A horse sale begins with the buyer’s dream. For each person, the dream is different. For some, the dream is of the perfect pony for their child. For others, it could be the horse they wanted but never had while growing up. The dream is about winning ribbons at a hunter/jumper show, working cattle on a cutting horse, running a Thoroughbred, or simply riding the trails with their “best friend.” While each dream is different, the basics of buying a horse—from the buyer’s perspective—are the same.

The old adage caveat emptor or “buyer beware” applies to horse sales perhaps more than any other. Kentucky equine attorney Robert S. Miller writes that horse traders are found somewhere between sinners and saints: “The horseman is not only a gambler, but also a deal maker. Added to the horseman’s love of the animal and his or her comfort with the unknown, one finds an odd mixture of the bandit and the saint.” When buying horses, not every seller can be trusted. It’s important to know the law.

In Texas, there are no implied warranties on livestock or their unborn young, according to the Texas Uniform Commercial Code Section 2.316. In Texas, there are very few protections for buyers. However, the Uniform Commercial Code, “U.C.C.,” differs from state to state. So, a Texas horseman could buy or sell a horse to someone else in another state, and the transaction might be covered by a U.C.C. statute that is drastically different from Texas’ law on horse sales. When travelling across state lines to buy or sell a horse at a show, polo match, cutting, race, or ranch, be aware that the law governing horse sales could affect your responsibilities as a buyer or seller. Many other states have laws on horse sales that are more buyer-friendly than Texas. For that reason, a brief summary of U.C.C. requirements may be helpful for horsemen travelling to other states and transacting horse deals, elsewhere.

A seller—particularly a professional horseman who is covered by the U.C.C. or Uniform Commercial Code—must provide a warranty of merchantability for each horse sold. That is, the horse must be reasonably sound and free of defects. The horse should also be fit for the purpose that the buyer tells the seller that the horse will be used for. However, a buyer must use caution when purchasing a horse. The buyer must become well acquainted with “the Three Truths:” the truth, the whole truth, and nothing but the truth. To do this, a buyer must carefully exercise due diligence when inspecting a horse prior to purchase. The old Russian proverb “Trust, but Verify” rings true.

If the horse has an obvious defect, the buyer should notice it and ask the seller direct questions about that defect. Buyers need to make careful observations of the horse’s conformation, way of travelling, and display of bad behaviors or stable vices, such as cribbing, weaving, or wind-sucking, among others. The buyer also needs to ask whether the horse bathes, clips, ties, and trailers safely. Buyers should be very wary of a disclaimer of warranty—or a horse that is being sold “as is.”

A buyer’s diligence in having the horse evaluated—in a pre-purchase exam by a vet and ridden by an experienced rider—influences whether a legal dispute may be resolved in the buyer’s favor or not. Buyers routinely have veterinarians check out a sales prospect. The vet evaluates the horse’s general health and soundness. Also he or she may perform x-rays to evaluate the bones in a horse’s feet and legs, and draw blood to determine whether the horse has been drugged in anticipation of the vet check.

Getting data from a vet check is critical to making an informed decision before purchase. Discovering abnormalities may suggest how much a horse can perform in the future—particularly for a racing or competition prospect—and whether the horse should be rejected. Or, the buyer may try to negotiate a lower price for the horse based upon the new information.

Most sellers engage in some form of “ puffing” in an attempt (continued)
to show the horse to best advantage and encourage a sale. This is to be expected. However, an express warranty—that the horse is sound, or fit to perform and to what level of success—may be an affirmation of fact or a promise that becomes a part of the sale. If a seller makes an affirmation that is wrong, the seller should correct the previous statement, so that the buyer is not misled and does not rely upon that misrepresentation to the buyer’s detriment. A court may allow a buyer to rescind a sale because the horse does not conform to the seller’s description. If a seller seeks to rescind a sales contract, the horse needs to be returned to the seller within a reasonable time after the buyer’s discovery that the horse was not “as advertised.”

If a seller conceals or misrepresents a known defect, the buyer could have a cause of action for fraud, breach of warranty under the U.C.C., breach of contract or a deceptive trade practice. Should a legal dispute arise, it is important that the buyer be able to show the defect existed prior to the sale and to document the seller’s representations at that time.

A buyer does well to take a knowledgeable person along while trying horses. This person could be a trainer, experienced rider or friend. He or she can help keep the buyer grounded while trying horses. Sometimes buyers are guilty of getting carried away with “the dream” and friends can serve as agents-of-reality. That way, a buyer does not purchase a horse that looks pretty but is too much horse to handle. A bystander can also witness the representations made by the seller. Videotaping the horse and having an audio record of the seller’s representations makes good evidence if a dispute arises later. Many video cameras have a date and time function. If a buyer is trying several horses, it is helpful to have a video/audio recording and hand-written notes that document the seller’s representations and the buyer’s impression of each horse. This helps the buyer and seller keep the details straight.