



### Contracts: What You See Is What You Get

A written contract serves two important, and related, purposes: It sets out the expectations and obligations of the parties to the agreement and establishes a legal relationship between the parties. The former reduces the possibility of a misunderstanding about who will do what under the contract; the latter allows one party to seek enforcement of the contract in court if there is a breach of the agreement by the other party.

Whether a contract actually accomplishes those purposes depends on how carefully the document is written and whether the language used actually expresses the wishes of the parties. This can be more difficult than it sounds, even when the contract in question is a simple one like a bill of sale.

A bill of sale documents the transfer of ownership from seller to buyer, identifies the horse, spells out how the purchase price will be paid, and addresses any warranties made by the seller. A standard clause in a bill of sale and other contracts is a provision that the written agreement is the "entire agreement." In other words, if something isn't in the written contract, it doesn't count. The bill of sale also may, or may not, specify additional conditions of the transaction. These conditions might include restrictions on future use of the horse and the seller's right of first refusal if the buyer decides to sell the horse in the future.

When novice trainer Kathleen Costello bought the 12-year-old Thoroughbred mare Grand Forks from Rick Trontz, owner of Hopewell Farm near Midway, Kentucky, earlier this year, the bill of sale included such an additional condition. The mare was a double stakes winner at Turf Paradise, but a failure as a broodmare, producing only a single live foal that died shortly after birth. The bill of sale reportedly specified that Grand Forks would not be used for breeding, a sensible restriction given the mare's dismal breeding record, but the contract did not specifically prohibit a return to racing. Why should it, considering that Grand Forks had been out of training for nine years and was being sold as a riding horse?

Imagine the surprise when Grand Forks showed up as a 50-1 morning line longshot in the entries for a \$5,000 claiming race at Churchill Downs on Nov. 18. Trontz told the *Lexington Herald-Leader* that a return to competition hadn't been addressed in the bill of sale because it was his understanding that Grand Forks would be used only for riding. Costello responded that the bill of sale didn't prohibit her from racing Grand Forks, only from using the mare for breeding.

The bottom line: never assume anything. The terms of a written contract trump any assumptions or understandings that are not made part of the agreement, no matter how sensible or defensible those assumptions might be.

Shortly before her first start in nine years, Grand Forks was scratched by the stewards who said they wanted the mare to work out for the state veterinarian before she would be allowed to race. She passed that test, but likely will miss the rest of the Churchill Downs meeting (which ends Nov. 28) due to a required blood test for medications that might mask unsoundness.