

GOT PAPERS?

W.C. Fields said, "Horse sense is the thing a horse has which keeps it from betting on people."

A few months have gone by since you bought that new horse from an ad in Horse Connection magazine. You watch the mailbox each day hoping that the registration papers will finally arrive from the seller. Weeks go by, show season is approaching, and you need those papers to enter some of the breed-recognized horse shows. After a few follow-up phone calls, you start betting that the seller is not going to follow through on his promise to send the papers straight away. You check your bill of sale and there was no mention of the papers. Are all bets off or is there anything that can be done?

There are several legal remedies the buyer may have in this situation: (1) sue the seller for specific performance, which means that he must specifically perform his promise of transferring the horse's registration papers into your name; (2) sue for rescission, which nullifies the sale and put each party back in the position they were before the transaction took place (i.e., the seller takes the horse back and the buyer gets her money back); (3) sue for

damages (under this theory of law, you could recover the difference in money from the value you paid for what was believed to be a registered horse less the value of the horse without the papers); (4) assert various claims under applicable state and federal consumer protection or deceptive trade practices acts, violations of state Uniform Commercial Codes, or more. A lawyer experienced in these matters can assist you in determining what causes of action might be best for your situation and which will best meet with your expectations.

But before filing suit, it is generally worthwhile to give the seller one more opportunity to remedy the situation. Often a letter from an experienced attorney will help to set the right tone. Further, getting the requisite transfer forms together, and sending them often helps a seller who is confused about what is required, or has lost the papers and needs to have them reissued to himself in preparation of the transfer. These same problems also often occur with brand inspection transfers. There is good news: there are procedures for replacing lost papers or facilitating inspections which were legally required upon sale and transfer, but did not occur for one reason or another.

Your odds of receiving the proper papers can increase by insisting on a written bill of sale and/or a sales contract. Make sure it has warranty provisions with the seller guaranteeing that he owns the horse, that he is legally capable of transferring ownership, and that the seller will transfer the papers in a form required by the breed association within a set time frame. Get copies of the current papers and brand inspection documents at the time of payment. Call the breed registry to find out what will be required in the event of sale and have those documents signed at the time of payment. Finally, have indemnification, costs, and attorney's fees provisions in your bill of sale and/or sales contract in the event that things don't work out, which will put some teeth into enforcing these provisions should the seller not comply in a timely fashion. These protections should make it a sure bet that you receive your papers in time for the next show. **H**

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