

Rules relating to the Sales, Purchases, and Transfers of Horses Pursuant to Chapter 535 Florida Statutes:

Section 1.

The Horse breeding and sales industry is an important industry in the State of Florida. The provisions of these Rules are intended to promote transparency in connection with the sales, purchases, and transfers of horses within the State of Florida. These Rules seek to ensure that such sales, purchases and transfers are conducted with the utmost integrity and fairness so that the reputation of the State's breeding and sales industry will not be tarnished and both sophisticated and unsophisticated horse buyers will be protected from unfair and deceptive trade practices by horse sellers.

Section 2.

As used in these Rules the terms:

- (1) "Agent" means a person acting on behalf of a Buyer or Seller.
- (2) "Buyer" means a purchaser of a Horse.
- (3) "Consignor" means an agent for a Seller who places a Horse for sale at a public sale held by a Licensee.
- (4) "Department" means the Department of Agriculture and Consumer Services.
- (5) "Dual agent" means an Agent for both a Buyer and a Seller in the sale, purchase or transfer of a horse.
- (6) "Legal Owner" means a person with complete and lawful right, title, and interest in the horse for sale.
- (7) "Licensee" means a holder of a license for the public sale of Horses pursuant to s. 535.01.
- (8) "Repository" means a room or building located on the premises of a public sale, containing

disclosures required pursuant to this rule as relates to the sales, purchases, and transfers of horses.

- (9) "Seller" means a Seller, who is the legal owner of a Horse.
- (10) "Willful conduct" is conduct which a person knew or should have known constituted a violation of this rule or an unfair or deceptive trade practice as defined in s.501.201 et. seq. Section 3.
 - (1) Any sale, purchase or transfer of a Horse shall be accompanied by a written bill of sale, acknowledgement of purchase or security agreement setting forth the purchase price signed by both Buyer and Seller or their respective Agents.
 - (2) A Seller must warrant in the written bill of sale, acknowledgement of purchase or security agreement required under subsection (1) that he is the legal owner of the Horse. The legal owner is responsible for the horse's condition and is charged with knowledge of all the provisions contained in this chapter and the rules and regulations adopted pursuant thereto.
 - (3) In the event of a transaction at a public sale held by a Licensee, the requirements of subsection (1) shall be satisfied by the issuance of an auction receipt generated by the Licensee and signed by the Buyer or Buyer's Agent should that Agent possess written authority from the Buyer.
 - (4) An agent has a duty to act in a manner that is consistent with the best interests of his or her principal(s), including providing the principal(s) with full disclosure of any adverse interests that the agent has in a transaction concerning the principal(s). It shall be unlawful for any person to act as a Dual Agent unless:
 - (a) The Buyer and Seller have prior knowledge of the dual agency arrangement; and
 - (b) The Buyer and Seller have consented to the dual agency arrangement in writing.
- (5) It shall be unlawful for a person acting as an Agent for a Buyer or a Seller or as a Dual Agent to receive compensation or anything of value in excess of five hundred dollars (\$500) from anyone

other than the Agent's principal related to the sale, purchase or transfer of a Horse, unless:

- (a) The Agent or Dual Agent informs the principal(s) in writing of the proposed payment prior to the sale, purchase or transfer; and
 - (b) The Agent's or Dual Agent's principal(s) consent in writing prior to the sale, purchase or transfer.
- (6) An Agent or Dual Agent shall, upon the request of the Agent's principal(s), furnish copies of all financial records and financial documents in the possession or control of the Agent in any way related to a proposed sale, purchase or transfer of a Horse.
- (7) Any person injured by a violation of this Section shall be entitled to enforce the terms of this Section in the appropriate County or Circuit Court. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs as provided in ss.501.211 and 501.2105. In addition to such reasonable attorney's fees and costs, if the person in violation of this Section is found to have acted willfully, a prevailing plaintiff shall be entitled to punitive damages and civil penalties as provided in s. 501.2075.

Section 4.

- (1) The Seller of a Horse must provide disclosures to any prospective Buyer which disclosures are intended to accurately and honestly represent the horse for sale. The Seller must make disclosures to the Buyer concerning the following with respect to the subject Horse:
- (a) Any deviations from the norm in the eyes;
 - (b) Any knowledge of musculoskeletal defects or surgeries, including invasive joint surgeries, noninvasive joint surgeries, treatments or procedures, cosmetic or conformation-altering surgeries, treatments or procedures, mechanical or other alterations of the musculoskeletal system;
 - (c) Any knowledge of neurological defects or surgeries, including neurectomy, myectomy or diagnosis of wobbler syndrome;

- (d) Any knowledge of gastrointestinal defects or surgeries, including abdominal surgeries of any type, caesarian sections or partial or complete resections of an abdominal organ, but not including repair of a ruptured bladder in a newborn foal;
- (e) For horses presented as racing prospects, any knowledge of respiratory defects or surgeries, including surgical intervention in the upper respiratory tract including throat laryngeal hemiplegia, rostral displacement of the palatopharyngeal arch, epiglottic entrapment permanent dorsal displacement of the soft palate, chondroma or severe arytenoid chondritis, subepiglottic cyst or cleft palate;
- (f) Any knowledge of reproductive defects or surgeries, including unilateral or bilateral cryptorchidism, missing or removed testicles or ovaries, deformities or abnormalities of reproductive organs, history of abortions, surgery involving the cervix, urethral extension or history of failed matings;
- (g) For horses presented as broodmares, whether the broodmare is pregnant aborted or not pregnant whether the broodmare is mated or not mated, and whether the broodmare is suitable for mating, all according to the terms and standards of the American Association of Equine Practitioners;
- (h) Any knowledge of a history of infectious diseases, including testing positive for equine protozoal myeloencephalitis or exhibiting symptoms of equine protozoal myeloencephalitis;
- (i) Any knowledge of a history of cribbing;
- (j) Any medications administered on a routine basis over the six (6) months immediately preceding the sale of the horse, including the use of steroids, growth hormones and/or any other substance designed or engineered which could enhance, alter or otherwise unnaturally affect the appearance or performance of the horse; and

- (k) To the extent not covered in this part, any knowledge of corrective surgeries or other conformation altering procedures performed on the horse.
- (2) If the Horse is offered for sale by a Consignor at a public sale held by a Licensee, the Consignor must ensure that the required disclosures under subsection (1) are placed, prior to the public sale, in a Repository maintained by the Licensee at the premises of the public sale.
- (a) The Repository must be open to all potential Buyers or their Agents for inspection.
 - (b) A Repository librarian shall be responsible for organizing and managing the information stored within the Repository and shall be in charge of facilitating access to said information.
 - (c) The Repository Librarian shall maintain copies of disclosures in the Repository for at three (3) years from the date of sale, purchase or transfer of the Horse.
 - (d) At the expiration of three (3) years, the Repository Librarian must forward copies of the disclosures to the Department. The Department shall maintain copies of said disclosures for seven (7) years from the date of receipt.
 - (e) The licensee is responsible for ensuring compliance by the Repository Librarian with the duties prescribed in this section.
- (3) No Consignor offering a Horse for sale at a public sale held by a Licensee may engage in any of the following practices:
- (a) Shockwave therapy in any form within fourteen (14) days prior to the Horse being offered for sale or being sold;
 - (b) Acupuncture or electro-stimulation with the intent of altering laryngeal or other neurological function within fourteen (14) days before the Horse is offered for sale or is sold;
 - (c) Within 90 days of the public sale, injection into the body of the horse of an internal blister or any other substance designed to alter conformation or;

- (d) The public advertising or disclosure of exercise times (workouts) in which the rider or others applied topical substances, administered pharmacological substances, or used mechanical or electrical stimulation or other method capable of enhancing performance (“Abusive Practices”) other than the normal use of voice, hands, spurs and whip. The use by the rider or anyone associated with the Seller or Consignor of any Horse of any of the above Abusive Practices within fourteen (14) days before the Horse is offered for sale or is sold is expressly prohibited.
- (4) The Department shall prepare an official form for disclosures required under Subsection (1)(a)-(k) and shall promulgate the form by regulation. Consignors shall be required to use the official form at public sales by Licensees. Other Sellers may use the official form or supply written disclosures in a substantially similar format. Failure of the Department to prepare an official form and promulgate the form by regulation will not relieve Consignors of their obligations under Subsection (1)(a)-(k).
- (5) The Department shall have the authority to promulgate additional regulations setting forth additional specific conditions, defects or surgeries which must be disclosed under Subsection 1(a)-(k) as well as regulations concerning the timing and format of the disclosures.
- (6) Sellers and Consignors who do not provide disclosures as required under Subsection (1) or in the format required under Subsection (4), or who are found by a County or Circuit Court to have omitted or misrepresented information required under Subsection (1) or to have engaged in prohibited practices under Subsection (3) are considered to have engaged in an unfair or deceptive trade practice and are subject to a two (2) year ban on any participation in the preparation for sale or the sale(s) of Horses at public sales by Licensees, including a ban from the premises of any licensed sales company during the ban, from the date such Sellers or Consignors are found by the Court to have violated subsections (1), (4), or (3).
- (7) Licensees who sell a Horse on behalf of a Consignor who fails to provide disclosures as

required under Subsection (1) or in the format required under Subsection (4), or who is found by a County or Circuit Court to have sold a Horse on behalf of a Consignor with knowledge that the Consignor omitted or misrepresented information required under Subsection (1) or to have engaged in prohibited practices under Subsection (3) are considered to have engaged in an unfair or deceptive trade practice and are subject to a two (2) year ban on obtaining a license pursuant to Section 535.01, from the date such Licensees are found to have violated subsections (1), (4), or (3).

(8) Any Buyer injured by a Seller, Consignor or Licensee's unfair or deceptive trade practices as defined in 501.201 et. seq., including a Seller, Consignor or Licensee's failure to provide disclosures as required under Subsection (1) or in the format required under Subsection (4), or by a Seller, Licensee's or Consignor's omission or misrepresentation of information required under Subsection (1) or engagement in prohibited practices under Subsection (3) shall be entitled to enforce the terms of this section against the Seller, Consignor or Licensee in the appropriate County or Circuit Court including but not limited to 501.201 et. seq. or any other lawful cause of action recognized in Florida. The following remedies shall be available to a Buyer:

- (a) Rescission of the sales transaction or refund of half the amount paid, at the Buyer's election;
- (b) Actual damages from the Seller or anyone acting in concert with the Seller. Such actual damages, plus attorney's fees and court costs as provided in ss. 501.211 and 501.2105, include, but are not limited to, commissions paid, veterinary examinations and treatment, boarding, and training;
- (c) Punitive damages for willful violations of this section.
- (d) Refund of commissions paid to a Licensee, if the Licensee sells a Horse on behalf of a Consignor who failed to provide disclosures as required under Subsection (1) or in the

format required under Subsection (4), or who sells a Horse on behalf of a Consignor with knowledge that the Consignor omitted or misrepresented information required under Subsection (1).

- (9) Any Buyer wishing to make a claim pursuant to Subsection (8) must give written notice to the Seller or Consignor and Licensee within ninety (90) days of the date of sale, purchase or transfer of the Horse. Any legal action filed in County or Circuit Court must be filed within one (1) year of the date of sale, purchase or transfer of the Horse.
- (10) Licensees shall provide the Department with accurate sales results thirty (30), sixty (60), ninety (90), and one hundred eighty (180) days after the close of a public sale noting:
 - (a) Corrections based on claims asserted under Subsection (8);
 - (b) Sales determined by the Licensee to be non-bona fide sales where nothing of value changed hands (i.e a credit/debit transaction in commonly controlled accounts or entities) or non-arms length transactions resulting in the inaccurate publication of sales information, the inflation of the sales price of the Horse, including without limitation, the average or median or other statistical measure for the sale or vendue or for the sire, broodmare or, broodmare sire of the Horse published in connection with the reporting of the sales results to the public, those entities or associations keeping records for the breed or the press; and
 - (c) Unsettled accounts, except that unsettled accounts need be listed only in the results provided at one hundred eighty (180) days.
- (11) Engaging in a transaction regarding a Horse where nothing of value changes hands (i.e a credit/debit transaction in commonly controlled accounts or entities) or a non-arms length transaction resulting in the inflation of the sales price of the Horse, including without limitation, the average or median or other statistical measure for the auction sale or vendue or for the sire, broodmare or, broodmare sire of the Horse expressly constitutes a violation of

Chapter 501, Florida Statutes.

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