BY AVERY CHAPMAN

WRITTEN CONTRACTS

To avoid misunderstandings, put horse deals in writing

There is a strong preference for informality in the horse business. Many deals are conducted on the basis of a handshake or a phone call. That is not all bad because it fosters a degree of reciprocal trust not many communities have. But, and there is always a "but," making a horse deal without a written contract, agreement or document of some sort does open up a Pandora's Box of issues and leaves the buyer and the seller both exposed and powerless to fix problems with the deal, should they come up later.

I do not intend or expect to stop the handshake deal here. Rather, this article will give you a few thoughts to ponder before you do your next deal. If the concerns you read about are that important to you, or the money or horses at stake are great, then perhaps you should err on the side of documenting the deal. You may recall my last article on pro-patron contracts, which noted that "good contracts make for good friends." The same is true here. If you write down the specifics of the deal, then later there is going to be much less confusion and much less animosity if someone suffers a memory lapse as to the specifics of that deal.

I. Put the deal in some sort of writing.

You may be surprised to learn that all states, Florida included, require written agreements for most sales transactions of $500 or more. Such a law is called a "statute of fraud" and its purpose is to define a specific type of transaction that requires a writing for the agreement in the transaction to be enforceable. The idea is simple—avoid fraud by requiring written evidence of the deal. Using Florida as an example, Florida's Uniform Commercial Code, F.S. § 672.201[2], provides several statute of frauds, each dealing with a different type of commercial transaction. Any agreement for the sale of goods for more than $500, for the sale of personal property other than goods for a price of more than $5,000, or for the lease of goods for lease payments in excess of $1,000, must be in writing to be enforceable. By the way, a horse is considered goods.

Why the amount limits? The common sense answer is that our lawmakers have decided that a transaction above a certain amount is important enough to require a written agreement. Below that, well, not too much is at stake, and it would be impossible to enforce written agreements to sell a $2 chicken. You get the point. Under our laws, then, once you have a horse deal worth more than $500, you should have a written agreement, signed by both parties. Notice that I do not say "formal contract" because almost any writing that has the following: 1) price; 2) identification of animal; 3) time to inspect; 4) warranties and guarantees (whether you make them or expressly disclaim them); and 5) purchaser and seller identification should be sufficient. That does not mean that a more formal contract, with choice of venue provisions, insurance and risk of loss issues is not sometimes necessary, but probably not in most horse transactions. In any event, given that strong preference for informality I mentioned earlier, these items listed at least get the "bones" of the deal down on paper and likely would satisfy the statute.

That does not mean to say that if you do not have a written contract, there is no enforceable contract. In fact, the exception to the statute of frauds provides that in cases where "goods for which payment has been made and accepted or which have been received and accepted," the very actions of the buyer and seller can prove out the existence of a contract concerning those goods.

However, the problem lies in the details. A court will not add additional terms—guarantees, warranties, return or refund clauses or the like—without documentation. All the actions of the buyer and seller prove was that there was a contract for the purchase and sale of something. This is not much to go on if you are seeking to return a horse.

II. Can you return the horse and demand your money back?

The answer is "maybe," and only if you do it in a timely manner and the contract does not say that the sale is final. For example, if the written contract says that the horse is "guaranteed" or that your "satisfaction is guaranteed," then you have the right to return the horse and get your money back. But not forever. (I told you there was always a "but.") So what does "timely" mean? If you return the horse 30 days or fewer, most courts will presume the return to be timely. However, the matter of timeliness is often a matter of measuring the circumstances. Even if the contract is silent on whether there was a guarantee or that the sale was final, if you had three weeks to try the horse before you paid for it, including time to vet it, then returning it 30 days after sale would seem a bit of a stretch.

Consider this scenario, which actually happened: A player tried a horse three times during the Florida season, bought the horse in April and sent it north. In

October, the player calls the seller, a pro, and says he does not think the horse suits him, that the seller orally agreed that he guaranteed satisfaction and the player therefore wanted to send the horse back and recover his purchase price. Putting aside issues of fairness, was this timely rejection? No.

The seller may take the position in that case that the buyer failed to make a timely rejection of the horse pursuant to F.S. § 676.602 (b) after a reasonable time to inspect[3]. Therefore the player is without remedy, having accepted the horse for six months and waived any defects. See, for example, Euroworld of California Inc. vs. Blakey, S.D.Fla.1985, 613 F.Supp. 129, affirmed 794 F.2d 686 (failure to make an effective rejection also constituted acceptance). The player likely could provide no proof that an oral "satisfaction guaranteed" provision was part of any agreement between the parties and can provide no proof to rebut the statutory presumption that his six-month use and possession of the horse was not lawful acceptance of the horse.

The player did not have any written contract for sale whatsoever. In that instance, the court will not read tea leaves to discern what was the arrangement between the parties. Florida law—as in most states—as embodied by the Statute of Frauds, requires the terms of certain transactions to be enforceable. But—there it is again—the statute also provides that "with respect to goods for which payment has been made and accepted or which have been received and accepted," then the transaction will stand whether or not there was a writing. And the court will not add other terms, such as a supposed guarantee, that are not plainly apparent by the conduct of business between the parties.

III. What's a buyer to do?

The answer has several parts. First, and as I mentioned earlier, put the bare bones of price, of the deal, down in writing. Second, put the length of any post-sale inspection period down in writing. Third, put any guarantees of satisfaction specifically down in writing. The same with any warranties (promises) of soundness or fitness for a particular purpose.

Don't want to do that? Then live by the handshake and hope the hand you're shaking has the same intention. And that pro who sold the horse for six months? He took it back, resold it for a lower price than the first sale and gave the player those proceeds. You decide what was fair. What I do know is that relationship will never be what it once was.

FOOTNOTES:

(2) F.S. 672.201 (Statute of Frauds), provides in pertinent part:

1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (s. 672.606).

(3) F.S. 672.606 provides in pertinent part:

What constitutes acceptance of goods:

(1) Acceptance of goods occurs when the buyer:

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or

(b) Fails to make an effective rejection (s. 672.602(1)), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them ...

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