

BUY SELL AGREEMENTS

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Historically, the cattle industry has relied on verbal agreements and handshakes to seal the deal. The final agreement is seldom reduced to writing and each party may walk away with a different understanding of the terms of the verbal agreement. Carefully drafted written agreements setting out the agreed terms can eliminate disputes and prevent costly litigation. This article will attempt to inform the reader of basic aspects of a properly drafted bill of sale.

Misunderstandings can be avoided with a properly drafted bill of sale. For example: you purchase the hot futurity prospect of your dreams. Prior to allowing the bull to be shipped to your operation, the seller requires full payment. You pay the seller and make transportation arrangements for shipping the bull to your trainer. Unfortunately, prior to taking possession of the bull the bull injures himself and will not be able to buck. Who bears the loss, buyer or seller? Generally, absent a written buy-sale agreement providing for a specified risk of loss shift, the risk of loss shifts from seller to buyer at the time payment is made. In our hypothetical scenario the buyer would assume the loss.

In the event of conflict or disagreement, absent a written signed bill of sale, you may be barred from seeking relief from the judicial system. Most states have adopted the Uniform Commercial Code (UCC). Article 2 of the UCC governs the “sale of goods” which includes cattle transactions. The UCC section known as the “Statute of Frauds” requires that an agreement for the sale of cattle over \$500.00 or transactions that by the terms of the agreement cannot be completed within one year must be in writing to be enforceable.

A properly drafted bill of sale should spell out all the agreed terms and conditions of the transaction. The first paragraph should clearly identify the name of the buyer and seller, their addresses and whether they are an individual, partnership or corporation.

The second paragraph should include recital statements describing the intent of the parties including the background of the agreement and that each party voluntarily wishes to enter into the agreement. The recital statements can be important if other areas of the agreement are ambiguous and become disputed.

Next, the transfer clause should specifically identify the cattle and percentage of ownership to be conveyed. Include the name, registration number, sex, color, age, sire, and dam. If the seller intends to retain any ownership interest or breeding rights in the cattle the agreement must clearly state what rights or percentage of ownership is to be retained by the seller.

The bill of sale should clearly state the sales price, method of payment and time for payment. If the seller is financing the transaction, a promissory note retaining a security interest in the cattle should also be executed along with the bill of sale. The seller should file a financing statement in the buyer's jurisdiction to protect the security interest.

The legal issue of "risk of loss" should be included in the bill of sale, indicating when the risk of loss transfers from seller to buyer. Buyers should pay attention to when the risk of loss shifts and make sure to have adequate insurance in case an accident occurs. Unless the seller's negligence caused the accident or the written agreement clearly states when the risk of loss shifts, the buyer generally assumes risk of loss at the time of payment.

The bill of sale should contain a listing of all disclaimers and warranties. The seller should warrant that he/she has ownership interest of the cattle and the unencumbered right to transfer title of the animal to the seller. Implied warranties are included in UCC transactions unless the seller expressly disclaims the warranties in the written agreement. The seller should disclaim all warranties by stating the transaction is conveyed, "As is". If the buyer has concerns regarding the health and condition of the animal then he should include a contingent provision requiring the certification of the animal by a licensed veterinarian prior to transfer of title.

The choice of jurisdiction should be addressed in the event of a dispute or breach of contract. With interstate transactions, the agreement should provide which state law applies and where disputes will be heard. Mandatory mediation or arbitration clauses may be included to reduce litigation costs. The document should also provide for the award of reasonable attorney's fees and costs for the prevailing party.

Finally, each party to a written contract must sign the agreement. Both buyer and seller should sign and date the bill of sale and state what capacity or authority they are signing under.

With the increasing value of bucking stock, our industry needs to re-evaluate the cattle transaction process. A properly drafted bill of sale can accurately memorialize the transaction agreement and avoid unnecessary disputes, litigation costs and damage to business relationships.

This article and the information contained herein is intended to be used as an authoritative guide for the stock contractor and bucking bull breeder. It is not intended to replace legal counsel. This article is intended to provide general authoritative information to assist the reader in managing his or her bucking bull business. The information contained herein should not be relied on as legal opinion or advice. Final determination of the suitability of the information for use by the reader is the sole responsibility of the user. The law varies from state to state and the usefulness of the information contained herein, depends upon and is affected by the laws of the users home state.