



LEGAL EQUESTRIAN™

EQUESTRIAN QUESTION FORUM: by Lisa L. Lerch, Esq.

The horse seller I purchased my Quarter Horse mare from misrepresented the horse's age and health and now I'm stuck with an older, lame horse. I just want to return the horse and get my money back, but the seller is refusing to correct the problem. Does California have a "lemon law" for horses?

California's Consumer Legal Remedies Act (CLRA) is very powerful pro-consumer legislation. The Act is set forth in California Civil Code sections 1750 et seq. and applies to specifically defined "unfair methods of competition and *unfair or deceptive acts or practices* undertaken by any person in a transaction intended to result or which results in the sale or lease of *goods* or services to any consumer." (Civ. Code § 1770 (a)). [Emphasis added] "Goods" are defined by the code as tangible chattels bought or leased for use primarily for personal, family or household purposes. (Civ. Code § 1761 (a)). The CLRA defines "consumers" as individuals who seek or acquire, by purchase or lease, any goods or services for personal, family, or household purposes. (Civ. Code § 1761 (d)).

Horses have been established as "goods" under both the Uniform Commercial Code and case law. Section 2105(a) of California's Uniform Commercial Code ("UCC") states in pertinent part as follows: "'Goods' means all things . . . which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities. . . and things in action. 'Goods' also includes the unborn young of animals. . .". Further, the court in Sessa v. Riegle 427 F.Supp. 760, 764 (E.D.Pa.1977) found that the sale of horses was governed by the UCC. Given that horses have clearly been established as 'goods' under the law, the CLRA would clearly apply to the purchase of a horse in California.

The CLRA specifically sets forth numerous practices that are deemed unlawful methods of competition, unfair or deceptive acts from which a consumer may seek protection. The most applicable sections for a horse transaction are Civ. Code section 1770 (a)(5) and (7). When a seller falsely represents a horse as having certain characteristics, uses or qualities they place themselves in violation of the Act allowing the buyer to seek protection under the CLRA.

In order to invoke the protective power of this Act, the consumer must take certain necessary steps before commencing litigation or will lose their rights to pursue litigation under the CLRA. Pursuant to section 1782 of the CLRA, thirty days or more prior to the commencement of an action for damages, the consumer *shall*:

1. *Notify the person alleged to have employed or committed methods, acts or practices declared unlawful by Section 1770 of the particular alleged violations of Section 1770.*
2. *Demand that the person correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770.*
3. *Notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred or to the person's principal place of business within California.*

** It is important to note that if the seller renders an appropriate correction, repair, replacement or other remedy, or agrees to within 30 days, no action for damages may be maintained.

The CLRA is a very effective tool for encouraging a seller to do the right thing, as consumers who suffer damages under this Act may recover actual damages, punitive damages, as well as, attorney's fees and costs. As so many horse transactions occur without the benefit of a written contract allowing for attorney's fees this aspect of the CLRA is of particular benefit to a horse buyer.

If you have further questions regarding this issue, please feel free to contact our office for further information.

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