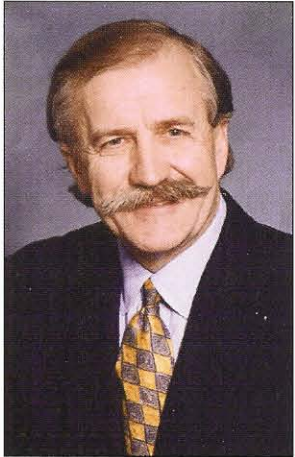


# is your word good?



By Mati Jarve  
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IT IS COMMON PRACTICE IN THE HORSE INDUSTRY TO ENTER INTO VERBAL agreements with only a handshake sealing the deal. Typically these agreements are between friends or acquaintances, and given the relationships, it is perceived as bad manners to demand a written contract. Even deals between complete strangers in the horse industry are very often only verbal agreements. These verbal agreements are enforceable contracts. As long as both sides perform, there is no problem. However trouble starts when there is disagreement regarding the terms of the contract. When that occurs, it often comes down to “he said, she said” in determining whether a contract was formed, and if so, the terms of the contract.

The law of contracts requires an “offer” and an “acceptance”. Except in the case of real estate, most verbal contracts are enforceable as long as there was a “meeting of the minds”. But, if the parties never discussed, agreed upon, or had different understandings of material terms, the contract may not be enforceable.

On the other hand, just because every single term was not specifically discussed and agreed upon will not necessarily be enough to void the contract. Just as in written contracts, there are terms that will be implicit in the contract. For example, all contracts include an implied covenant of good faith and fair dealing between the parties.

So, what can you do to minimize misunderstandings and problems when there is no written contract? Confirm your verbal agreement in writing. After you have reached a verbal agreement, send a letter to the person confirming your understanding of the terms of the agreement. Include in the letter a request that the person contact you to discuss any terms that are inaccurate, not understood, or missing. Even if you don’t send a letter, send an e-mail or some other form of writing to memorialize the fact that there is an agreement. Although your writings will not turn your verbal contract into a written contract, it will help avoid any misunderstandings that may exist. At the same time, if the other person responds in writing, you should carefully review the reply to make certain you agree with the content.

Another helpful way to avoid potential problems with verbal agreements is to have witnesses to the agreement. These witnesses, ideally, should be independent, so if they are called upon to corroborate certain facts, they will not be perceived as biased or prejudiced. Although the reality of most situations won’t provide such witnesses, it is nevertheless better to have persons available to confirm any disputed details or circumstances of the agreement.

The old adage of “get it in writing” is still sound legal advice, but do not be misled by the notion that an agreement can’t be enforced because it wasn’t “in writing”.

Fortunes large and small have been won and lost on a deal consummated by nothing more than a handshake.

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