

How NOT to Sell a Horse

Eight Suggestions for Avoiding Equine Sale Disputes

By Julie I. Fershtman, Attorney at Law

A few years ago, I represented horse buyers in a trial of an equine sales fraud case. We won. The judge issued a ruling in my clients' favor that commanded the sellers to take back the horse, reimburse the entire purchase price with interest, reimburse certain maintenance expenses, and pay my clients all of their legal fees.

The case involved my clients' purchase of a show horse for their daughter, a novice rider. The sellers represented that the gelding was "sound" with "no bad habits" and "ready to show." Before the sale, my clients took their daughter to test ride the horse, and he behaved beautifully, even in a chaotic environment with many distractions. They took the horse home, but two days later, the horse showed drastic behavioral changes and was lame. He was unruly, and even dangerous. Despite my clients' demands to reverse the sale, the sellers refused. Left with a dangerous, unsound, and unsuitable horse, my clients authorized me to file a lawsuit.

The lawsuit claimed, among other things, that the sellers committed sales fraud, violated our state's Uniform Commercial Code, and violated the state Consumer Protection Act. We sought rescission of the sale and reimbursement of all of my clients' expenses, including reimbursement of their legal fees.

Certainly, lawyers like me enjoy winning cases, but the fact is that lawsuits take their toll on the parties involved, emotionally and financially. In the interests of helping people avoid disputes in the future, this article offers suggestions for what horse sellers should **not** do.

What Not to Do When Selling a Horse

1. *Do not publish statements in advertisements without making at least a reasonable effort to check them for accuracy.* In the case I handled, the horse was advertised as "sound," with "no bad habits" and "ready to show." Evidence at trial, however, proved that these statements were false, and raised serious questions about whether the sellers recklessly included them in the ad. Make sure you can confidently stand by the statements in your ads.

2. *Do not assume that the wording of your ads carries no legal weight. It absolutely can.* Under the law of several states, advertisements could qualify as warranties for which sellers can be held legally accountable if the horse fails to measure up to them.

3. *Do not assume that "as-is" language in your sales contract will prevent all lawsuits.* Although "as-is" language is important to protect sellers, courts in several states have ruled that these clauses are powerless against certain claims of sales fraud against the seller.

4. *Do not assume that “buyer beware” is the law and that buyers have no rights.* In an appropriate case, buyers have recourse against sellers. Depending on the facts and law, some cases fail, and some succeed.

5. *Do not assume that if you, the seller, lose a sales case, the most you stand to pay will be a refund of the buyer’s purchase price.* Laws in many states allow courts to order you to reimburse the buyer’s attorney fees and costs. Also, some states have consumer protection/deceptive trade practice laws that, if applicable, might obligate a losing seller to pay the winning buyer “treble damages” (where the buyer’s losses are actually *tripled*).

Regardless of whether the seller in a lawsuit wins or loses, he or she will be expected to pay legal defense costs. Consequently, even a winning defense can be costly. And rarely, in my experience, will the losing buyer be ordered to pay the winning seller’s fees.

6. *If you are being sued, do not assume that your liability insurance company will handle a sales lawsuit against you or finance your legal defense.* Standard homeowner’s insurance policies and commercial liability policies respond to claims involving “personal injury” or damage to tangible personal property. They are not generally designed to respond to claims involving contract and sale disputes.

7. *Do not assume that your silence, even in the face of the buyer’s specific questions, will shield you from liability for fraud.* For example, if a horse has a well-known tendency to kick out forcefully at the walls of his stall, your concealment of this information from a would-be buyer who specifically asks about the horse’s stall manners could set you up for liability for fraudulent concealment.

8. *Do not assume that horse buyers don’t sue.* They can, and they sometimes do. As the trial I handled indicates, horse buyers sometimes win.

This article does not constitute legal advice. When questions arise based on specific situations, direct them to a knowledgeable attorney.

About the Author

Julie Fershtman is one of the nation’s most experienced Equine Law practitioners. A lawyer for 26 years, she is a shareholder with the firm Foster Swift Collins & Smith, PC (www.fosterswift.com), and has successfully tried equine cases before juries in four states. She has also drafted hundreds of equine industry contracts and is a Fellow of the American College of Equine Attorneys. She has spoken on Equine Law in 28 states, including at the largest equine industry conventions. Visit www.fershtmanlaw.com , www.equinelaw.net, or www.equinelawblog.com.

Julie Fershtman’s two books, *MORE Equine Law & Horse Sense* and *Equine Law & Horse Sense*, help people avoid disputes. Contact Ms. Fershtman for more information.