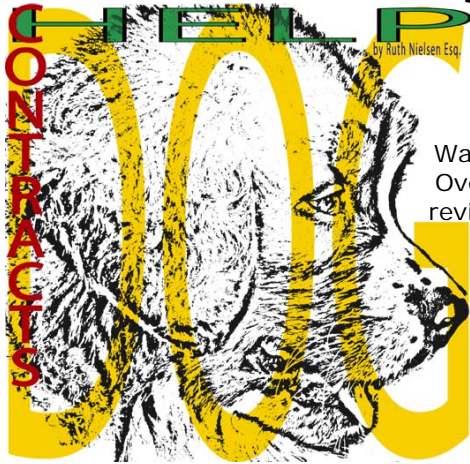


A Lawyer Looks at Breeder Contracts

Tips for both the Breeder and the Puppy Buyer

Ruth Nielsen, Esq.



INTRODUCTION:

I am an actively practicing attorney with my own law firm in Seattle, Washington, and my Bernese Mountain Dogs are my very helpful office assistants. Over many years of mixing my legal practice with my Berner obsession, I've reviewed a number of Breeder contracts, and I've had both breeders and puppy buyers come to me for help when they've ended up in a contract dispute. While the best solution is to avoid having the dispute in the first place, whether you are a breeder selling puppies, or a puppy buyer looking for that perfect addition to your family, the contract you have can help save you disagreements and disappointment down the road.

This article **is NOT intended to provide legal advice** since laws can vary from state to state, and individual situations also require individual solutions. My goal is to share a few tips and suggestions to help you use and understand the benefits of a good contract, and most importantly, to help you avoid the pitfalls that can come with miscommunication and misunderstandings.

WHY HAVE A CONTRACT WHEN YOU BUY OR SELL A PUPPY?

The topic of Breeder Contracts is not something that can easily be covered in one article, and that doesn't even get to the issues related to Stud Dog Contracts and other types of Breeding Agreements. Who knew just getting a dog could be so complicated?

FROM THE BREEDER'S PERSPECTIVE – A good contract helps explain what you expect from a puppy buyer, and provides some protection from people who might mistreat or misuse the puppy you place with them. If your contract is TOO restrictive or unreasonable, however, you invite the Buyer to go down the road to the Back Yard Breeder or Puppy Miller who will sell them that cute puppy with a smile, no questions asked.

FROM THE BUYER'S PERSPECTIVE – A good contract is an indication that the breeder has done her homework and cares about the dogs she breeds. The contract should help you understand what the breeder expects from you, and what you can expect from the breeder for the life of your dog. If you are not comfortable with what the Breeder wants you to sign, ask questions! Make sure you get any explanations or changes to the contract in writing as well. Don't sign what you don't understand or don't agree with.

RED FLAGS ~ As a Breeder - If a Buyer doesn't want to sign your contract or questions the need for one – this is someone who is likely not going to respect your wishes down the road. You need to find homes that are compatible with your goals and expectations as a Breeder.

As a Buyer – if the Breeder doesn't have a contract or tries to tell you that contracts don't mean anything, this suggests the Breeder isn't promising you anything and likely hasn't done all the research and health certifications that a good Breeder would want to tell you about. Don't expect this Breeder to provide you any help or support down the road. Without a contract, the Breeder owes you nothing and she is not standing behind the puppy she bred. You can do better.

A CONTRACT = CLEAR, CONCISE, COMMUNICATION

CLEAR = Format your contract so it's easy to read using tools like paragraph headings, numbering, or bullet points for emphasis. Put key points in separate paragraphs so they stand out. Important topics will get lost if they are buried in long-winded paragraphs and pages of dialog.

CONCISE = Unless you are writing a contract for a complicated breeding or showing arrangement, you really don't need a novel –length contract. A document that is solely focused on the critical points of what both Breeder and Buyer promise will be much more effective than a long winded history of the kennel or the breed with the important information lost somewhere in the middle.

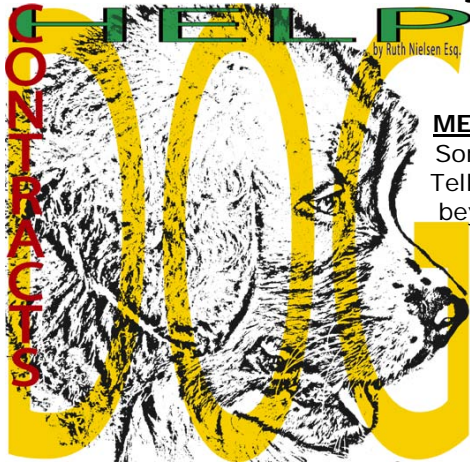
COMMUNICATION = Both parties need to understand what the contract means. If you are the Breeder, be open to questions and be ready to explain. If something isn't clear then you can revise the Contract to make it easier to understand. If you are the Buyer, ask before you sign and make sure you know what the Breeder expects of you when you walk away with that puppy! Communication will hopefully continue for the life of the puppy...but it has to start before you sign on the dotted line.



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MENTORING OR MICROMANAGING?

Some breeder contracts I have reviewed take micromanaging to a whole new level. Telling the puppy buyer what to do with every single aspect of the dog's life can go beyond helpful to obsessive. I suspect that many judges would simply laugh at contracts that have such a restrictive list of requirements that the buyer has little say in the dog's day to day life, and would throw the whole contract out the window.

As a Breeder – you ARE selling the dog to someone else. If you want the Contract to have meaning, don't make it unreasonable. At some point the Buyer is going to make decisions about the dog's daily life including food, activity, socialization and health – and no judge is going to take someone's dog away from them because they didn't feed the brand of kibble that the Breeder put in the contract. If you don't trust the Buyer to take care of the dog, then don't sell them a dog in the first place.

SEPARATING REQUIREMENTS FROM RECOMMENDATIONS

A suggestion to Breeders for keeping the Contract clear and concise – and avoiding unreasonable micromanaging – is to give the Puppy Buyer two different Documents. One document is the CONTRACT, and the other document is a list of RECOMMENDATIONS. The Contract should focus solely on those items that are non-negotiable – what I call the “Deal Breakers”. A Deal Breaker is something you are willing to fight over, and something you would ask a judge to enforce if you could. Deal Breakers might include things like spay/neuter, non-breeding, OFA x-rays and health clearances at a certain age, and listing the dog in Berner-Garde. Recommendations might include things like feeding a certain food, going to puppy class, limiting certain activities at certain ages. The Contract can refer back to the list of Recommendations as well, but the truly critical points in the puppy purchase are separated from the day to day advice on raising and training a dog.

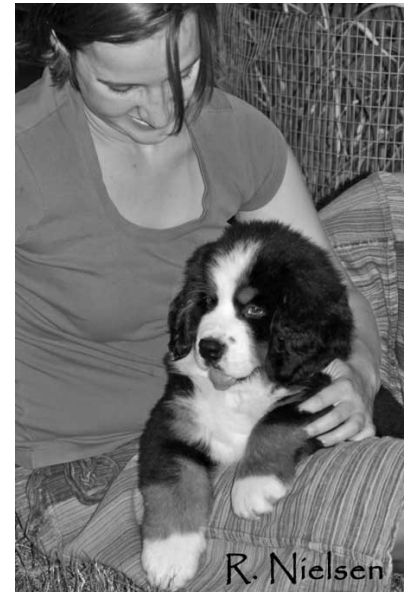
What constitutes a “Deal Breaker” or a Recommendation will vary from Breeder to Breeder, but if you stick to the true DEAL BREAKERS in your Contract, and put all the great advice into a separate list of Recommendations, the Contract will be much more powerful and it will be clear to any Puppy Buyer what things are simply not subject to compromise. In the painful event of a serious dispute, a court is more likely to enforce terms that are clearly spelled out as essential to the Breeder's agreement to sell the puppy in the first place. Not everything is a Deal Breaker – Remember, if the contract is too overbearing and unreasonable, it likely won't be enforceable.

ENFORCING THE CONTRACT - STICKS AND CARROTS –

As a Breeder - What can you do to make it more likely that your Contract will be followed – and how can you enforce the terms of the contract if it's not? Of course, avoiding a dispute is the best way to go if possible since going to court is expensive and inconvenient at best, and a horrible nightmare in addition to being expensive at worst (I can say that since this is what I do for a living --)

Some breeders use the “carrot” approach and provide incentives for Buyers to meet the terms of the Contract such as spay/neuter requirements and OFA x-rays. Incentives can include things like a financial rebate when the Buyer provides proof that the puppy has been neutered, or the Buyer provides copies of OFA x-rays or other health certifications. Some Breeders that want to encourage certain activities with the dogs they breed also offer financial incentives or rebates for titles earned.

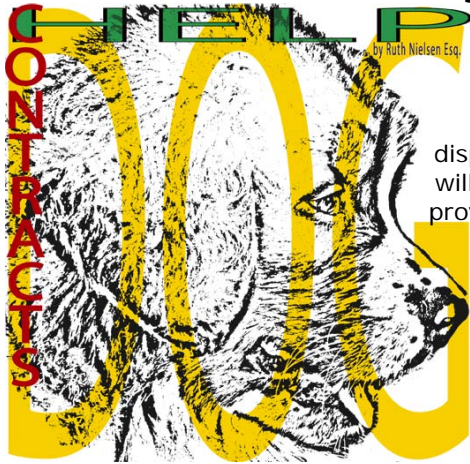
Since the “carrot” approach doesn't work for everyone, the “Stick” can also come into play where a specific penalty is spelled out in the contract. Most courts will recognize what is known as “liquidated damages” – a specific monetary penalty that the parties agree in advance will be imposed if the terms of the contract are breached. The amount of the penalty must be clearly spelled out in the contract, and the amount can't be unreasonable or excessive. For example, if the contract is for the sale of a Bernese Mountain Dog for \$2000, then courts are unlikely to impose a \$25,000 penalty for the failure to x-ray the dog since the amount of the penalty is many times the value of the dog. But – if the penalty is for breeding the dog in violation of the contract, then a higher financial penalty would make sense, since otherwise an unscrupulous buyer could breed the dog and still make money by selling the puppies. If you want to use the “stick” approach by imposing a financial penalty, a good local lawyer could give you guidance on what would be considered an appropriate penalty in your area.



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Another big “stick” to help enforce the contract is to specify that if there is a dispute and the Breeder has to bring legal action to enforce the contract, the Buyer will pay attorneys fees. One tool that I have used in breeder’s contracts is a provision that any contract dispute will be handled in the court system where the breeder lives. Other options that might be available in your state to make it easier to enforce a contract include options like arbitration or small claims court. Having a local attorney help you write your contract will give you the best tools for enforcement since the ability to collect attorneys fees and other enforcement tools can vary from state to state.

WHAT’S IN IT FOR THE PUPPY BUYER – PROMISES, GUARANTEES AND SUPPORT

As a buyer who might feel overwhelmed by all the requirements the Breeder has in the contract – the question is – what’s in it for ME? Buyers should be looking at the Contract to see not just what the Breeder requires them to do, but what has the Breeder promised to do for them? Is there any kind of Health Guarantee – for example, what will the Breeder do if the puppy is diagnosed with hip or elbow dysplasia? What does the Breeder promise or require if the Buyer is unable to keep the dog for any reason? What kind of support, if any, does the Breeder offer for the life of the dog? The contract is not just a list of what the Buyer promises to do, but it should also include what the Breeder promises to do as well. Buyers should look for responsible breeders who stand behind the dogs they breed by promising support and a willingness to take the dog back for the life of the dog.

TIMING IS EVERYTHING – WHEN IS THE CONTRACT REVIEWED/DISCUSSED?

The most important time to look at a contract is BEFORE you fall in love with the puppy. Breeders should provide their contract to puppy buyers in advance so they can weed out potential buyers who are not compatible. Buyers should read the contract before they experience puppy blindness that will impair their ability to read and understand what the breeder requires. And a good contract does not replace open, honest communication – but a good contract is also part of that open, honest communication. Make the contract you use – or the contract you sign – the foundation for a long, happy Breeder/owner relationship.

