

FAQ - Contracts

- 1- I have been trying to sell my horse, and finally someone came and tried him and loved him! We negotiated a price, they paid me and took the horse. We didn't put anything in writing. Now a friend is telling me that I have to get the buyer to sign a sales agreement or the sale isn't valid. Is that true?
 - a- Yes, that's true. If there is no sales contract, it never happened.
 - b- No. You can sell a horse on a handshake.

The answer is (b). You can sell a horse on a handshake. However, if both parties don't sign a contract setting out the terms of the transaction, then the law of the state where the transaction occurred will govern any dispute that may arise. But the lack of a written agreement does not render the transaction a nullity.

- 2- Now the buyer has texted me and says he wants a "Bill of Sale." Is that the same thing as a sales agreement?
 - a- Yes. A Bill of Sale and a Sales Agreement are the same thing
 - b- No. A Bill of Sale and a Sales Agreement are not the same thing.

The answer is (b). A "Bill of Sale" and a "Sales Agreement" are not the same thing. A sales agreement typically sets out the terms of the transaction and how the deal will go down. A Bill of Sale is really just a receipt for payment received – in other words, it is proof of the transaction, but not documentation of the terms. Typically, a sales agreement incorporates a bill of sale in the sense that it can function as a bill of sale once the transaction has been completed.

- 3- I found a "Bill of Sale" on the internet and sent it to the buyer. But he says he won't sign it because it says "AS IS" on it, and he is saying he didn't buy the horse "AS IS." What now?
 - a- Now you might have a problem
 - b- No worries. Just ignore him

The answer is (a). The language "AS IS" is a disclaimer of warranties. Technically, that is a significant contract term. Imagine buying a car – it makes a difference whether you are buying it with warranties or without. The law says that warranty disclaimers have to be in writing, but they have to be agreed to before the fact, and cannot be imposed by the seller after the fact. So, since you have the money and the buyer has the horse, it sounds like the buyer is objecting to the "AS IS" language because he thought he was buying your horse with all legally applicable warranties. If the two of you can't come to some agreement, then technically there was a "mistake" and the deal should get undone – meaning you may need to take the horse back and give the buyer a refund of his money.



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- 4- So I went ahead and revised the Bill of Sale and took out the “AS IS” language. It’s been a month, but now the buyer is texting me again saying that he wants to return the horse and he wants his money back. He is saying he spoke with a lawyer and the Bill of Sale I gave him is illegal. What should I do?
- a- Give him a new bill of sale
 - b- Take back the horse and refund his money.
 - c- No worries. Just ignore him.
 - d- It depends.

The answer is (d) because it depends on what the real problem is. Obviously, the guy wants his money back. But you need to find out whether he has a legitimate basis for revoking the transaction. If you live in a state (like Kentucky or Florida) that has a law that requires specific statements in an equine bill of sale, then it is a relatively simple matter to give him a compliant bill of sale. But is he really hung up on a “proper” bill of sale, or is he just trying to find an excuse to return the horse and get a refund? Since you took the “AS IS” language out of the Bill of Sale, certain warranties may apply to the transaction. But depending on what the buyer is claiming, his issue with the horse may or may not be related to an applicable warranty. I suggest that you find out what the real issue is before you do anything.

- 5- I run a small boarding barn. I don’t have my boarders sign any kind of boarding agreement. One of my boarders went off to college last year and hasn’t paid board in a year. She owes me \$12,000 in board and her horse is worth about that. Now another boarder wants to buy her horse. Can I just sell it to the other boarder?
- a- Yes. That’s a logical and efficient solution.
 - b- No.

The answer is (b). No, you cannot just sell her horse. Even without a boarding contract, you have a lien on the horse for the amount you are owed. But in almost every state the most a lien gives you is a right to hold onto the horse to secure payment. Having a lien does not automatically transfer ownership of the horse to you. Depending on what the livery lien law in your state provides, there is probably a whole process you have to follow to sell the horse, and it probably involves jumping through a lot of hoops. If you had a boarding contract, you could put language in it that would let you sell the horse without jumping through all the legal hoops associated with enforcing a livery lien.

- 6- Can I sue the college student for the board she owes me?
- a- Yes
 - b- No



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The answer is (a). You can sue her for what she owes. Even though she didn't sign a contract, she left the horse in your care knowing that you expected payment for the services you were providing. However, since you have nothing in writing, hopefully she won't claim that she sold, leased, or gave you the horse in some kind of transaction that would relieve her of the financial obligations associated with its care.

- 7- Can I collect interest and late fees on the amount owed?
- a- Yes
 - b- No

The answer is (b). Without a written agreement, you cannot collect late fees. By law, interest will accrue on the amount of any judgment you are awarded by the court. However, the interest rate will be set by statute and will only run from the date you get judgment. You will not be able to collect pre-judgment interest since you don't have a written boarding agreement.

- 8- Can I also get my attorneys' fees?
- a- Yes
 - b- No

The answer is (b). Without a written agreement, you cannot recover your attorneys' fees. In the United States, the custom is that parties to litigation each have to pay their own lawyers – unless they agree otherwise in writing. If you had a written boarding agreement, you could have a clause in it providing for your recovery of collection costs, including attorneys' fees.

- 9- So, I decided to just go ahead and sell her horse because it seemed like the easier thing to do. Now the college student has shown up and she wants her horse back. Her father is a lawyer and says they will sue. Am I in big trouble?
- a- Yes. You are going to jail.
 - b- No.
 - c- How do you define "big"?

The answer is (c). You won't go to jail. But you did sell a horse you didn't own – so, that's a problem. But realistically, you are probably only on the hook for the value of the horse – although the college student's father will certainly think the horse was worth way more than what you think it was worth. But if they sue you for the value of the horse, you can countersue for the unpaid board. So hopefully your valuation of the horse is correct and litigation would be "wash."

The court will ultimately decide what the horse was worth, after taking evidence on the issue from both sides.



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- 10- The parents of the little girl who owns the horse now are calling me because the college student's lawyer-dad is calling them demanding they give the horse back. Their daughter loves this horse and is in tears. Do they have to give the horse back?
- a- Yes. Absolutely
 - b- No. Definitely not
 - c- Probably not

The answer is (c). The new "owner" probably doesn't have to give the horse back. But that will depend on what they knew about the situation surrounding the sale. If the people you sold the horse to knew nothing of the unpaid board bill and paid a fair price for the horse, then the law will most likely deem them to be "bona fide purchasers for value," or "BFPs." "Bona fide" in this context means "good faith." A BFP's ownership interest is protected by law. On the other hand, if the new owners knew that there was something squirrely about the deal, then a court might conclude that they aren't legitimate BFPs and make them return the horse.

A written boarding contract could have resolved all of these issues in your favor. A simple clause to include in a written boarding contract is one that covers "abandonment," and defines it as not paying an overdue bill for a certain period of time, at which point ownership of the horse transfers automatically to the stable – giving the stable the right to sell the horse privately or dispose of it as may be appropriate.

