available for delivery to the purchaser. This may be upon payment of the purchase price, a date certain, or some other arrangement.

- Sufficiently identify whether anyone served as a “dual agent” related to the transaction and, depending on the jurisdiction, the compensation they received. Certain jurisdictions impose additional requirements for “dual agents.”
- Specify whether any warranties apply or are disclaimed. Parties may want to consider indicating the purchase of the horse is “as is,” and, depending on the jurisdiction, including language waiving implied warranties, such as the implied warranties of fitness for a particular purpose and merchantability. Parties may also consider including acknowledgements, such as that ample opportunity for inspection (including pre-purchase examinations) was provided and that transfer of possession and the buyer’s full assumption of the risk, responsibility, and liability are effective upon execution.

In certain states, parties may need to include specific acknowledgements under a governing statute or rule. In Florida, for example, the person signing on behalf of the owner must acknowledge: “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.” The person signing on behalf of the purchaser must acknowledge: “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.”

Parties should also consider additional provisions, in the event unforeseen circumstances or disputes arise:

- That the parties will cooperate in effectuating the provisions and intent of the Agreement, including entering into other agreements, releases, or stipulations, as reasonably necessary or required to carry out each party’s intent.
- A governing law and venue provision, so that in the event of a dispute, the parties will know, in advance, which law governs and where litigation should take place. This gives the parties clarity from the outset and may potentially reduce time and costs litigating these issues. Depending on the jurisdiction, parties may need to include a reference to “conflicts of laws,” or exclusivity for venue.
- A prevailing party attorneys’ fees and costs provision. Litigation may eclipse the price of the horse in a transaction gone bad. Fees are not typically available under a specific law for these sorts of transactions (absent fraud), so buyers and sellers should consider protecting themselves in case a dispute arises.
- An arbitration clause for dispute resolution and, if so, whether arbitration will be mandatory, final, and binding, and not subject to appeal. In addition, particularly if parties are in different countries, consider including the desired location and seat of arbitration, as well as the language to be used for the arbitration.
- A right of first refusal for the seller in the event of a potential subsequent sale of the horse.
- Clauses that state the signatories have authority to execute the agreement on behalf of the parties; addressing potential interpretation to the disadvantage of the drafting party; integration or merger; a severability; and addressing how the agreement may be amended.

Depending on the jurisdiction, the seller may need to make additional disclosures about the horse’s health, even if they have included a waiver of warranty or as-is clause. Failure to include these disclosures may constitute a deceptive or unfair trade practice, subjecting the seller to substantial liability.

In Florida, for example, [FLA. ADMIN. CODE ANN. R. 5H-26.003\(10\)\(a\)](#) provides that the seller of the horse must disclose whether the horse has been subject to any of a list of treatments within seven (7) days prior to the sale. Failure to make these disclosures constitutes a per se violation of [Florida's Deceptive and Unfair Trade Practices Act \(FDUTPA\)](#), triggering its remedies. [FLA. ADMIN. CODE ANN. R. 26.003\(13\)](#) (“A violation of any provision of Chapter 5H-26, F.A.C., resulting in actual damages to a person, shall be considered an unfair and deceptive trade practice pursuant to Chapter 501, Part II, F.S.”). These treatments currently include:

- extra-corporal shockwave therapy or radio pulse-wave therapy;
- acupuncture, electro-stimulation, or both, with the intent or effect of altering laryngeal function of the horse;
- internal blister or other injections behind the knee, which are intended to or which have the effect of concealing the true conformation of the horse; and
- the use of any electrical or mechanical device designed or used to shock or prod a horse for the purpose of increasing the horse's speed when it is being exhibited prior to sale, except for the use of a whip, spurs, or items otherwise permitted by the rules of the governing breed association, federation, or other regulatory body.

While many equine purchases may be uneventful, parties should consult with legal counsel to ensure their agreement comports with applicable laws and adequately protects them.

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