

Can You Repossess a Horse When the Buyer Fails to Pay?

By Julie I. Fershtman, Attorney at Law

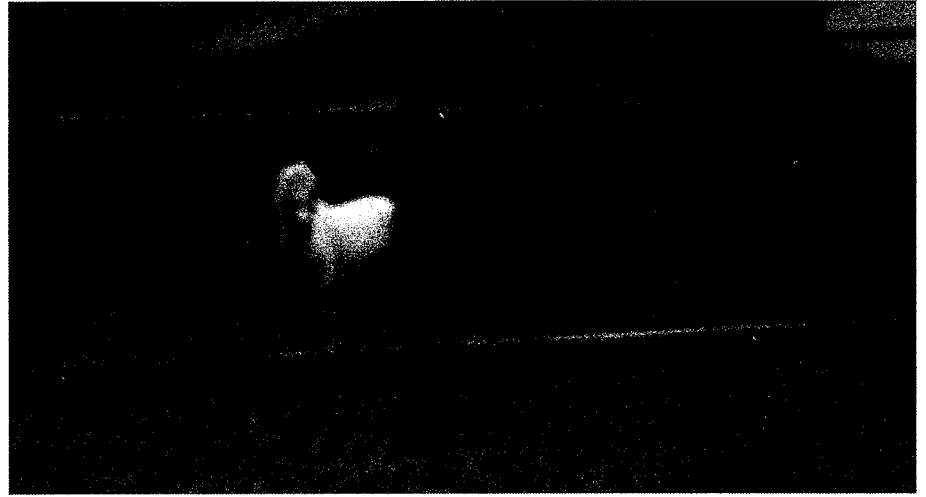
Q. Last year I sold one of my horses on installment payments. We had no agreement in writing, but the buyer promised to pay me within six months and I let him take the horse. Six months passed, but he only paid a small part of what he owed. Every time I call him asking for the money he gives me tons of excuses. Can I just take back the horse and call it off? – T.G. (South Carolina)

A. T.G. wonders whether she can legally take back, or “repossess,” a horse that she sold because the buyer has failed to pay. T.G., has added to her problems by failing to use a written contract that describes the terms of the sale, much less any right to repossess. This article discusses repossession.

What Makes repossession Complex- Repossession is the act of taking back an item, such as a horse, that has been sold on credit when the buyer has violated the terms of a payment arrangement. The process may seem as simple as entering the non-paying buyer's barn and removing the horse, but in the eyes of the law, repossession can be very complex.

The right to repossess generally can exist in three settings:

- The parties have a legally valid contract (with appropriate language dictated by applicable law) through which the buyer has allowed the seller the right to repossess the item that is being sold;
- The applicable state's law gives the unpaid seller the right to peacefully (without trespassing and without receiving resistance from the buyer) repossess the item; or
- Before the repossession, the seller receives a legally valid order from the proper court that allows the seller, or someone acting for the seller, to enter someone else's property and repossess the item. Sellers may need to pursue this option if (1) state law requires a court order before repossession; (2) the buyer refuses to part with the item or challenges the seller's right of repossession; (3) no contract exists; and/or (4) the parties had a contract, but it is either unclear or silent on repossession rights.



Problems- In this equine sale, T.G. created problems from the start. Here are three of them:

No Written Contract

A contract can establish restrictions on the location of the horse until the buyer has fully paid. This prevents the buyer from re-selling the horse or moving it out of the state or to an unspecified location before the seller has been fully paid. A contract can also specify the purchase price. Without a contract setting forth the purchase price, the buyer might claim he paid in full, which could give him grounds, when the seller comes to repossess, to call the seller a thief. When legal disputes arise over these and other problems, the legal fees to resolve them can be enormous. By comparison, having a knowledgeable lawyer draft a written contract before the transaction is a small fraction of the cost and could prevent disputes.

Parting With the Horse

T.G. allowed the buyer to take the horse. In doing so, she accepted a risk that the buyer would not pay her and the horse could not easily be taken back. Some horse sellers avoid this problem by insisting on continued possession of the horse until the buyer has paid in full.

Potential Criminal Charges

Sellers like T.G., who have no written contract but later try to “re-claim” their horses, put themselves at risk. By entering another's

property, such as a private barn or pasture, to repossess a horse, they could face criminal charges of trespass and theft. Hauling repossessed horses across state lines might even trigger federal criminal offenses, as well. Although sellers will insist they are merely reclaiming their horses, they may be forced to make these defenses in a criminal court.

Alternatives to repossession- Unpaid sellers have alternatives to repossession. They can allow the non-paying buyer to keep the horse but file a lawsuit to recover the balance due. If the amount is small enough to pursue the matter in small claims court, the seller could be spared the expense of a lawyer. ➔

This article does not constitute legal advice. Secured interest and repossession issues can be very complex. When questions arise based on specific situations, direct them to a knowledgeable attorney.

About the Author: Julie Fershtman is one of the nation's most experienced Equine Law practitioners. A Shareholder with the firm Foster Swift Collins & Smith, PC, based in Michigan, she has successfully tried equine cases before juries in 4 states. She has drafted hundreds of equine industry contracts and is a Fellow of the American College of Equine Attorneys. Her speaking engagements on Equine Law span 29 states. For more information, please visit www.equinelaw.net and www.equinelawblog.com.