

Six Ways to Leave Your Lawyer Lonely

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I hardly think that we will achieve the status of the lonely Maytag repairman but there are ways to avoid your lawyer's office. Most disputes that end up in Court result from a lack of communication, forethought, or paper. Obey these six simple rules and your lawyer can take a vacation.

1. PUT IT IN WRITING

If horse lawyers had a mantra, this would be it. Many of the cases that come through my door wouldn't be there if the parties had signed an agreement. Too often, one party's understanding of a horse transaction varies significantly from the other party's understanding. This gap seems to widen if a problem surfaces. Reducing the transaction to writing makes the terms more clear and at the very least, creates an environment in which misunderstandings are less likely to occur.

This rule applies to all aspects of this business including boarding arrangements, leasing arrangements, sale agreements, breeding, and even training agreements. By expressing an arrangement in writing, the parties are forced to communicate clearly, think about the deal, and comply with its terms. Any agreement should be signed by all involved parties and a witness should sign the agreement beside each party's signature.

If a dispute does arise, the written agreement will serve as your first line of defence.

2. BUYER BEWARE

When purchasing a horse, this old maxim is still the law. If you, as a buyer, don't ask the important questions about the horse before you buy it, then you have only yourself to blame if the horse is less than perfect.

The seller of the horse has no obligation to tell you anything about it. The horse could be dead lame and if you, as a prospective buyer don't ask about its soundness, you have purchased a lame horse. (Note that there is an implied condition of fitness for a particular purpose when buying from a 'dealer').

When buying a horse, consider what you require in a mount. Make a list of the important qualities and then ask the seller whether the horse possesses the qualities you require. It could be show circuit experience, age, disposition, breeding, or a history of soundness. When you get the answers you require, go back to point 1 above and PUT IT IN WRITING.

3. ASK THE EXPERTS

Penny wise, pound foolish. It is always a good idea to spend a little money on the experts if their advice will save you grief in the long run.

If you are not willing to pay for a thorough veterinary examination when purchasing a horse then you get what you get (see point 2. above - BUYER BEWARE).

Spending a few hundred dollars on a lawyer to review a complicated sale agreement or draft a boarding or lease agreement is money well spent if it protects you from a problem. One court case created by the lack of a well written agreement will cost many times more than the cost of the agreement.

If you are operating a horse business, consider reviewing the financial side with an accountant. There are complicated farm tax rules that will impact your business.

4. THINK AHEAD

If you are entering into a transaction, think ahead.

Try to imagine all the possible outcomes - good and bad - and plan for them in the agreement.

As an example, a lease agreement should indicate what will happen if the horse becomes lame in the care of the lessee. Who will pay for the veterinary bills? Who assumes the risk if the horse is permanently injured or killed? Will the lesser or the lessee carry insurance so that both are protected in the event that the horse hurts a person? All these questions are forward looking. The answers to these questions should be decided between the lesser and the lessee before the horse is leased and should be written into a paper agreement and signed by the parties.

In a boarding agreement, think ahead to plan for emergency veterinary care, the amount of notice required if a boarder wishes to leave the stable, collection procedures for non-payment of board including interest, penalties, etc.

This exercise should take about ten minutes and requires you simply to sit quietly and think about the big picture and all its possible outcomes.

5. COMMUNICATE YOUR INTENTIONS

This is a big one. A failure to communicate lies at the beginning of many a law suit as well as at the ending of many a marriage. Often, two parties will complete a transaction and have two very different ideas of what they just did.

To make this even more difficult, memories are short especially when the memory is not in the person's favour.

The best way to communicate your intentions is to obey rules 1, 2, and 4 above. Make sure you discuss with the other party all things that are important to the transaction and when you have reached an agreement, PUT IT IN WRITING. You will be surprised how often a party will say, "That's not what we agreed to!", when he or she sees it in writing. By catching the misunderstanding before you are in the middle of things, you can negotiate a

solution to the disagreement and move on with the deal. Finding a misunderstanding when a problem arises is too late.

6. COMPROMISE

If points 1 through 5 have not prevented a dispute or worse yet, Court action, then it is time to COMPROMISE. On earth at least, it is very rare for someone to be 100% right and the other party to be 100% wrong. It is not wise to fight a court battle based on "principle". It is much better to fight for "principal". Show me the money! In other words and using point 4 above - THINK AHEAD. If you will spend more money fighting a legal battle than you can realistically obtain if successful at trial, then compromise and settle the case.

Legal action is expensive. It also takes an emotional toll and a lot of time. Think carefully about the possible outcomes and your chances of success before pursuing court action. If you can settle a dispute without legal action, perhaps for a little more money than you think you owe or for a little less money than is owed to you, the quick settlement will be much more rewarding to you than a long court battle.

That's it – six suggestions that are so simple and yet so often ignored. Don't feel bad about your lawyers – they will have lots of other clients to attend to. I'd rather be riding anyway. ✨

Catherine Willson is a partner at Willson Lewis LLP, a law firm based in Toronto, Ontario with counsel practising civil and commercial litigation and construction, employment, family, and equine law. This article contains general information only, based on the laws of Ontario, and is not intended to provide a legal opinion or advice. Readers should consult a lawyer with respect to the application of the information contained above to their particular circumstances. Readers may also contact the lawyers at Willson Lewis LLP at (416) 534-9504 or www.willsonlewis.com to discuss any specific issues they may have.