



BREEDERS AND PUPPY Protection

by Lisa Dubé Forman

There is a chat list discussion nowadays regarding breeder contracts for the sale of puppies. Breeders have used purchase and sales contracts for decades with today's version modernized to keep pace with our changing times. Many responsible breeders who sell their pups do so with a contract. As expected, the contents of the contract will vary from breeder to breeder and many now contain clauses stipulating a penalty if the buyer breaches the contract. This is not a discussion of what is legal and enforceable, as I am not practicing law. It is a discussion about the contents of said contracts.

Most puppy-sales contracts are a testament binding both parties to specifics and conduct of behavior. Contracts are an extension of a breeder's wishes, desires and contain performance expectations. Many breeders' contracts utilize time-sensitive warranties concerning the genetic health of the pup, right of recovery or placement of the puppy, instruments of recourse and so on.

I read details of a viral discussion amongst one breed chat list specifically concerning liability clauses in today's contracts. It is ambiguous if the chat list members are referring to the buyer's liability for the overall good health of the pup or perhaps they are referring to the liability clause concerning the dog's fate. I am referencing the liability clause new owners and, in some cases their estates, assume, prohibiting the disposal of the dog. This clause is typically phrased, "in the event the new owner can no longer care for and/or keep the dog, such dog needs to be immediately returned to the breeder or the breeder retains the first right of refusal to

obtain the pup/dog back." In either scenario, if the buyer (new owner) does not abide by the written and executed contract there are instruments of legal recourse for the breeder. These oftentimes include not only the buyer's forfeiture of the dog but also include a sizable, established fine the buyer has agreed to pay. There typically is a clause stating the buyer must pay all necessary attorney's fees the breeders may incur in enforcing their contract with the buyer. The fine or penalty fee is what I believe to be the point of contention.

Why such hubbub? Well, apparently, there are people who are opposed to signing contracts. Others are blissfully ignorant, and have expressed and feigned surprise that today's contracts have stipulations protecting the breeder's interests. Many argue these instruments are consequential in protecting the puppy and the breed. Many breeders would not sell or place a pup without an ironclad contract. They feel this legal instrument provides the ability to enforce the already agreed upon terms previously stated and outlines performance expectations. Some breeders also argue that when a buyer pays a premium, the dog, or for that matter, this may apply to most any possession, is more valuable, more meaningful to the buyer; hence, they will better care for it. Hypothetically, if the buyer defaults, the added liability clauses stipulating hefty penalties insulate both the puppy's and the breeder's interests.

Some chat list participants have expressed their opinion that the breeders who utilize such contracts with liability clauses are performing the work for the Animal Rights Activists (ARA). In other words, they

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claim that such restrictive contracts exerting control over the buyer and his inability to breed the pup, spay/neuter demands, clauses citing housing, diets, exercise requirements along with the never-permissible act of tethering, chaining or housing the animal outside is a fait accompli for the ARA. Further, they stress that liability clauses are unconscious ARA tools that actually discourage consumers from buying pups from established, reputable breeders. Instead, they claim that the liability clauses force some buyers to purchase pups from puppy mills or pet shops. One woman commented that she looked for a pup from a particular breed for nearly three years because she would not sign a contract with such liability clauses. Eventually, she purchased a pup from a source that apparently did not make any such demands. It is unclear if she signed a contract at all, as she implied they reached an agreement they both could live with and she did not share details of the pup's origins.

I am not making any claims as to what constitutes a substantive contract or not. Many breeders do not utilize strict liability clauses with hefty fines and state they have not had any problems to date. On the other hand, many breeders have experienced problems with dishonorable buyers; consequently, these breeders would not sell a dog without legal recourse. I believe that if you have been breeding long enough you will not only experience most health issues but, inevitably, you increase your exposure to disheartening, disappointing occurrences with new owners. As for the former who have not had any troubles with uncaring or falsehearted buyers, it is unknown if these breeders performed due diligence on new buyers before the pup left their property or if they regularly followed up on the dog's well-being with the new owners. If not, then how would these breeders be aware if any issues did exist with the welfare of their puppy or of their improper disposal? In spite of good intentions though, I know of incidents where due diligence was performed and after the pup went to their new home issues of contention arose resulting in a very bad experience for all involved.

As for the buyer who does not wish to execute a

contract stipulating terms and conditions with penalties, I will point out that in modern times we all knowingly or unwittingly sign contracts with liability clauses on almost a daily basis. Prior to purchasing a new cell phone from a carrier you had better read the terms and conditions before clicking or signing "I agree" to the contract of sale. There always are customary penalties for early terminations of services. These penalties can be sizable ranging in the hundreds of dollars. If you have

satellite television service you had better look at the terms and conditions before signing or clicking on the dotted line "I agree to these terms." These terms and conditions include equipment lease addendum's and early cancellation fees that can range in the hundreds and hundreds of dollars. If you damage your cable equipment or internet modems there are penalty fees. There are warranty disclaimers and liability clauses you agree to when leasing their product and services.

These disclaimers cite, for instance, "You are responsible for the loss of, damage to or the entire cost of any necessary service or repair of the leased (company name) equipment. You have no right to sell, give away, transfer, pledge, mortgage, alter, or tamper with the equipment."

If you breach these agreements, then there are consequences to your actions and those are nearly always financial. If you download a software product on your computer, you MUST first agree to lengthy terms of use and conditions. Have you read all the terms and agreements out there? How about the early termination penalties and the abnormal wear and tear clauses contained in auto lease agreements that stipulate surplus fees based upon the opinion of a third party. Consider the prepayment penalties on a mortgage refinancing or home equity loans. When you register for online banking, there are terms and conditions with liability clauses you MUST agree to before having access to your online account. These are but a few examples.

"I accept" is probably the most widely used and accepted phrase in the world today. From grocery store savings cards to credit cards, auto lease or purchase agreements with a financial institution, from cell phone



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carriers to real estate purchase and sale contracts there are countless liability clauses in fine print. The scary part is that the majority of the time we do not realize what we have just agreed to. Yet all these illustrations are just material possessions or services, many are intangible, and we blindly and willingly consent to their terms.

In direct contrast, these same people object and oppose terms and agreements when obtaining a new puppy or dog. This time we are speaking about living, breathing animals coming from a reputable, caring breeder. Most breeders have a stake in the well-being of their puppy. Mostly, the pup is a creation of their years of hard work and devotion that will go off to live with a new owner. At the risk of sounding melodramatic, this is a creature capable of blind devotion, unyielding love that will bring endless joy to their new owner over what we hope will be a long and happy life, in some cases a decade or more. An animal that has had such a close bond with humankind we refer to him as "man's best friend" and people object to terms and conditions that will protect the welfare of such animal?

Therefore, I will recap this perplexing debate. People, consciously or not, in their everyday lives agree and sign off to terms and conditions containing liability clauses with penalties for goods and services, but these same people are objecting to breeder contracts for the sale of a puppy, which contains liability clauses with penalties?

Many breeders will tell you that they include accountability clauses to protect a loving, wonderful companion. These will spell out financial penalties if the buyer breaches the contract usually through neglect, inhumane treatment, or disposal of the dog without first consulting with the dog's breeder. Many contracts also stipulate housing, diets, and exercise requirements. These latter provisions exist to lay the groundwork for the proper nutrition and management of our growing dogs. In some cases, there have been very sad, often pitiful reunions when a pup returns to its breeder. At first sight it is evident the dog was raised on improper fad

diets or foodstuffs that ruined his growth. It is heart-breaking to realize that such afflictions will necessitate expensive joint supplements for the remainder of its life or, even worse, medical intervention in combination with medication (chemicals) to relieve his pain. All this simply to enable what was once a healthy, sound puppy to move around once again of his own volition. Consider the pup which has been constantly crated his first year of life. Can you imagine the deleterious effect this

has on proper muscle development and growth? I could go on but will refrain from doing so other than to say that my friends have seen this happen countless times in rescues, and rehoming with crippled and deformed hounds that effectively were experimented on with new owner's diets and housing.

Our perspective on life is subjective and frequently influenced by events. Our perspectives can change in an instant or may be a slow experience. I know that many people will read this but not fully appreciate its meaning. Perhaps many of the people on the chat list who have been denouncing breeder contracts with stiff penalty and liability clauses have a chaste perspective. It

is easy to denounce when you have not lived within a conscientious, dedicated breeder's lifestyle. I know of numerous breeders hoodwinked, deceived at the outset, by what appeared to be sincere buyers only to be betrayed. I have known breeders who misjudged buyers who appeared to possess good judgment skills and were sorely dismayed afterwards. Paraphrasing a Native American proverb, 'never judge a man until you have walked a mile in his shoes.'

I am fond of saying that you never really know about people and what makes them tick. Others agree as they have learned the hard way and have sought remedy in developing contracts that not only protect their interests but the overriding welfare of the puppies. Thus, many of these people can sleep soundly at night.

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