

**By Chris E. Wittstruck, Esq.**



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Along with the pride of horse ownership comes obligatory responsibility. While feral horses can certainly fend for themselves in the wild, Standardbred racehorses maintained primarily in a stall or paddock are completely dependent upon the services of caretakers to ensure their health and well-being. The tasks are immeasurable, and while the owner might be living and working in a city several miles away from the farm, his or her duty to provide the financial resources necessary to ensure the good and welfare of his steeds is seemingly boundless. So too, the owner is responsible not only for the living creatures he or she has taken title to, but also for the safety of all the other living creatures, both human and animal, those horses might come in contact with.

When does all this accountability end? Clearly, the death of an animal terminates all continuing duties. Short of this unpleasant event, the transfer of title to the animal should conclude the owner's legal responsibility for the horse. But does it always? While Shakespeare considered parting to be "such sweet sorrow," there is nothing but harsh sorrow when the horse's transfer is not completed in a legal sense.

First, it should be remembered that Standardbreds are registered horses. Our Association maintains a registry, and a foal registration certificate is generated for each horse appearing in the registry. For the last several years, the U.S.T.A. has offered the option of "paperless" registration. While a foal registration certificate is generated for each horse, owners may elect to have the U.S.T.A. electronically "hold" the registration certificate.

In either case, effective transfer of the horse for the purposes of the U.S.T.A. is accomplished by providing both the correctly executed paperwork and requisite fee. In the case of an actual registration certificate having been issued, the signature of all owners on the certificate and forwarding of it to the Association, with the appropriate fee, is required. In the case of paperless registration, a transfer slip signed by all current owners is required to be submitted along with the fee.

Still, the four-tiered fee schedule involved contemplates that the new registration and the actual sale might be mutually exclusive. Fees depend upon whether the sale took place within 90 days of sale; between 90 days and six months of sale; between six months and one year of sale; and after one year of sale. Clearly, while the signature on the registration or transfer slip certifies that a transaction has occurred, the document may only serve to memorialize that a completed transaction occurred, rather than effectuate the transfer itself pursuant to the laws of the state where the transfer took place.

Stated another way, while a motor vehicle is registered, the transfer of that motor vehicle is accomplished via the delivery and acceptance of a bill of sale that is the transfer document often called for in a sales contract. Whether a contract exists or not, the bill of sale is the document that irrevocably transfers personal property, and it should be both delivered by the seller and accepted by the purchaser in every horse transaction.

What if the horse is not sold, but gifted with no consideration (money) changing hands? A bill of sale is still in order. Why? Consider that with neither money nor paper involved, whether there was an actual transfer of title or merely the granting of temporary possession will be an open question.

In 2006, the Iowa Court of Appeals was faced with just such a circumstance. An elderly gentleman “gave” a horse used in 4-H programs to his five-year-old great-nephew, purportedly as a birthday present, only to take the horse back when the child apprised him that he didn’t like to ride it. In *Stoecker v. Stephens*, the Iowa appeals court ruled that conflicting testimony as to the exact nature of the transfer evidenced that the great uncle did not possess a clear intention to pass all right, title, and dominion over the horse, and vested continuous title in him. Of course, if a simple bill of sale was delivered by the great-uncle and accepted by boy’s parents, the result would have been completely different, the lack of money involved notwithstanding.

Similarly, in a 2004 case in Ohio an appeals court was faced with determining whether a Thoroughbred was delivered as a gift or a loan, and whether papers from The Jockey Club should issue to the one in possession of the horse. The result of the lawsuit, *Kelm v. McCardle*, is, for our purposes, completely irrelevant. What is relevant is that if any documentation at all setting out the nature of the transaction existed, there would have been no ambiguity, and thus no case.

Of course, ambiguity can easily arise in the leasing realm as well, especially where there is no written lease. Here, the U.S.T.A. is quite helpful by providing a mandatory mechanism for registered Standardbred owners to memorialize leasing arrangements. Still, if the horse is not actively racing or breeding, the mechanism is hardly mandatory.

What’s the point of all of this? Consider a hypothetical where Joe, an owner, takes pity on his 6-year-old gelded trotter who just can’t seem to find his stride after suffering a pulled suspensory ligament. He decides to retire the horse from racing. First, he has no intention of transferring a registration certificate, lest a new owner get ideas about mounting a comeback for the finished racehorse. Unfortunately, Joe isn’t aware that our Association permits him to re-register the animal for “pleasure-only” purposes (discussed below). Moreover, he is hard-pressed to find anyone who will purchase the animal for anything other than nominal consideration. So, Joe visits his neighbor, a farmer, hands him the halter (and nothing else), kisses his loyal campaigner on the muzzle, and wishes the neighbor well with him. Here’s what could happen next:

Scenario #1) A week after the transfer of the horse, it gets loose from the farm, runs onto a local road and directly in front of an innocent motorist. The driver is seriously hurt, his car is totaled, and we don’t even want to ponder what happened to the gelding as a result. Who does the driver sue? Certainly the farmer; but what about Joe? A check of the freeze brand leads to Joe’s identity on the U.S.T.A.’S database as the horse’s owner, at least for our Association’s purposes. While Joe may have no ultimate liability since he was not in possession of the horse at the time of the incident, Joe is probably still going to find himself defending a lawsuit. He is listed as the owner on the breed registry and has absolutely no documentation to establish that he relinquished title in a legal sense. The farmer might support Joe’s version of events, but that may not happen until the lawsuit is well underway, and Joe has spent a small fortune in legal fees and court costs. Delivery of a simple bill of sale could have prevented Joe’s involvement in all of this.

Scenario #2) A few months after the transfer of the horse, community members see how terribly thin and rundown the horse appears. So, they call the local chapter of the A.S.P.C.A. Again, while the farmer has some explaining to do, there is no proof other than his word that he has anything more than possession of the horse; assuming in such a circumstance he chooses to tell the truth. He could even allege that the horse was

delivered to him in worse condition, and that he is nursing him back to health for the “owner.” Again, Joe is listed on our registry as owner, and there is no documentation whatsoever to establish that he ever relinquished title. Not a really sweet spot for Joe.

Scenario #3) Six months after the transfer, it becomes apparent that the old gelding isn't going to be useful to the farmer for anything. As the horse is eating much more than he is worth, he not so surprisingly finds himself purchased at a grade auction, where horses are sold “as is.” The gelding is soon on his way to Canada or Mexico. Miraculously, he and his trailer mates are rescued by a humane group that dutifully checks the horse's freeze brand and contacts the U.S.T.A. which, in turn, confirms Joe to be the horse's owner. Joe's real trouble then starts. Entities like Penn National Gaming, Suffolk Downs and the New York Racing Association have implemented stringent policies which permanently deny stall space to any owner or trainer whose horse knowingly ends up either at or en route to an auction where they could be bought for processing in Canada or Mexico. The trend is recent, and other tracks may follow. So, not only is Joe unable to prove he gave title to the horse to his neighbor, he also can't prove when, or that his intentions were that the horse be used on the farm. In this instance, proving “when” might be even more significant than establishing the title transfer itself. Clearly, the six-month time gap would indicate that Joe's farmer neighbor was not simply a straw buyer utilized as a conduit to facilitate the horse's entry into the grade auction. Of course, who is to say exactly when Joe entrusted the horse to the neighbor? Moreover, does Joe really want to be faced with such an inquiry at all?

Here's how to correctly sell or gift a Standardbred horse:

**FIRST:** Develop a simple contract of sale that sets forth all of the terms and conditions of sale, including at a minimum the identity of the horse (age, sex, color, freeze brand, sire, dam); the correct name and address of the purchaser; the full consideration for the transfer (if a gift, it should recite “\$10.00 and other valuable consideration”); whether or not the horse is being sold with a transfer of its registration certificate and, if not, that the horse is NOT to be used in racing or breeding ever again, and; reserving in the selling owner a right of first refusal to retake title to the horse if the purchaser seeks the sell for value or otherwise “dispose” of the animal. Make copies, so that each party walks away with original signatures.

**SECOND:** Incorporate the foregoing terms into a bill of sale signed by the seller that is delivered to the purchaser upon transfer. Have the purchaser sign a copy acknowledging receipt of it. Take a check from the purchaser (even if only \$10.00); copy the check; negotiate (deposit) the check; and keep the contract, bill of sale copy and check copy in a secure place.

**THIRD:** In ALL cases, transfer the U.S.T.A. registration by notifying the Association and paying the fee. In this regard, many horse owners with intentions similar to our hypothetical Joe are unaware that Standardbreds can be converted to pleasure registration only by our Association to ensure that they will never be permitted to be used in racing or breeding by any subsequent owners. U.S.T.A. Rule 26, Section 2(h) reads as follows:

(h) The status of a previously registered Standardbred may be changed to Pleasure Horse upon application by the owner. A registration certificate will be issued stating that future offspring of such horse will not be registered with this Association. Any electronic eligibility previously issued for such horse shall be terminated, and no new electronic

eligibility shall be issued. Any transferee must be a member in good standing of this Association at the time of registration.

Thus, changing a horse's registration to "Pleasure Horse" just prior to transfer accomplishes the dual purpose of memorializing that a transfer of title has, in fact, taken place and satisfying a caring owner's concerns regarding the desire to permanently retire the animal from the rigors of training, racing or breeding.

Like everything else involving legal issues, it's very simple and relatively inexpensive to take proper steps so as to prevent a problem from arising. Once the situation presents itself, it's too late to avoid a problem, and costly to rectify it. Before you sell or gift a racehorse, please think about doing it right.

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