

Recommendations of the Sales Integrity Task Force

Pursuant to an agreement between the Consignors and Commercial Breeders Association, Fasig-Tipton, Inc., Horse Owners' Protective Association, Keeneland Association, Inc., Kentucky Thoroughbred Association and Thoroughbred Owners and Breeders Association and Representative Larry Clark, the Sales Integrity Task Force was reinstated to develop industry consensus on the following issues which were implicated by Kentucky House Bill 388:

- Licensing bloodstock agents and consignors;
- Transparency in ownership in the sales arena; and
- Transparency in medication in the sales arena.

Licensing of Bloodstock Agents and Consignors

A bloodstock agent Code of Conduct will be added to the Conditions of Sale of Fasig-Tipton and Keeneland Association and to other Kentucky sales companies and sales companies in other states that choose to adopt the Code (e.g., Fasig-Tipton). The Conditions of Sales are legally binding upon all sales participants, including sellers, consignors, agents, owners, prospective bidders/buyers and all other interested parties.

The Code states that an Agent owes a duty of good faith and loyalty to his Principal, and requires an Agent to act at all times in an Equine Auction Sale in accordance with the Principal's best interests.

The Code sets out definitions ([See Complete Code of Conduct](#)) of Agent, Principal, Luck Money, Consignor, Secret Profit, Seller Purchaser and Equine Auction Sale.

The Code enumerates, without limitation, seven specific situations where an Agent must disclose and/or account to his principal in order to act in the Principal's best interest:

1. An Agent must not place himself in a position where personal interests conflict with duties to his Principal, except with full advance disclosure;
2. When an Agent acts as a Seller of any horse in which he has an interest, the Agent must disclose to the Principal the full extent of the Agent's ownership interest and benefit to be derived from the transaction;
3. If an Agent represents more than one Principal, the Agent must first disclose the dual agency and obtain the consent of all Principals to the Agent's dual agency;
4. An Agent must notify his Principal when a conflict of interest arises;
5. An Agent must disclose any Luck Money he receives to his Principal, and account to his Principal for the Luck Money if the Principal requires;
6. A Seller or Agent shall not offer any Secret Profit to any person the Seller or Agent believes is acting as an Agent for a prospective purchaser; and
7. An Agent shall not bid at public auction on any horse the Agent knows his Principal intends to bid or his Principal is selling, except with the Principal's full knowledge and consent.

Any complainant of an alleged breach of the Code must first provide a written statement to the sales company describing how the alleged breach occurred.

If the parties are unable to resolve the matter among themselves, the complainant may initiate arbitration pursuant to the rules of the American Arbitration Association. Arbitration will be held in Lexington, Kentucky. The findings and decisions through arbitration are final and binding on the parties.

The Code or a finding of a violation thereof does not preclude the aggrieved party from pursuing all remedies at law that he may have.

If the arbitrators find that a violation of the Code has occurred, the arbitrator(s) may impose sanctions against the person(s) violating the Code. The Sanctions are limited to exclusion from participation in the sales, or from the sales grounds for various prescribed periods of time, depending on the number of offenses by the person(s) violating the Code.

Fasig-Tipton and Keeneland have agreed to observe the findings and sanctions of the arbitrator(s).

In the event of a finding of a violation of the Code, the sales companies will post the name of the party sanctioned and the sanction in a conspicuous manner during the period of exclusion. The prevailing party in arbitration is entitled to recover costs and expenses, including attorneys' fees.

[Complete Code of Conduct](#)

Transparency in Ownership in the Sales Arena

A [Condition of Sale](#) addressing ownership transparency will be added by Fasig-Tipton and Keeneland and will incorporate the following points:

An Ownership Registry will be established by the sales companies.

Disclosure of ownership, while voluntary, will be encouraged.

If ownership is disclosed either in the catalogue or in the Ownership Registry, a change in ownership is required to be disclosed in the Ownership Registry or by written notice to the sales company.

If a change in ownership occurs after a horse is on the sales grounds, the change in ownership is required to be disclosed to the sales company by giving written notice of such change in ownership to the sales company. The change in ownership will be announced by the auctioneer prior to the sale of the horse.

A change of ownership of 10% or less is deemed not to be a change in ownership for purposes of the Condition of Sale.

If information is placed in the Ownership Registry, or if information regarding ownership is disclosed in the catalogue, the party supplying the information warrants that the information is materially accurate.

If the purchaser of a horse learns, after the sale, that the information in the catalogue or Ownership Registry was not materially accurate, or that there was an undisclosed change in ownership after the horse was on the sales grounds, the purchaser has the right to collect liquidated damages, provided that:

1. The purchaser accessed the Ownership Registry regarding the subject horse;
2. The purchaser has paid for the horse in full;
3. The purchaser notifies the sales company of its election to collect liquidated damages within six months from the date of sale of the horse;

4. The purchaser establishes, by clear and convincing evidence, that there was a material inaccuracy in the Ownership Registry or in the catalogue at the time of sale of the horse that was not corrected by subsequent notice as required by the Condition, or that the seller or consignor failed to disclose to the sales company, as required by the Condition, that there was a change in ownership prior to the sale of the horse; and

5. The purchaser establishes, by clear and convincing evidence, that the party from whom purchaser seeks liquidated damages had actual knowledge at the time of the sale of the material inaccuracy in the Ownership Registry or catalogue, or of the failure to disclose change in ownership as required by the Condition.

Liquidated damages are 50% of the hammer price of the horse, but the consignor's liability is limited to two times its commission on the horse. Accordingly, if a purchaser prevails against both the seller and consignor, the consignor would pay two times the commission the consignor received on the sale of the horse, and the seller would pay the balance of the 50% of the hammer price.

If any dispute arises regarding ownership disclosure, the parties to the dispute agree to submit the dispute to binding arbitration, which will be held in Lexington, Kentucky.

The non-prevailing party in arbitration will be required to pay the costs of arbitration and reasonable attorneys' fees of the prevailing party, including the costs of the sales company.

Transparency in Medication in the Sales Arena

Owners selling horses at public auction should disclose known and material medical information regarding the offered horse through the veterinary repositories maintained by the sales companies. In addition, the Task Force reaffirms the 2004 Sales Integrity Task Force recommendation to require disclosure of conformation-altering procedures with the goal of working toward disclosing all material medical procedures.

A committee will be formed by TOBA to work with the relevant industry organizations to address all of the technological, legal, financial and political issues regarding the implementation of this recommendation.

The following language regarding anabolic steroids and other prohibited practices will be included in the Conditions of Sale of Fasig-Tipton and Keeneland:

Anabolic Steroids

"It is the sales companies' desire that horses not be sold under the influence of anabolic steroids. Our position is that no anabolic steroids be given within 45 days of sale. To that end, we have the ability to test for the presence of exogenous anabolic steroids. Beginning in January 2008, at the Purchaser's request, testing will be performed immediately after the horse is sold and any presence of these anabolic steroids in the sale horse may result, at the Purchaser's discretion, in its return.

"Starting in 2008, research will be done to establish naturally occurring levels of other anabolic steroids in different ages and sexes of horses. As the ability to determine what an abnormal level is achieved, the presence of other steroids in sale horses may result in the rescission of a sale."

Prohibited Practices

Pursuant to recommendations of the Sales Integrity Task Force from meetings in 2004, the current Conditions of Sale of Fasig-Tipton and Keeneland contain a list of "Prohibited Practices." Horses which have been subject to Prohibited Practices are subject to Rejection, which is defined as rejection or revocation of acceptance by the purchaser.

The Prohibited Practices included in the Conditions of Sale of Fasig-Tipton and Keeneland will be expanded to include the following:

A horse should not be injected behind its knee prior to sale to conceal the true condition and conformation of the horse, and recommends that injections behind the knee be placed on the list of Prohibited Practices.

An industry committee will meet annually to review and recommend additions and deletions to the list of Prohibited Practices included in the Conditions of Sale to the sales companies. The committee will be comprised of one representative from each of the following: (1) the sales companies, (2) the American Association of Equine Practitioners (AAEP), (3) the Thoroughbred Owners and Breeders Association (TOBA), and (4) Consignors and Commercial Breeders Association (CBA).

In addition, the Task Force recommends other sales companies include a list of Prohibited Practices in their Conditions of Sale.