

After the Sale: Heartburn or Afterglow?

BY ARMAND LEONE • The excitement of a horse purchase rests on the dreams and hopes of a new horse and rider coming together and embarking on a new adventure. When the fit is right and the horse can perform as intended, a warm afterglow is shared by buyer and seller. When the fit isn't right or the horse goes lame, relationships deteriorate quickly. Although litigation was never contemplated, the potential for a buyer feeling duped and the seller being sued exists. When dealing with horses anything can go wrong, from an unanticipated injury, exacerbation of a pre-existing condition, development of a new illness, or incompatibility of horse and rider, just to name a few. There are ways to lessen a claim of non-disclosure and fraud against a seller. There are also ways to maximize a buyer's chance of satisfaction with the horse. Here are guidelines that can help to maximize the promise and minimize the risk of disappointment leading litigation:

If there is something important to the transaction, write it down in the bill of sale or lease. For instance, if a lease will be voidable and partly refundable if lameness results from a known pre-existing injury, write it into the lease. Otherwise, later it may be assumed that the price paid reflected risk of that injury recurring. If a horse is being sold "as is," clarify in the bill of sale what that means. The purchase terms become embodied in a bill of sale which commemorates the completion of the sales transaction, with the buyer getting the horse and the seller getting money and/or other horses. Sales from industry professionals to amateurs without a trainer are set-ups for controversy. If selling to an amateur who lacks a trainer, reflect that fact by writing it into the bill of sale. Anything of potential importance to the deal should be documented.

Never overlook the assistance of a qualified trainer to help you in selecting a horse if you are an amateur. It may sound obvious, but it requires saying. The fit between horse and rider does not instantly snap into place. Most often there is a learning and "coming together" period after a purchase. Trainers manage riders' transitions to new horses, as well as horses to new riders. Good ingredients must be properly mixed. Be aware that the USEF, USHJA, USEA and other

affiliate organizations have certified trainer designations to help with ensuring safety on the field and increasing financial transparency. Engaging a qualified trainer to advise in horse selection and to train the new pair maximizes



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a successful purchase.

Always consider getting a pre-purchase exam commensurate with the purchase. A pre-purchase exam can be advantageous to both buyer and seller. The exam can alert a potential buyer to undisclosed and unknown medical conditions that may be problematic. A pre-purchase exam can also protect the seller from claims of undisclosed risks. If a buyer decides not to perform a vet exam to save costs because of familiarity with seller or otherwise, insert that in the bill of sale. One can even write that the seller permitted the buyer to perform a pre-purchase exam with a vet of their choosing, and that the buyer elected to purchase the horse without a veterinarian examination. Remember, pre-purchase exam is not a guarantee of future health or performance. It gives you an evaluation whether the horse has a greater future health risk than normal.

Get fresh veterinarian eyes to examine the horse. Most commonly, buyers use their current veterinarian to perform the pre-purchase examination, but often, horses are bought and sold within the same barn. A veterinarian without prior experience treating and evaluating the horse may offer the most unbiased evaluation of the horse. Sellers should identify the horse's existing veterinarian and offer the buyer to select a vet of their own choosing. If concerns still exist on the horse's health after review of records and a pre-purchase vet exam, ask for permission to speak with the horse's current veterinarian. The pre-purchase examination, combined with the perspective of the existing veterinarian familiar with horse's health history, provides optimal disclosure and helps to prevent regret.

If you can arrange a trial period with the horse, do it. Trying a horse before acquiring ownership may sound obvious, but for a host of reasons, some purchases are made without doing so. A seller may sometimes offer a trial period, a buyer may ask for a trial period, and sometimes informal opportunities for buyers to try horses may arise. Depending upon the seller's familiarity with the prospective purchaser, the seller may offer a trial for a finite period at the buyer's barn, offer for the buyer to return to seller's barn to try the horse again, or offer to take the horse to another facility to

be tried. Issues related to non-refundable deposits and/or insurance against injury during a trial period may arise and need to be addressed. If a trial period of some sort was performed or offered and rejected, specify all details in the bill of sale. Doing so may protect the seller against future claims ranging from horse and rider incompatibility to that of pressuring the buyer into a quick purchase.

Be realistic. There is substantial risk in buying any new horse, These guidelines can help to lessen the inherent risks of disappointment over a purchase and the cost of litigation after a sale when things don't work out as planned.

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Have questions or need legal help with your next horse transaction? Leone Equestrian Law is available for consultation at 201.444.6444 or info@equestriancounsel.com.