

Selling a horse – advice for the seller

When selling a horse it is important you are aware of any potential legal problems and that you have a formal agreement drafted to protect you. The agreement will cost between £300-£500 and must be done by a qualified lawyer. Below Equine Lawyer Jacqui Fulton outlines some of the potential problems to be aware of when selling your horse.

Selling a horse is often a heart rending decision for the private seller. However, for a horse dealer, it is usually all in the course of a day's work. The law in relation to private and business sales is different. In short, the law applying to a business seller is far more onerous than the law applying to a private seller.



Sale in the Course of Business

Section 14 of the Sale of Goods Act 1979 – www.johnantell.co.uk/SOGA1979.htm - (as amended) imposes implied terms of fitness for purpose and satisfactory quality where a horse has been sold in the course of business. It is important to note that for section 14 of the Sale of Goods Act to apply, the seller must be selling in the course of business and must not be a private seller. In the event of a dispute these statutory terms can be relied upon by the purchaser.

This means that after purchase, if the buyer is able to prove that the horse is not of satisfactory quality, for example due to an old injury, or that the horse is not fit for the purpose for which he was purchased, for example due to an ongoing behavioural problem that had been ongoing prior to purchase, then the buyer has the legal right to rescind the sale contract and reject the horse. The seller will be legally obliged to take the horse back and refund the purchase price plus any expenses associated with the purchase so long as they have been reasonably incurred.

The onus is on the buyer to prove that the horse is not of satisfactory quality or fit for the purpose for which he was purchased. This may be done by obtaining evidence such as veterinary notes where the issue relates to an old injury, or it may result in the buyer obtaining a veterinary or other expert report giving an opinion on the problem in question. Where an expert is instructed, he must confirm that on the balance of probabilities the problem pre-existed purchase. This is an important criteria, which must be satisfied in order to succeed in a claim under section 14 of the Sale of Goods Act.

Sale in the Course of Business

Where the sale is a private sale, the purchaser cannot rely on section 14 of the Sale of Goods Act. In this situation the rule of caveat emptor (or 'buyer beware') applies and the purchaser must prove that the horse was not as described in accordance with section 13 of the Sale of Goods Act and/or has been misrepresented to them by the seller. The important tests which must all be satisfied in order to succeed in a claim for misrepresentation are (1) there was a statement of fact; (2) that statement of fact was false; (3) the statement was made by the seller in order to induce the purchaser to enter into the contract, and (4) the statement was relied upon by the purchaser.

Where the purchaser is unable to prove a breach of section 13 of the sale of Goods Act (sale by description) or misrepresentation, there will be no comeback over undiscovered problems or vices unless the purchaser has an express agreement with the seller.

Sellers are far better protected by having a written agreement of sale in respect of every horse they sell in comparison to a seller who has nothing in writing. This ensures that the buyer is aware of any problems, pre-existing injuries or vices that the horse has, and the seller cannot deny these after the sale has concluded.

The agreement (in the form of a written contract) should provide the following:

- Names and addresses of the parties.
- A detailed description of the horse being sold.
- A full and frank declaration from the seller as to any vices/behavioural or temperament problems that the horse has.
- Exactly when and how the purchaser will be allowed to return the horse for breach.
- A time limit within which a complaint must be made or the animal returned.
- Details of when the risk passes i.e. does the risk pass when the horse is loaded onto the buyer's transportation or when the purchase price is paid? The seller needs to be clear on this point so that the buyer can insure the horse from the correct point.

Top Tips for the Seller

- Insist upon having a written purchase agreement, which should fully detail how the horse has been described to the buyer and should be signed by the seller and buyer before the purchase price is paid.
- Prior to buyers viewing a horse, send (in writing) a list of details about the horse, the height, age, colour, breeding, details of the horse's temperament, what he has done in the past, where he came from, any problems that he has etc.
- Insist that the buyer views the horse prior to purchase. Where a horse is purchased unseen (e.g. over the phone, internet etc), and the sale is a business sale (the buyer must be a consumer and buying the horse for their own use, not for business purposes), the Distance Selling Regulations apply. These Regulations allow a buyer to return the horse within seven days from the date of delivery regardless of whether the horse is absolutely as described by the seller. This could result in a horse being transported back and forth for no good reason, ultimately costing the seller a lot in terms of transport.

- Ensure that potential buyers try the horse in the discipline for which they are buying it. If they are buying the horse to jump, ensure that they jump it.
- Prior to the horse's collection, send details to the buyer (in writing) of the horse's routine, when the horse is due to be wormed and shod, what the horse is fed etc to ensure that the horse's routine remains as similar as possible to the routine the horse is used to. By sending this to the buyer prior to collection they will be able to discuss the horse's needs with the person who will be caring for the horse to ensure that the routine is kept the same where possible and to ensure that the necessary feed is in stock for the horse.
- Do not be scared to disclose the horse's veterinary history (a computer printout from your vet and any other vet who may have treated the horse e.g. a specialist vet). By providing these details you show the buyer that you have nothing to hide. Ultimately the buyer can obtain access to these records by making an Application to the Court for an Order. Where it is clear that the seller has hidden information, with the intention of inducing the buyer to buy the horse, the buyer can make an Application to the Court for an Order that the seller must disclose the horse's veterinary records.

It is important to remember that this article does not constitute a formal agreement and that you must have one drawn up by a qualified lawyer. Every situation is different and it is important that your agreement suits your requirements. Petplan Equine customers can have an agreement drafted by Jacqui Fulton for the discounted price of £175 + VAT. To Redeem this offer please visit the Rewards Room.