A friend of mine says, “Owning a horse is a beautiful dream, and about half of it is real.” For the other half of the dream—which can sometimes become a nightmare—prospective buyers must protect themselves. To do so, buyers should fulfill their duties of due diligence, carefully draft sales contracts, hire escrow services when appropriate, buy insurance to protect the buyer and seller from the risk-of-loss during an installment contract, and try alternative dispute resolution programs before resorting to litigation.

When considering buying a horse directly from the seller, everyone’s duties are clear. The buyer represents him or herself and tries to negotiate the best deal that he or she can get. The seller does the same. At times, buyers hire agents to find the right horse. The agent has an exclusive duty of loyalty to that buyer. A trainer or agent may represent an absentee horse owner who wishes for the agent to sell the horse on his or her behalf. The seller’s agent has an exclusive duty of loyalty to the seller. Occasionally, an agent will attempt to obtain a fee from both buyer and seller. This is known as “dual agency.” Dual agency can lead to a conflict of interest because the agent attempts to serve two masters—one on each side of the same transaction. These arrangements should be viewed with a healthy amount of skepticism.

A written contract helps to protect both buyer’s and seller’s expectations. Each horse sold should have a bill of sale and negative Coggins test. Bills of sale or sales contracts set forth the promises that both buyer and seller make for the change of ownership to take place. This is especially important when a buyer and seller agree that the buyer will pay the purchase price over time. Problems may arise when a buyer pays the purchase price in installments and then a horse is accidentally injured or dies. This type of accident is rare, but it does happen because horses are not widgets from a factory assembly line. Despite their size and majesty, they are fragile animals. Overnight, a horse can colic or get cast in a stall. A performance horse turned out in a paddock can sustain a career-ending lameness. Then, neither buyer nor seller will want a horse that is useless, and both parties may attempt to place the responsibility for the financial loss upon the other. A written contract sets forth who bears the risk of loss and helps to prevent disputes. A contract and the purchase of equine mortality or loss-of-use insurance protect buyer and seller. Each knows who is responsible for what, when. Further, installment contracts and payments may be handled by a neutral, third-party: an equine escrow service.

If a dispute over a horse sale occurs, buyers may have remedies in court after filing a lawsuit for breach of contract, breach of warranty pursuant to the U.C.C., fraud, or deceptive trade practices, among others. Each case has unique facts. Different state or even federal laws may apply depending on where the parties live, the sales contract’s choice-of-law provision, and the amount of money involved.

In Texas, there are no implied warranties on livestock or their unborn young, according to Texas Uniform Commercial Code Section 2.316. If the buying or selling of Texas horses is done out-of-state, then the other state’s laws apply. They can differ widely from Texas. If you are going to buy or sell a horse at a show, cutting, race, polo match or clinic at someone’s ranch in a nearby state, it’s a good idea to know the law, there.

Before suing over a disputed sale, it is best if buyer and seller can go to the table and try to work out a solution. This is often difficult because both parties are very emotional.

Mediation or arbitration—known sometimes as “alternative dispute resolution” or just “ADR”—can be an effective alternative to filing suit. Parties may include clauses requiring ADR in the sales contract, or one side may invite the other party to attend a session after making an appointment with a mediator or arbitrator. These professionals may be found in local court-based programs, non-profit organizations, or through bar association referrals. ADR costs range from hundreds of dollars to a nominal fee. Some mediators specialize in equine disputes and charge accordingly. Private
mediators may charge several hundred dollars for an entire day, but public programs may have a docketing fee of less than $100 for several hours with qualified mediators who often volunteer their services. Often the mediators or arbitrators are attorneys who know the state laws, can educate the parties on the strengths and weaknesses of their legal positions, and help the parties to draft a settlement that both parties can live with. Such ADR programs achieve mutually-agreed upon settlements more than 85 percent of the time, and parties report satisfaction with the process. ADR is less expensive than litigation, and ADR may provide a way for the parties to preserve their business relationship, which may be meaningful for people intending to participate in the same equestrian community for a long time.

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**About Lisa C. Smith**

Where passion and vocation meet
As a horse owner for nearly 35 years, Lisa offers her clients a real-life perspective on buying and selling horses, boarding, hiring and firing trainers, purchasing equine insurance and more. She’s fully aware of most equine issues because she has experienced them first-hand. She will handle all of your equine legal matters as if they were her own.

**Services for Equine Law include drafting:**
- Bills of Sale
- Lease-purchase options
- Breeding contracts
- Boarding contracts
- Liability releases

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This article was intended for informational and educational purposes. Because every equine transaction is as unique as the horse and horsemen involved, buyers and sellers should consult the advice of an attorney before finalizing their contracts.