

Do a Horse's Registration Papers Prove Ownership?

By Julie I. Fershtman, Attorney at Law

In the horse industry, registration papers do not automatically reflect true ownership. This can pose a problem, for example, if the horse injures someone and the injured person assumes that the one named on the papers is the horse's owner who should be used, or if a creditor (such as a bank) secures a large money judgment against a horse owner for an unpaid debt and then tries to seize and sell off the registered horse to satisfy the judgment. But although the papers are in the debtor's name, the fact is that someone else owns the horse.

Do Registration Papers Really Prove Ownership?

Many people in the horse industry believe that the person named on a horse's registration papers is the horse's true, legal owner. However, courts in a few states that examined the issue have, in fact, reaffirmed that the name appearing on the horse's breed registration papers may not necessarily be the horse's owner. The courts may also have taken into account that many people in the horse industry simply don't transfer the horse's breed registration papers when sell a horse.

Strategies for Avoiding Liability

Here are a few suggestions for avoiding liability:

- *Get it in writing.* When you buy or sell a horse, get written confirmation that the horse has been sold and that the title has transferred. Insist on a Bill of Sale and keep a copy of the document.
- *Transfer the registration papers,* or specify in the sale agreement if the horse is not being sold with papers.

Documenting a Sale

An equine sale agreement can be drafted in a few as five minutes. Here are the minimum elements for what I call the "five minute sales contract."

1. Parties. State the seller and buyer's full names, addresses, and telephone numbers. Minors under the age of 18 need a parent or legally appointed guardian to sign.
2. Horse. Describe the horse clearly. For example: "Scotty Straw, 2007 American Quarter Horse gelding; AQHA Registration No. 123456; Dark chestnut with blaze and three socks." Specify if the seller is transferring registration papers along with the horse.
3. Price. State the full sales price and whether the seller has been fully paid. If the state law requires payment of sales tax, state who is paying the taxes.
4. Warranties. Sometimes the seller makes promises regarding the horse's qualities or condition, which are important to the buyer. These are generally known as warranties. Although certain laws may govern warranties, buyers may want to confirm in writing the most important warranties or promises. The parties can list the statements the seller has made on which the buyer is relying. Never buy a horse from someone who refuses to warrant in writing that they own the horse and can sell it to you free of liens and encumbrances.

Legally, the seller can try to disclaim warranties in the contract through language that he or she has made no warranties and that the horse is being sold "as is." State laws usually

address how this is done. Also, these laws often state that disclaimers must be conspicuous (noticeable).

5. Signatures. Sometimes the document can call for signature of both the buyer or seller, but the most simple sale agreement can be signed by the seller. If a person claims to sign the sale agreement on behalf of a business, make sure that he or she has authority to sign and bind the business.

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

About the Author

A lawyer for over 24 years, Julie Fershtman is one of the nation's most experienced Equine Law practitioners, has successfully tried equine cases before juries in four states, has drafted hundreds of equine industry contracts, and is a Fellow of the American College of Equine Attorneys. For more information, visit www.equinelaw.net or www.equinelaw.info.

Julie Fershtman's books, *MORE Equine Law & Horse Sense* and *Equine Law & Horse Sense*, help people avoid disputes. Order both for \$42.90, first class shipping included. To order, call Horses & The Law Publishing at 866-5-EQUINE. Or, send check or money order to Horses & The Law Publishing, P.O. Box 250696, Franklin, MI 48025-0696.

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