



# LEGAL EQUESTRIAN™

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

I relied on my trainer to help me sell my mare. I told her I would like to get \$45,000.00 for her and she agreed that in her opinion that was a fair price. She ultimately was able to sell the mare to one of her other clients and I received \$40,000.00 for the sale of the horse. I was happy with the transaction until the new owner contacted me on Facebook and I found out she purchased the horse for \$60,000.00. Apparently, my trainer pocketed a \$20,000.00 commission. I thought my trainer was doing me a favor by helping me sell my horse. I had no idea the horse sold for that amount and I never would have paid her a \$20,000.00 commission. What can I do now?

I often caution beware the trainer who offers to “help” you sell your horse. For so many of us our trainers become the center of our equine universe. They are our experts we turn to when making major decisions regarding the well-being of our horses. Of course, when we need to sell our horse, we happily turn to the trainer who has offered to help and we rarely use a written agreement.

Unfortunately, your scenario is all too common in the horse industry. California’s recently modified legislation, Business and Professions Code section 19525, seeks to prevent this particular fraudulent behavior. This code section requires complete transparency in all equine sales, purchases, or transfers as they relate to a horse of any breed used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, yearlings, or weanlings, or any interest therein in an attempt to avoid fraud and nondisclosure. This law applies to any horse except maybe a gelding trail horse that will never set hoof in any type of show ring. Given the narrow exclusion, it is simply easiest to apply this code section to all horse transactions even if you are selling your gelding trail horse.

The code requires a written bill of sale or other acknowledgement of purchase stating the purchase price signed by both buyer and seller or their agents. Dual agency (acting on behalf of the buyer and seller) is unlawful under this law without the prior knowledge and written consent of both the buyer and seller. Further, it is unlawful for any agent, whether acting for seller or buyer or both to receive in excess of \$500.00 worth of compensation, fees, gratuities, or other items of value, related directly or indirectly to the transaction unless, the parties fully disclose the value in writing to the buyer or seller for whom the agent is working. Finally, both the buyer and seller must consent in writing to the agent’s compensation.

In your set of facts, your trainer was functioning as a dual agent and failure on her part to obtain your written consent and buyer’s written consent to her commission payment has resulted in her potential liability for extensive damages. The code provides that any person injured by violation of this law is able to recover treble damages or three times the amount from the person violating this code section. In your case, potentially \$60,000.00.

One final note to consider, as this code section does not allow for attorney's fees and costs, parties should include a provision in the written agreements allowing for reasonable attorney's fees and costs, otherwise it may not be cost effective to litigate even on a \$60,000.00 claim.

If you have further questions regarding this issue, please feel free to contact our office at 949-264-1464 for further information or visit us on-line at [www.legalequestrian.com](http://www.legalequestrian.com).

*This article is meant to provide general information only and is not intended to constitute legal advice. The information in this article is not intended to establish an attorney-client relationship between attorney and reader. The contents of this article are not a substitute for seeking the advice of legal counsel.*

Copyright 2011. Legal Equestrian, a Professional Law Corporation All rights reserved.