

Contracts for the Sale of the Purebred Dog



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by

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Contract for the Sale of a Dog

In comparison with the sale price of a purebred dog, the indirect costs of producing the pedigreed dog are manifold. On a basic level, the cost of achieving a Championship on a dog can run into the thousands of dollars – campaigning that dog to the top 20 of its breed can easily run several times that amount. Add to that the cost of advertising fees, management fees, and general expenses, and it is not uncommon for an owner or breeder to spend tens of thousands of dollars on a top-winning dog in a single year.

But direct costs aside, there are also the breeder's reputation, integrity, and other personal values to take into consideration. Many of these animals represent years of careful and studied breeding programs, and the use – or misuse – of these animals can have a great impact on not only the survival and success of the kennel, but also can seriously impact a breeder's reputation among fellow fanciers – a reputation that carries a great deal of weight in these relatively small circles. To a breeder, reputation and integrity are what will determine whether their program continues as a viable enterprise.

Taking this into consideration, the simple sale of a Newfoundland puppy for \$1,500 actually represents a massive investment of tangible and intangible value by the kennel. Accordingly, a contract is a sound course of action for any person entering into an agreement concerning their rights – and the rights of another – to a purebred dog. In plain terms, a contract is an enforceable promise, which should contain all the considerations of the buyer and seller. But a contract for the sale of a purebred dog not as simple as one might think.

A contract for the sale of a pet animal is much more basic than one covering the sale of a show dog, with contingencies, breeding reservation, syndicates, and so forth. This contract, however, should contain the basic provisions that should be in all contracts concerning dogs.

This guidebook will hopefully give you an idea of the information you could include in a basic purchase and sales contract. **NONE OF THE LANGUAGE IN THIS GUIDE IS MEANT TO PROVIDE YOU WITH FINAL**

CONTRACT WORDING OR CONTENT, NOR DOES IT PROVIDE ALL RELEVANT TERMS OR CONDITIONS YOU MAY NEED OR WANT TO INCORPORATE. This guidebook is intended only for providing a structure and suggestions to get you started. The final form of your contract will depend greatly on the exact desires and objectives of the parties.

The following discussion provides a basic outline of items you likely will want to see, or consider, in a contract. You may choose to use this as a checklist against which you can compare any existing or potential contract. It is surprising how often contract basics get lost to the more complicated and unique aspects of “animal contracts”, but the details can make or break a contract.

The following presentation is framed around a standard purchase and sale agreement of a puppy. You can modify the terms and conditions, and add or delete relevant sections, for a variety of different situations concerning animals.

ABOUT THE AUTHOR

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THE BASIC CONTRACT

SECTION I

INTRODUCTION

TITLE (Purchase & Sale Agreement)

Every contract should have a title. This allows the interpreter to understand what the document purports to be. The title can be quite simple, “Sale Agreement” or “Purchase and Sale Agreement”.

INTRODUCTORY PARAGRAPH

The introduction should serve to define the title of the document, and identify the pertinent parties and dates. In addition, the practice of writing a preamble assists the parties, and anyone who is in the position to interpret the contract, in understanding the purpose of the contract.

EXAMPLE: The parties enter into this contract for the purchase and sale of one (1) purebred Newfoundland dog. The contract terms set forth are prepared for the benefit of each individual dog, breeder, and buyer--to prevent the exploitation of the Newfoundland breed through unselective breeding programs and practices. Without regard to the breed of dog, there is always a risk of physical problems in a giant breed of dog with even the most selective breeding practices. The parties enter into this agreement to preserve their mutual concern and respect for the Newfoundland breed. The parties further acknowledge breeder's intent to reserve breeding/stud rights on Newfoundland puppy.

PARTIES

Every contract must identify the parties. Most simply, the contract should contain name and address of the buyer and seller, and identify which party is the buyer and which is the seller. If the seller is an individual doing business under a kennel name, both should be included. If the Kennel is a registered business, then you may choose to use only the kennel name.

This is a [Purchase and Sale Agreement] (hereinafter “Agreement”),

Between "Seller"
Name
Kennel name (if applicable)
Address
Phone
Email
and "Buyer"
Name
Kennel name (if applicable)
Address
Phone
Email

EXAMPLE: This agreement, made this ___ day of _____, 20 __, is between _____ (seller) [doing business as "Kennel Name"] located at _____ and _____ (Buyer) residing at _____.

It is important be very clear when identifying multiple parties. Where one of the contracting parties is a couple, be sure to individually identify each person if you intend to bind both individuals.

In a contract, the "thing" being sold must be sufficiently described. If appropriate, it is good practice to identify dog as specifically as possible. "A puppy" may refer to any pup. Whereas, "Newfoundland dog from the Hansel (sire) x Gretel (dam) litter whelped January 31, 2003" would describe any one Newfoundland pup from a specific litter. Adding a name or description could serve to specify one pup: "Grimm's Bay's Little Bear", "black coat with white left rear paw", or something like that. The following example identifies the puppy as any one puppy from a specific litter:

EXAMPLE: The Buyer agrees to purchase from seller a male/female puppy of the _____ breed from the _____ (sire) x _____ (dam) litter whelped _____, 20 __, [named _____ or described as _____].

When available, the contract should also include:

- General description of dog (color, sex, ribbon color)

- General description of the “type” of dog sold (in a typical breeder’s contract, they will identify the dog as “pet” or “show” quality – this may appear elsewhere in the agreement);
- Registry number, or any other permanent identification number (microchip, tattoo, etc.)

If any of the above are unknown or unavailable, describe the parents as clearly as possible, including any individual markings or other identifying characteristics.

- Parents – sire and dam:
- Registry number, or any other permanent identification number (microchip, tattoo, etc.)
- If either of the above are unknown or unavailable, describe the parents as clearly as possible, including any individual markings or other identifying characteristics).
- Date born (if unknown, indicating an approximated age can be appropriate if desired)

EXAMPLE:

Breed: Newfoundland, GreenBoy-Puppy #6 whelped on 01/31/2003

Registration Number: WS01593706

Color: black

Date of Birth: January 31, 2003

Sire: _____/WP555555/04

Dam: _____/WP555555/01

PURCHASE PRICE

For a contract to be valid, it must contain some sort of value given by the buyer to the seller in consideration for the “thing” purchased. In law, this is called consideration. It can be almost anything of present value, including money, services, etc.

In this provision, you can account for any deposits made, or other services exchanged that reduces the actual amount paid for the dog.

EXAMPLE: The purchase price of the puppy is \$_____ [less the deposit of \$____, or less the breeding services valued at \$____, etc.]. The balance is due _____. [You may also include shipping charges in this provision].

If you agree to any partial payment, outline the exact terms of payment (including amounts and dates), and any conditions upon which future payments may change. If payments are being made, specify the due date and any “grace” period for late payments. It is a very common error for parties to fail to adequately describe what the parties expect regarding staggered and/or conditional payments.

If compensation other than money is considered, outline the exact services expected in order to complete and fulfill the contract. In describing the obligations, err on the side of inclusion.

DATE AND SIGNATURES

While the signatures appear at the end of the contract, it is important not to forget this requirement in the details discussed below. Most simply, the parties’ signatures demonstrate that the contract is a manifestation of their intent to be bound by the terms of the agreement. All parties referred to in the contract should sign and date the agreement. If the contract is several pages, or has addenda, attachments, etc, it may be good practice for the parties to initial and date each page. One copy for each party should be filled out and signed at the same time, so that all parties have valid copies of the contract.

SECTION II

BUYER'S OBLIGATIONS

The breeder may wish to oblige the buyer to take additional measures concerning the care of the dog, showing the dog, etc. If so, the additional terms should be written in a section of the contract dealing with the buyer's continuing responsibilities.

This section should explain the obligations that the buyer promises to fulfill, beginning with a general introduction section encompassing all basic care requirements.

While provisions concerning general training and care are probably the least enforceable terms of the entire dog contract, such provisions are nonetheless valuable. The language itself impresses on the buyer the importance of owner control and responsibility for the dog. And such provisions may serve to assist in protecting the seller against future claims of destruction or damage caused by the animal, absent some evidence of prior knowledge of the dog's propensities. An example of this is a clause wherein the buyer agrees to not to use aggression training with the dog.

The buyer's basic obligations for training and care may include any combination of the following non-exhaustive list:

- The dog shall be maintained and kept under buyer's control at all times;
- Not allowed to run at large (with possible exception of under direct supervision and control of owner);
- Provided a secure enclosure (if desired, you can add specific acceptable materials, height, and need to secure against escape both under and over the enclosure);
- Required veterinary care;
- General requirements – all encompassing provisions that are the minimum for maintaining the health and well-being of the dog (adequate food, water, and shelter from the elements, for example);
- “Including but not limited to ...” any specific examples that are particularly important to your

contract, whether because of specific breed concerns, or purpose-specific requirements needed to maintain the dog in necessary health and condition;

- Any specific requirements for ongoing prophylactic treatment.

EXAMPLE: The buyer agrees to provide the dog with proper exercise, diet, shelter and general care; properly maintain adequate accommodations for a Newfoundland considering its size and weight. The buyer further agrees to provide regular veterinary care including checkups, booster vaccinations, microchip and any other care needed by the dog, (e.g. regular worming, illnesses, injuries, etc).

Because the importance of a “training and care” provision is mostly informative – not its enforceability – it is good practice to explain why the buyer is agreeing to do (or not do) certain things.

EXAMPLE: There are many factors that can influence growth and development of a giant breed dog, such as diet, exercise, weight gain, proper veterinary care, etc. The buyer agrees to complete the appropriate vaccinations, give the dog regular and appropriate exercise, and feed the dog according to the information provided by the seller. The buyer additionally agrees to provide a suitable fenced area for this dog.

It is not uncommon to see contracts require vaccine requirements, regular dental treatments, and other preventative treatments such as flea/tick or heartworm.

EXAMPLE: The buyer agrees to maintain the dog in a humane environment and properly train and care for it. The buyer agrees to license the dog, inoculate the dog against rabies, distemper, parvovirus, and other communicable diseases as recommended by a qualified veterinarian. The buyer agrees that the dog will not be allowed to roam and will be socialized and obedience trained appropriately.

However, considering the ongoing developments in the veterinary industry and increasing questions regarding over-treatment causing negative health ramifications – especially as pertains to vaccinations – it might be wise to require such measures “as appropriate” for the dog’s age,

condition, local area, and relative risk of exposure dependent upon the dog's activities. This necessarily introduces a subjective element in the requirement, but is arguably also more reasonable. It may be wise to suggest "appropriate" measures rather than some specific schedule that is easily breached, and that could actually prove to be unhealthy in some future study – especially considering the questionable enforceability of such a clause anyway (absent some direct interest in the animal giving rise to an 'interest' in the animal's ongoing health, such as a co-ownership).

In addition, the seller may choose to include restrictions on participation in activities that are contrary to the breeder's general program, and/or to the general population of that breed or type of dog.

EXAMPLE: Because Newfoundland dogs continue to grow beyond two (2) years of age, the Buyer agrees to use extreme care to ensure that a dog under two (2) years of age should not be allowed to jump from any height without assistance. Any such activity may cause permanent and irreversible damage to growing joints.

OTHER REQUIREMENTS

There may be several requirements that the breeder wants the buyer to fulfill with respect to general "paperwork" regarding the dog. You may want to include in your contract some language emphasizing that these seemingly mundane issues have a distinct value to the seller, particularly with respect to building the reputation and measuring the worth of their breeding program. This adds value not only to the judge or lawyer who might later be called to interpret the contract, but also acknowledges the buyer's understanding of the non-tangible values involved in breeding a pedigreed dog.

These "paperwork" requirements may include obligations for the buyer to:

- Use the kennel's name as first name of the official registry name;
- Notify seller of any change in contact information;
- Submit applicable registration materials (including any specific requirements particular to that breed);

- Submit applicable materials to microchip (and/or tattoo and/or other permanent identification registry);
- List the kennel as a secondary contact on any such registry;
- Notify seller of any pertinent accomplishments of the dog – titles, awards of merit, or other accomplishments recognized by any appropriate organization.
- Release agreement – allowing seller to use the dog’s name, picture, and/or other information in advertising the kennel or other dogs, providing that seller shall give buyer proper recognition of ownership where appropriate.

FUTURE TRANSFER OF OWNERSHIP OF DOG

In interpreting the parties’ property interests after a contract, courts prefer that the buyer receive the entire property interest in the animal. Because ownership of property grants the owner the exclusive right to possess, use, and dispose of the property, a clause that prohibits a buyer from reselling the dog may be ruled unenforceable. Therefore, it is incumbent on the drafter to explicitly set forth the reasons for a no resale clause, retain an interest in the dog, include a first option on any resale, or have a resale trigger some damages provision.

This is an extremely important section that addresses the respective rights to the dog should the original purchaser decide to sell or place the dog. This is also one of the most sensitive aspects of the contract – subtle drafting can drastically affect whether the clause will be enforceable or not. In general, you want to make a “take-back” provision as fair and as clear as possible, with a definitive scheme for when and how the dog is to be returned, the measurement of any value for the dog, and limitations on what the seller will be responsible for.

While such covenants are not generally favored by law, it is important to never underestimate the “non-legal” value of such clauses – it can often be just as important to the seller, if not more so, that the buyer unambiguously understands that the seller WANTS the dog back if things do not work out. Simply having the option in writing can often mean a successful, voluntary return of the abandoned dog, aside from any questions regarding the legal enforceability of the clause itself. This is important to any

good breeder, as they want to help ensure that their dogs will not end up in shelters, abusive or neglectful homes, puppy mills, or other unacceptable situations if the first placement falls through. The seller often also has a keen interest in controlling the destination of any intact breeding dogs.

These “future transfer” requirements may include obligations for the buyer to:

- Notify Seller of intention to sell or give away the dog;
- in writing;
- in a time frame (i.e., “a minimum of two weeks before ...”);
- Provide seller with an absolute first right of refusal (It is important to include language that a refusal must be reasonable, as it helps the chance of such a right being upheld if later challenged in court.)

EXAMPLE: In the event the buyer is unable to keep the dog for any reason, the buyer agrees to immediately contact the seller. The buyer agrees that the seller has the first option to either: (a) take the dog back or (b) assist the buyer in finding a suitable home for the dog.

EXAMPLE: The parties understand that the Breeder retains an interest in all dogs bearing his/her Kennel name, and that an unauthorized resale of the dog may adversely affect and damage the Kennel’s reputation and the value of the kennel’s dogs. Because of the foregoing, the parties agree that the Buyer will not resell the dog without prior approval of the Seller. The parties further agree that, in the event that the Buyer is unable to keep the dog for any reason, he/she will immediately contact the Seller, who has the first option to accept the return of the dog. The Seller will make a reasonable offer based the breeder’s reasonable assessment of factors that may affect the dog’s value, such as age, condition, and general health. In the event that the Buyer sells the dog without the Seller’s prior consent, the Seller may seek damages in the value of the dog and consequential damages to the Kennel.

If you include a “take back” clause, you want to outline what happens if the seller exercises their option to

take the dog back. You will want to specifically state that transfer will be complete, including:

- Transfer of ownership under all applicable registries;
- Provide current copy of veterinary records to date;
- If desired, provide a payment/reimbursement scale.

You may also choose to include the following provisions:

- Note that provision is not meant to interfere with the buyer's or seller's rights as may otherwise be provided under the contract, unless otherwise agreed upon in writing;
- Provide that all past expenses and liabilities are the sole responsibility of the buyer, other than as may otherwise be provided by the Agreement;

Specifying these terms in the contract helps to clarify and limit the allowable financial compensation for a returned dog before any trouble occurs and emotions begin to run high. At the very least, the contract should specify that any financial reimbursement is subject to the breeder's reasonable assessment of factors that may affect the dog's value, such as age, condition, and general health.

One method to determine financial reimbursement is a declining scale of value, which reduces the maximum total percentage of purchase price (subject to the current health and condition of the dog) that the buyer can expect, graduated upon declining scale as the dog gets older. The exact age scale depends largely on the breed's maturity rate, and the seller's personal desires. For large breeds, the typical maximum age where the buyer can expect any kind of financial reimbursement is two years, more commonly eighteen months.

If there are any remaining payments or services per an extended sales agreement, the contract should specify how those unpaid benefits will be allocated if the dog is returned before the contractual payment terms are met in full.

You also want to include information about what will happen if the seller does not exercise their option to take back the dog, including any of the following:

- At seller's discretion, seller may require notice in writing as to whom the dog is to be adopted (Including current contact information for the potential adopter);
 - Indicate minimum time frame during which buyer must provide contact information (i.e., at least two weeks before the dog is transferred to the new owners).
- Buyer acknowledges seller's right to approve of any sale or transfer:
 - Not to be unreasonably withheld.
- Stipulate that the present contract will apply with full force and effect to the new owners:
 - Require the buyer to provide a written copy of the contract to the new adopters;
 - Require the buyer to notify the third party of the contract's terms and conditions;
 - Require the buyer to notify the third party that by adopting the dog, they are assuming terms and conditions of the contract;
 - Require the buyer to incorporate the contract into any agreement, preferably written, between the buyer and third party.

HEALTH GUARANTEE OBLIGATIONS

This section is extremely important, and a critical area in which the drafter should take care to put the contractual conditions in the clearest terms possible.

A competent health guarantee clause, both on the seller's and buyer's side, should take into consideration breed-specific diseases, tests, and acceptable practices. The options for handling health issues that may crop up are very personal, and require careful thought on the part of all parties to the agreement.

You may choose to obligate the buyer to do certain things in order for any health guarantee to be valid:

- A preliminary veterinary examination:
 - Specify time frame within which exam must occur;
 - Meeting this condition is a pre-requisite for preserving the buyer's rights under the health guarantee provisions within the contract;
 - If desired, specify the documentation or method(s) of documentation or

communication the seller requires regarding the veterinarian's findings.

- Specify any necessary testing to uphold specific health guarantees, as appropriate to breed, function and/or type of dog (e.g. OFA, PennHip, etc.);
- Include, if applicable, requisite time frame for test to be performed;
- Specify whether the x-rays are to be submitted to seller or directly to the recognized organization that will certify the results; and require that any results be conveyed to seller. If test results are to be sent to seller, specify who will in turn then submit them for certification, refer here to Seller's Warranties and Guarantees.
- Clearly state that failure to comply with these provisions will void any guarantees as to that condition.

EXAMPLE: Buyer's obligations that may arise concerning a health guarantee regarding hip dysplasia:

- Have dog's hips x-rayed, at buyer's expense, by veterinarian who is board-certified, or otherwise demonstrably qualified to performing x-rays for this specific purpose;
- Specify the age range in which test must occur (most organizations require that the dog be at least 2 years old before they will certify the dog – and the seller likely will desire a cap on how long the buyer can wait before performing the test. A common range is between 2 and 3 years.);
- Specify where x-rays are to be sent (whether to seller, or directly to OFA or PennHip).

GENERAL TRAINING AND SOCIALIZATION

This section will outline the Buyer's responsibility in training and socializing the dog as appropriate for its breed and lifestyle. While such a clause is quite susceptible to legal challenge, the terms in this section of the contract can prove to be a powerful tool in demonstrating that the owner bears significant responsibility in the ultimate temperament and reliability – and thus safety – of that individual dog.

In these days of increasing awareness of liabilities arising out of dog bites or attacks, these clauses may help protect the seller from damage caused by an untrained,

unsocialized, or otherwise inappropriately managed dog (including lack of restraint and training of a dog using inappropriate aggression/attack methods), causes that do not flow from the seller's responsibility in breeding dogs of sound, stable temperaments.

In addition, such clauses serve to help educate the buyer in what methods the seller considers appropriate and necessary training. This not only helps to show that the seller did indeed attempt to educate the buyer – it also puts that education in writing, hopefully helping the buyer to shape a reliable canine citizen.

With Newfoundland dogs, it is important to include language indicating that the Buyer recognizes that they are adopting a large and powerful breed, that they are familiar with the breed's traits, that they bear responsibility for the training and socialization of that dog, and responsibility for the safety of the dog and others with whom the dog interacts. (However, be careful not to word this caution to state that the breeder has produced what they know to be an inherently dangerous animal, or a dog with poor temperament).

The "training" provision should state that all expenses incurred in caring for, raising and/or training the dog – even those obligations imposed by the contract – are to be the sole responsibility of the buyer, unless otherwise explicitly provided by the contract. The provision should contain some language indicating the following:

- The buyer recognizes general characteristics of the breed, especially if it's a large and/or guarding breed;
- The buyer accepts the risks and responsibilities of owning the dog;
- And the buyer acknowledges that he/she has sole responsibility for ongoing, life-time socialization and training for the dog as appropriate for its age and level.

The buyer may be more specifically obligated to:

- Obedience train and socialize the dog as appropriate:
 - The contract may require specific classes, such as puppy kindergarten and/or a basic obedience course and/or Canine Good Citizen, etc.;

- The contract may also require that the classes occur during a particular time period when training is believed to be ideal for that level (i.e., puppy kindergarten between 3 and 6 months of age; basic obedience begin before the dog reaches 7 to 9 months of age);
- If desired, may specify minimum class hours each class must entail.
- Provide the seller with some kind of proof of fulfilling the training requirements:
 - State what will constitute acceptable proof;
 - And state time period in which Buyer must provide this proof.

As further encouragement to fulfill the “training” obligations, many contracts offer reimbursement of a modest portion of the original purchase price if the buyer complies in full with these requirements (such as obtain a CGC certificate) – not only does this provide incentive, but the Seller can increase their purchase prices accordingly.

BREEDING AND/OR PERFORMANCE OBLIGATIONS

If the dog is a breeding or performance prospect, the buyer may bear extra responsibilities. These issues are very individual, and depend on the nature of the particular arrangement unique to any given situation. The following below is an idea of what might be included – any specific requirements or expectations, including who will pay for which expenses, should be laid out as specifically as possible. Quite simply, this is an area where confusion about respective responsibilities is perhaps one of the more common sources of later dissension between the parties. Any of the following provisions may help to clarify the parties’ positions:

- The buyer accepts responsibility for training, grooming and socializing the dog as necessary to prepare the dog for this specific purpose;
- The buyer agrees to attempt to title the dog (such as a conformation Championship, performance titles, breed titles, etc.);
- The buyer agrees that they are 100% responsible for any expense incurred in achieving these goals;
- The buyer acknowledges that seller has guaranteed only that the dog has the basic physical characteristics necessary to achieve the desired

goal, and that the seller cannot guarantee that the dog actually will achieve this goal.

- The guaranty of so-called “show-quality” does not extend to guaranteeing that the dog is of breeding quality, or that the dog will suit the buyer’s breeding needs.
- Unless the seller wishes to make this kind of promise, the contract should specifically state that the quality guarantee does not guarantee that the dog will even be able to breed (due to some physical infertility or other impediment).
- In the context of show dogs, the buyer agrees to not alter (spay or neuter) the dog until after it has achieved its title, unless otherwise waived in writing by the seller, or unless in response to a life-threatening situation (as documented by veterinary records).

The following conditions are often required in order to ensure the integrity of the seller’s reputation as a breeder, as well as the breed as a whole. While their enforceability is uncertain, they are considered reasonable and standard requirements within the fancy, and therefore have some inherent value.

- The buyer agrees to not use the dog for contributing to puppy mills, commercial breeding facilities, or other practices considered detrimental to the health of the individual and of the breed;
- The buyer agrees that the dog shall not be bred until it has achieved the appropriate title (whether a working or conformation title, or both);
- The buyer agrees that the dog shall not be bred except to another dog of the same breed;
- the buyer agrees that the dog will not be bred unless the other dog has also passed its health clearances, as required of the subject dog in the contract.

NO BREEDING OBLIGATION

Because the general practice with purebred dogs is to spay or neuter pet quality dogs well after the seller releases the dogs at 8-10 weeks old, a no breeding clause is essential to protect the kennel’s name and reputation, not to mention the health of the breed. But, as discussed above, courts do not like contracts that give the buyer less than a whole interest in the “thing” purchased. Therefore, the no

breeding clause should explain why the parties have agreed to this clause. One way to achieve this is to write into the contract the price difference between a puppy sold with the intention to breed (say \$2,000) and a puppy sold as a pet without the intent to breed (\$1,000). This will clearly establish to anyone reading the contract that there is a great difference in value between the two types.

EXAMPLE: The buyer agrees that the dog is sold as a companion dog and must be spayed or neutered when it reaches maturity, before twelve months of age. The seller will rebate [\$] to the purchaser, one third of the purchase price, upon receipt of a certificate of spay or neuter from a qualified veterinarian, provided that the dog has not previously been used for breeding.

If you wish to leave the option open to convert the pet dog animal contract into a show or breeding dog, you can add a provision stating so much.

EXAMPLE: If requested by the buyer, the seller shall have the prerogative to re-evaluate the dog for [show quality/breeding purposes]. In the event that the dog is considered [show/breeding] quality, the parties will execute new agreement and the buyer will pay the difference between a show quality dog and a pet quality dog.

BREACH OF AGREEMENT

Finally, you want to provide a clause that describes the buyer's and seller's respective rights if the buyer breaches the contract in any way. Elements of this clause can include:

- The buyer must forfeit the dog to seller;
- The buyer relinquishes any remedies that would have otherwise been provided by the contract;
- A liquidated damages clause;
- Attorney's fee provision;
- The buyer remains solely responsible for any expenses incurred prior to breach, including expenses incurred for care, training, etc.

EXAMPLE: In the event of breach of this agreement, buyer agrees to pay all expenses of retaking, holding, preparing for sale, selling, and expenses as may be allowed by law and incurred by the seller in enforcing his or her rights

under this security agreement. The rights and remedies conveyed upon the seller will be in addition to and not in substitution of or in derogation of the rights and remedies conferred by the laws of the State of Washington.

For a liquidated damages provision to be enforceable, the liquidated sum must be a reasonable preestimate of loss at the time of the execution of the agreement. In short, if the seller wants to put a specific amount of damages into the contract (\$5000), the contract should explain why that amount is reasonable. A figure simply drawn out of the air may not be enforceable. Therefore, as in the “No Resale” clause, the liquidated damages clause should explain why the parties have agreed that a sum certain would resolve any dispute arising from a breach of the agreement.

EXAMPLE: The parties understand that, in addition to costs relating to the health, welfare, and safety of the dog, the damages that may arise from a breach of this agreement may adversely affect the reputation and value of the Kennel’s dogs. The parties agree that any material breach of this agreement ... \$5,000.

One consideration when drafting a liquidated damages provision is where you want to enforce the provision, if needed. Do you want to keep your claims in small claims court? If so, the current jurisdictional limit on small claims awards in Washington State is \$4,000. A liquidated damages provision providing for \$5,000 may be brought in small claims court, but the court may only award \$4,000. On the other hand, if the liquidated damages provision is for \$10,000, the seller may wish to bring the case in district or superior court. In that case, the parties will need to retain attorneys, and be prepared for a long legal battle. (In King County the current wait between the filing of a complaint and trial is about 18 months).

Even if the seller does not want to enforce damages provisions against breaching buyers, a liquidated damages provision can be used as a good negotiating tool. The ability to seek \$5,000 from a buyer who wants to establish a back yard breeding program with the dog that you sold to him as “pet quality” may provide the impetus for the buyer to surrender the dog and not engage in those practices.

SECTION III

SELLER'S OBLIGATIONS

SELLER'S WARRANTIES AND GUARANTEES

This section outlines the seller's promises and responsibilities. It is important to note that many dog contracts unduly favor the seller. This is probably the surest way to have a court refuse to enforce the contract. Seller's often have a legitimate reason to want to reserve certain rights in the dog, especially one of good breeding or quality. However, care should be taken to ensure that the buyer's respective benefits are reflected, and that the contract is as balanced as possible. If necessary, you may even want to go so far as to include a clause in which the buyer explicitly recognizes that "in exchange" for accepting the dog with the multiple restrictions and limitations and reserved rights, they are being given the chance to purchase/adopt a dog of higher quality than they would otherwise. However, you should always carefully evaluate conditions that are heavily in the seller's favor, and be aware of the law's preference for an unrestricted transfer of property. Any restrictions or reserved rights stand a much better chance of being upheld later if the contract is "balanced" – i.e., the buyer also receives substantial benefit through the contract, and the seller's rights are not overly oppressive.

SELLER'S WARRANTIES

Warranties are assurances by the seller to the buyer of the existence of a fact upon which the buyer may rely. In this context, a warranty is a promise about the dog, i.e. "this is a show quality dog". Warranties may be made overtly by express clauses in the contract,

EXAMPLE: Breeder guarantees the described Newfoundland is a purebred dog, registered with the American Kennel Club and will furnish a true and correct copy of the pedigree and AKC registration certificate to the owner upon final payment or upon receipt from AKC.

or by implication as implied warranties incorporated by law. It is important when warranting pet quality to explain what any warranty term means.

EXAMPLE: The seller will use their best judgment and the advice of other fanciers in evaluating the puppies as to show or pet quality. There is no guarantee that a puppy evaluated as "Show Quality" will be successful in the show ring as an adult and no warranties are made to that effect.

In the past, the sale of animals was covered entirely by the doctrine of caveat emptor (or "buyer beware"). The sales did not contain any implied warranties. But in modern law, a few implied warranties attach to the sale of animals. These change from state to state. But generally, there are two warranties implied by law in the sale of purebred animals: title and merchantability.

The warranty of title is simply a promise that the seller owns the dog that they are selling.

The warranty of merchantability means that the dog is what it is purported to be: a companion animal is warranted to be fit for the general purpose of a companion. Disqualifying marks, a bad gait, or a bad bite would not fall under this warranty.

The warranty of fitness for a particular purpose is trickier. Some states incorporate it by law, others require that the seller make some express statement about the dog before they will incorporate this warranty. Like its description states, this warranty promises that the dog is fit for some special purpose, such as a drafting dog. If during the purchase, buyer discusses wanting a dog to do drafting competitions, and the seller responds that the puppy should be able to do that, comes from a line of fine drafting dogs, etc., it could be construed that the seller has promised (warranted) that the puppy will be a drafting dog.

Because a lot is said between the potential buyer and seller while discussing the puppies, and the breeder's line in general, it is best for the seller to protect themselves by including a general disclaimer to any "inadvertent" warranties that may have been given.

EXAMPLE: This dog is warranted only for the purpose of being a companion animal. While it may be capable of performing other functions, no warranty is given as to its fitness for any special purpose.

Typically, sellers include the following express warranties:

- The seller is the lawful owner of the dog, the dog is free of all encumbrances, and that the seller has the right to sell the dog;
- That the dog is in good health and sound body;
- That – to the best of seller’s knowledge – the dog is of stable temperament and sound disposition at the time that the dog is transferred to buyer;

(Many breeders shy away from guaranteeing a dog’s temperament – and for good reason. There are many factors that go into the ultimate behavior and temperament of a dog, and both “nature” and “nurture” have their influence. However, some language such as that suggested above, helps provide evidence that the seller did not knowingly adopt out a problematic dog, but be careful about overbroad promises.)

- If the dog is a show or working prospect, the seller may wish to warrant that the dog does not have any major conformational or structural fault that will inhibit the dog from performing that objecting.
- That the dog has received all vaccinations or other treatment as appropriate to the age of the dog at the transfer of ownership, and that veterinary records will be provided upon request at time of transfer;
- That to the best of Seller’s knowledge, the dog is free from any contagious or harmful diseases:

(Here is where you want to insert a basic health guarantee, which generally begins by provided that the buyer must bring the dog to a veterinarian within a certain number of days (as also referred to in the Buyer’s guarantees));

In addition, under the seller’s obligations section, you should describe the buyer’s remedies if the seller breaches these promises 9while it may be difficult to discuss buyer remedies, this will help to balance the contract and make it more enforceable):

- Stipulate to the buyer’s remedy (usually, full reimbursement of purchase price);

- The buyer must request remedy in writing, and provide written documentation of veterinarians findings;
- Some breeders require that the buyer also return the dog, unless otherwise agreed upon in writing.

In writing the seller's guaranties, be careful not to over-promise anything. For example, some dogs never achieve their Championship because of the owner's lack of diligence in pursuing the title, and not through any fault or flaw on the dog's (and thus the seller's) part. Therefore, crafting of this language should be done with care.

HEALTH GUARANTEES

This is, again, a critical component of the contract, and should generally correlate to the buyer's responsibility to test for the dog's health. Particular care should be taken regarding the available remedies. The following is but one example for handling these issues.

It does not need to be said, but a health "guarantee" is a misnomer. No breeder or seller can promise that a dog is genetically free of any problem. What the breeder can promise is that they've made every effort to minimize the risk of any such problem, and that if the problem does occur to the dog in question, that the buyer has certain remedies (which should be set out as explicitly as possible).

These conditions should be addressed specifically and expressly.

EXAMPLE: The seller guarantees that the dog is the offspring of breeding stock that are free of hip-dysplasia of a genetic origin as determined by the Orthopedic Foundation for Animals (OFA).

Should the seller want to limit any general guarantee of health, they may limit the warranty.

EXAMPLE: Should the dog develop clinical signs of hip-dysplasia prior to his second birthday, the Seller agrees to replace said dog with another of equal value subject to the following conditions:

- *That said dog has not been used for breeding, either intentionally or unintentionally;*
- *Provided said dog has received proper exercise and diet, and has been properly maintained for his size and weight;*
- *That Seller has the right to a second veterinarian of his choice evaluate the dog's condition before the guarantee will be honored.*

The seller may also want to include any of the following in their guarantee:

- If the dog is believed to be affected by a health condition, the seller has the right to request a second veterinary opinion before the seller's remedies are triggered;
- Specify (again) the exact remedies available if the dog is in fact affected: usually, either a puppy of comparable quality, or refund of purchase price, the choice of which remedy is at seller's discretion;
- Provisions on what happens if the buyer chooses to relinquish dog (namely, a damage limiting provision, noting that the remedies provided above are the sole remedies, and that any prior expenses, including medical expenses (except perhaps the cost of the original veterinarian visit and tests that diagnosed the condition) remain the sole responsibility of the buyer;
- Provisions on what happens if the buyer chooses to keep affected dog (whichever remedy is utilized):
 - The buyer accepts all future medical and other expenses that may flow out of the condition;
 - The buyer acknowledges that any payment made by seller towards the dog's medical care or expenses are voluntary, and do not impliedly or explicitly promise any future contributions or payments.

Another element of the health guarantee section covers any action on the buyer's part that would negate the health guarantees (e.g. compliance with the testing and certification requirements, or an agreement not to allow the dog to jump from any height before its growth plates set). Such exceptions should be explicitly described.

SECTION IV

TRANSFER AT DEATH

It is recommended to insert a general provision that provides for the title and ownership rights to the dog if either the seller or buyer pass away or become otherwise incompetent or incapacitated. Different registries such as the AKC have specific requirements for the transfer of ownership after an owner has passed away, and the parties should make the necessary preparations so that the dog may revert to one of the other parties in accordance with those requirements.

SECTION V

VENUE, ATTORNEY'S FEES, CONTRACT LENGTH, ETC.

The final section should include a venue provision, indicate the total length of the contract, and state that the contract stands alone and that there are no other existing agreements that affect the contract, absent another agreement signed by all parties. It is also wise to indicate that the contract is binding upon all heirs, successors and assignees. Of course, a date and signatures are the final critical steps.

Many people drafting their own agreements fail to include the following "miscellaneous" clauses. But they should be included in every contract.

Change of Address

The buyer agrees to notify the seller of any changes of address during the dog's lifetime.

Amendment

Any changes or additional terms to this Agreement must be in the form of an Addendum and signed by all parties.

Severability

If any provision of the Agreement is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

Integration

The entire Agreement between the parties is contained herein.

Applicable Law

This Agreement shall be governed by the substantive laws of the State of Washington, without regard to conflicts of law provisions.

Jurisdiction and Venue

The parties agree to submit to the personal jurisdiction of the Courts of the State of Washington.

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