



LEGAL EQUESTRIAN™

EQUESTRIAN QUESTION FORUM by Lisa L. Lerch, Esq.

I recently bought a horse and discovered it has a pre-existing lameness issue that the seller knew about and failed to disclose. I would like to return the horse, but the seller refuses based on the “AS-IS” clause of our contract. Is there any way to deal with an “AS-IS” contract?

Absolutely. When there is fraud in the inducement of the contract, the buyer can seek to rescind or unwind the contract.

The “AS-IS” clause is a favorite among horse sellers and is commonly found in sales contracts. In a horse sales contract, the “AS-IS” clause is used to describe a sale of a horse in its then-existing condition. The use of the phrase “AS-IS” or “With All Faults” will generally relieve the seller of any liability for visible and observable existing defects.

Where the seller has knowledge of a pre-existing condition and fails to disclose that information to the detriment of the buyer, the buyer can seek rescission of the contract based on fraud. The “AS-IS” language will not protect a seller from liability for the seller’s fraudulent representations.

If a seller misrepresents the condition of the horse or intentionally conceals any of the horse’s defects that are not otherwise visible or observable by the buyer and that misrepresentation or concealment affects the value or desirability of the horse, the seller cannot escape liability through an “AS-IS” clause.

Both intentional misrepresentation and the concealment of a material fact are forms of fraud. Seller’s failure to disclose a material fact such as a previous surgery to correct a lameness issue would constitute a concealment of a material fact. Seller actively injecting a horse to mask a lameness issue and failing to disclose that injection and lameness issue would constitute an intentional misrepresentation. Once a buyer determines fraud has taken place, the buyer should seek to repudiate the contract in a prompt and timely manner. Buyers should note that general statements by the seller regarding the horse’s soundness or ability to win blue ribbons in the future may not rise to the level of fraud and would most likely be considered “puffing” by the courts.

A pre-purchase exam can often determine whether the horse has any visible or observable defects that may affect the horse’s performance or value. Unfortunately, a typical pre-purchase exam does not include x-rays or blood work and many pre-existing conditions and medications can go undetected.

In an effort to avoid costly litigation, sellers with knowledge of a problem or condition that may render the horse less valuable or desirable than that which the buyer bargained for should always err on the side of disclosure. Buyers should also further protect themselves and include both x-rays and blood work in their pre-purchase exams.

If you would like more information on this or other topics, please feel free to visit our website at www.legalequestrian.com or contact our office at 949-264-1464.

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