

## THOROUGHBRED OWNERS AND BREEDERS ASSOCIATION CODE OF ETHICS FOR THOROUGHBRED AUCTIONS

Mission: At the behest of the Thoroughbred Owners and Breeders Association, the Sales Integrity Task Force was convened in response to an expressed desire within the Thoroughbred Industry to improve the opportunity for buyers at auction sales to feel informed, understand the various aspects of the process, and be confident they were being fairly treated. The project was specifically geared to the needs of new investors, but not designed exclusively for them. At the same time, it is recognized that the interests of consignors, breeders, agents, veterinarians, trainers, sale companies, and horses need also to be protected and that the Thoroughbred auction scene inherently involves risks for all concerned. The 22-person committee, which spent many hours over the months in developing this Code of Ethics, was made up of high-quality individuals with national and international standing in the various disciplines involved in the auction scene.

Action Plan: The Sales Integrity Task Force has created a Monitoring Committee of three individuals: Reynolds Bell, chairman; Fred Seitz; and Satish Sanan. The charge of the Monitoring Committee will be to meet at least semi-annually during 2005-06 to assess the role of the Code of Ethics in the auction market and make recommended changes as needed. The Thoroughbred Owners and Breeders Association will be in charge of implementation of the Code of Ethics and distribution of materials so that the Code has maximum value to new owners and other parties. The American Association of Equine Practitioners is asked to take a pro-active role in providing information on these and other subjects which might lead to additions or amendments to this Code of Ethics.

### ARTICLE I: Veterinary Practices

Overview: Since the market value of Thoroughbreds, especially young ones, is in part dependent on their conformation, veterinary and farrier practitioners seek ways to correct what may be deemed faults. It is to be anticipated that increased knowledge and techniques, from time to time, will make possible increasing opportunities for such corrections. At present, the following are categorized as "Acceptable, But Must Be Disclosed," and "Prohibited Practices." These designations have been endorsed by the American Association of Equine Practitioners. The appended form covering these categories will be provided by the sale companies to all consignors, and they are asked to include this information in the Repository and/or Information Center at the sale. Sale companies have stipulated that use of this form is voluntary for foals of 2004 and mandatory for foals of 2005 and later. The form will be turned over to the new owner.

***Acceptable, But Must Be Disclosed*** -- Invasive joint surgeries and other surgeries designed to affect permanent changes in a horse's conformation. These include transphyseal bridges and periosteal transections, manipulations, and elevations. These are procedures adjudged to improve conformation of horses and thus enhance their opportunity to remain sound under the rigors of training and racing. The fact of them having been performed must be disclosed to all potential buyers and buying agents.

***Prohibited, Unacceptable Practices*** -- Temporary alterations which may regress and therefore mask a horse's true conformation or condition, for purposes of sale. These include shock wave therapy, and acupuncture and/or electro-stimulation with the intent of altering laryngeal function. Neither is permissible after a horse has arrived at the sale grounds. Prohibited any time, regardless of the animal's location, within 90 days of sale is the injection of an internal blister or any other substance designed to alter conformation temporarily.

*The Code regards proof of one of these prohibited practices---if such proof is developed within 14 days after the sale---to be just cause for the buyer to turn back the horse and expect reimbursement of the sale price. Sale catalogues' conditions of sale will reflect this standard.*

Veterinary Information: Many sales have adopted the practice of providing a Repository of X rays and endoscopic findings, to facilitate a buyer's understanding of the horse's potential to be a sound athlete. Veterinary consultancy is thus a key part of the evaluation process. All veterinarians, under their own professional code, are presumed to provide honest and complete opinions with regard to these materials and all other evaluations, and consignors and consigning agents are prohibited from requesting that they do otherwise.

A legal form (appended) must be signed by veterinarians when they enter the Repository. It is designed to reveal any conflicts arising from their ownership of a horse or horses in the sale.

Other Considerations: The Task Force is well aware that certain other practices are controversial within the industry and might, in fact, have a negative impact on the reputation of the industry. These include use of anabolic steroids. Overuse of anabolic steroids is undesirable, but the medication does also have legitimate therapeutic uses. Horses presented at sales after abuse of anabolic steroids will revert to normal after steroid withdrawal and suffer no long-term effects. Thus, this Code does not prohibit all steroid use, but the repeated use of anabolic steroids during sale preparation artificially alters the horse's appearance and is discouraged.

Another practice sometimes observed involves extreme measures in altering and reshaping horses' feet. However, it is recognized that within a few months, a horse will routinely grow a new hoof, so prohibition of such practices is not contemplated at this time.

Certain 2-year-old sales are conducting medication testing, which apparently is sufficiently protecting horses, and buyers, from the impact of illegal drugs. Attempts to delineate and identify acceptable medication practices, in general, might hamper sound management of horses, so the Code does not pre-impose judgments on these veterinary/husbandry decisions. However, this is a subject for future and ongoing scrutiny, again with the assistance of the AAEP.

## **Article II: Disclosure Of Ownership**

Overview: The intent of this article is to encourage provision of knowledge about the background of a horse which a prospective buyer might wish, while at the same time recognizing and protecting the rights of both buyer and seller to privacy. At issue is the importance to some buyers to know all parties that might have an equity interest in the horse and the identity of the successful bidder after the sale.

**Information Not Mandatory** -- The supplying of ownership information is not held to be a requirement under this Code of Ethics. However, all sale companies are requested to *encourage* consignors and consigning agents to reveal all information about ownership which a prospective buyer or buyer's agent might seek, both on the catalogue page and verbally. The prospective buyer has every right to ask the consignor anything relative to the horse's condition and ownership, and if such information is unsatisfactory, he/she has the recourse of deleting the horse from further consideration. Also, prospective buyers, especially those new to the industry, should be informed of the commercial products available which provide some of this information. Following the sale, the sale company will make every effort to provide to the public the most complete and accurate information on buyers and sellers possible, consistent with the above cited protections of privacy.

Exceptions – Notwithstanding the above, it is mandatory that any ownership interest in a sale horse held by a person or persons employed by or directly affiliated with the company conducting the sale be printed on the catalogue page. If an agent has an ownership interest in the horse, this must be revealed in writing in the "Agent Disclosure Agreement" described in Article III. Also, if there is a change of ownership known to the sale company while the horse is on the sale grounds, this change **MUST** be announced from the auctioneer's stand.

On the subject of establishing a reserve, the Committee feels that the owner of a horse has a right to establish a reserve in any manner of his choosing, including bi-bidding.

## **Article III: The Role of the Agent**

Overview: Individuals and companies which provide advice and/or bid on behalf of an owner are an important facet of the sale industry. Many bloodstock agents also prepare and sell horses on behalf of the horse's pre-sale owner. Thus, it is important that the varied roles of the bloodstock agent be made clear and that, when a conflict of interest exists, that conflict be openly disclosed. The Sales Integrity Task Force believes prospective buyers will be best served by entering into a written agreement, and a suggested draft of such an agreement is appended to this article. This agreement is available from the TOBA offices.

**Dual Agency Without Disclosure Is Fraudulent** – "Dual agency" refers to the practice of an agent accepting a commission from the buyer for purchasing/bidding on the horse on the buyer's behalf and also accepting any commission or other commercial benefit from any party involved with the selling/consigning of the same animal, without disclosing this. For many years, this infrequent, but abhorrent, practice has received publicity from time to time; the Sales Integrity Task Force emphasizes to any buyer -- new or experienced -- that dual agency (without disclosure to all parties) is inherently fraudulent. No agent/trainer should ask for a

commission from a consignor, nor should a consignor pay a commission. All parties should understand that acquiescence to the practice does not mitigate its fraudulence, and the Task Force implores sale companies to print prominently in all sale catalogues the relevant state statute relating to dual agency. Also fraudulent is any pre-arranged agreement that establishes a secret price for a horse prior to the sale, and then bidding up the price and dividing any overage between agent and consignor, in the situation where the agent also represents a potential buyer.

**Agent Disclosure Agreement** -- The Task Force strongly urges buyers to require of agent(s) the written provisions as laid out in the accompanying Agent Disclosure Agreement. The buyer is also bound by the provisions in that agreement, so that each understands clearly his/her role and compensation.

**Other protections** -- Trainers and/or managers of boarding farms also are called upon to provide advice. Once a sale is consummated, however, the trainer who assisted in the selection of a racing prospect is not always guaranteed that he/she will have the opportunity to train the horse(s), and the manager who assisted in the selection of a weanling or breeding stock is not guaranteed he/she will receive assignment to board the animal(s). The Task Force stipulates that the buyer shall provide, and follow through with, agreement before the sale as to what the compensation and/or boarding/breaking/training opportunity is implicit in the business arrangement with the advisor.

#### **Article IV: The Sale Company**

**Education/Warning:** The widest possible distribution of educational materials is integral to the success of this effort; therefore, all sale companies are urged to display prominently in the barn area of their facilities placards spelling out the key provisions of this Code of Ethics. TOBA will work with sale companies to facilitate this project. The sale companies are also requested to cooperate in all other appropriate means of distribution of information so as to promote the understanding of the various dynamics of the auction market and to protect equally the interests of all parties involved.

In any case in which a horse entered in a sale changes hands after publication of the catalogue, the sale company will make this announcement from the stand prior to the horse being sold.

TOBA's role will include making relevant forms and publications readily available -- via *The Greatest Game* program, its website, and other means -- and providing other guidance to facilitate an owner's due diligence and successful participation in an auction.