

The Essential Elements of an Equine Sales Contract From A to Z

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A T T O R N E Y S



A. Attorneys Fees

- 1) General Rule – no fees awarded to litigants
- 2) Exception – expressly authorized by contract or statute
 - a) Fee shifting clauses in contracts
 - b) Kentucky Statutes
 - i. KRS 411.195
 - ii. KRS 230.357



B. Breeding Rights

- 1) A lifetime breeding right gives its owner the right to breed a mare to the subject stallion each breeding seasons of the stallion's breeding career
- 2) Language creating breeding rights should address transferability, obligations arising from ownership (such as carrying costs), whether nominations arising from ownership will be cumulative



C. Conditions Precedent

- 1) Veterinary Examination and Update
- 2) Material Adverse Change: Between time of contract execution and Closing
- 3) Insurability: At time of Closing
- 4) Representations and Warranties
- 5) Deliveries of Seller: Possession (and location for delivery of same), Registration Certificate, Transfer Document, Proof of Authority
- 6) Deliveries of Buyer: Purchase Price



D. Disclaimers

- 1) UCC-2-316
- 2) “Other Warranties. Except as expressly set forth herein, Seller makes NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE HEALTH, PHYSICAL CONDITION OR RACING SOUNDNESS OF THE COLT, ITS BREEDING SOUNDNESS, FERTILITY, OR ANY OTHER MATTER, AND IN PARTICULAR, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.”



E. Entire Agreement Clauses and Boilerplate

- 1) Entire Agreement
- 2) Governing Law
- 3) Dispute Resolution; Venue
- 4) Attorneys Fees
- 5) Counterparts and Facsimile Signatures
- 6) Further Assurances
- 7) Notice



F. First Refusal Covenants

- 1) Timing Issues
- 2) Content of Notice
- 3) Match rights: Pro-rata or “all or nothing”
- 4) Applicability of restrictive covenants on successor owner



G. Guaranties and Deferred Payment of Purchase Price

- 1) Context
- 2) KRS 371.065



H. Horse: It's all about the Horse, So Make
Sure You Are Buying the Right One!

- 1) Representations and Warranties of Seller re
Pedigree
- 2) Confirmation of Title on Registration
Certificate and endorsement of same.



I. Insurance and Insurability

- 1) Representation and Warranty as to Insurability
- 2) Covenants as to insurance prior to Closing
- 3) Congenital Infertility Insurance and shared ownership
- 4) Insurance to Secure a Promissory Note



J. Jockey Club/Registration Certificates

- 1) Delivery at Closing
- 2) Endorsement to Buyer



K. Kickers

- 1) Circumstances of particular transaction will determine when appropriate
- 2) Timing and terms for payment of kickers
- 3) Security for payment of kickers



L. Lien Searches

- 1) Information required and representations and warranties in purchase agreement re: same
 - a) Residence of Transferor
 - b) Location of Collateral
- 2) Using information obtained to determine appropriate search jurisdiction
- 3) Conducting a search



M. Management Provisions

1) Showing Provisions

- a) Training decisions, veterinary care, show selection, etc.
- b) Licensing and the complexity of multiple owners
- c) Income and expenses
- d) Trophies and Prizes
- e) Retirement (and what happens after retirement)

2) Breeding Provisions

- a) Management and boarding
- b) Breeding
- c) Duties of stallion manager/boarding farm relating to care and career



N. Nondisclosure and Confidentiality

- 1) Sample Confidentiality Language – Press Release
- 2) Sample Confidentiality Language – No Press Release



O. Options

- 1) Put Option
- 2) Call Option



P. Purchase Price

- 1) Cash Transaction
- 2) Deferred Payment Transaction
 - a) Note
 - b) Security Interest



Q. Quirks in the Law of Certain Jurisdictions

- 1) Sales Tax
- 2) Guaranty Statute
- 3) Document Stamp Tax



R. Representations and Warranties

1) Representations and Warranties of Seller

- a) Binding Obligation
- b) Clear Title
- c) No Liens
- d) Organization and Good Standing
- e) Authority

2) Representations and Warranties of Purchaser

- a) Binding Obligation
- b) No Liens
- c) Purpose of Purchase



S. Syndication and Co-Ownership

- 1) Normal Book
- 2) Reduced Book of Mares
- 3) Right of First Refusal



T. Taxes

- 1) Sample Exemptions
 - a) New York
 - b) Kentucky
- 2) Payment



U. UCC

1) Article 2

- a) Statute of Frauds
- b) Purchase Price
- c) Disclaimers
- d) Risk of Loss

2) Article 9

- a) Definition of Goods in Kentucky
- b) Lien Search
- c) Deferred Payment



V. Veterinary Examination

- 1) Coverage of Examination
- 2) Timing of Examination
- 3) Timing of Results
- 4) Satisfactory Results



W. Written Agreements

- 1) KRS 355.2-201
- 2) KRS 230-357



X. Exogenous Anabolic Steroids

- 1) Jurisdictions
- 2) Sales Companies
- 3) Sample Language – Representations and Warranties
- 4) Sample Language – Testing



Y. Yearlings

- 1) Public Auction
- 2) Terms and Conditions



Z. Zero: The Average Interest of Parties in Involving Lawyers

1) Handshake Deals - Problems



ADDITIONAL TOPICS

- 1) Rule Change at AMHA Relating to Requirement of Delivery of Stallion Service Certificate Signed by Stallion Owner Prior to Delivery of Registration Certificate for Foal
 - Appropriate Provisions in Stallion Service Agreements to Address Issue