

DO WE ALWAYS HAVE TO LEARN THE HARDWAY?

Why It is Important to have a Written Contract

By Mara and Lou Meyers

Evidently the answer to that question is, "YES." But perhaps our experience can save you the heartache, disappointment and just plain frustration (not to mention expense) that we have endured. In this article we will discuss why it is important to have **written contracts** and **not accept oral or unwritten contracts**.

A contract is a promise to fulfill specific responsibilities for a consideration, i.e., money or product, which is enforceable by law. There are actually two forms of contracts, oral and written. The one you chose to use can either help you have a clear, concise description of your agreement or provide an agreement that can be riddled with misunderstandings and is practically impossible to prove.

Once upon a time you could make a deal over a cup of coffee, shake hands and each of you received, on time, what was promised. A handshake was a bond that confirmed the agreement. But as someone once said, no doubt an attorney, "An oral contract is as good as the paper on which it is written." We, Lou and Mara, have made both written and oral contracts. We have had far superior success with written contracts.

In each written contract we knew exactly what was expected of us and exactly what we could expect from the other person. We were never disappointed, caught by surprise, or felt deceived. When we purchased our first purebred dog, the Seller had a contract which described the puppy and stated the conditions necessary to obtain the puppy. The contract was given in advance so we could study it and take it to an attorney. Each time we signed a contract we knew and understood the agreement.

We thought an oral contract with an individual we knew and trusted would have the same strength and results. The purpose of this article is to show you how mistaken we were about oral contracts and why unwritten agreements should be avoided at all costs. No doubt before you finish reading this article you will shake your head wondering how two seemingly intelligent people could be so dumb. Certainly we knew better.

You may even think to yourself, "I would never do that! That's really dumb. What were they thinking?!" Truth be told, we didn't plan to make the mistakes. Rather, we thought we could trust a person who we considered a friend, who gave us his word, who we thought shared the same ideas, ethics, and commitments. We could not have been more mistaken.

You are probably much like us. You want to trust people. You also trust people to whom you are introduced by friends and who are supposedly members of the same breed club. You learn about awards earned, honors received, and

champion dogs bred and shown. You visit at dog shows, swap stories, share meals, talk dogs, and generally get along well over a period of time. You learn about dogs and judging and evaluating animals from this person. Your friends appear to confirm that this person is worthy of trust. There appears to be no reason to think otherwise.

Sure, you hear complaints and negative stories, but there is always a plausible explanation. You admire his dogs' temperaments and conformation; you decide to purchase a puppy.

In our case, that is exactly what happened. When we were told there was no written contract, a handshake had worked for over thirty years, we had a moment's hesitation. It was overcome by the desire not to offend and to have the puppy. Certainly we didn't want to insult our friend by requiring a written contract. Wouldn't that suggest we didn't trust him? To add insult to future injury, we forgot to ask a lot of questions including everything we would have insisted upon in a written contract. So we shook hands and took our new puppy home.

Much later we were told by other friends that this person never signs a written contract. If it is not in writing, they quoted him, "I cannot be pinned down."

Three years later one puppy is now a dog and is tested for progressive retinal atrophy. The PRCD Mutation Test for PRA results are Affected. But we knew for sure it would be at the very least a Carrier. It was guaranteed! Or, was it? Do we remember what was discussed three years ago about the puppy and PRA? Was there a time limitation? Was there a warranty on genetic diseases? To this day we disagree on the specifics of the unwritten agreement. Oops!

We were told that there was no history of PRA in the bloodlines; there was little doubt the pup would be an A-Clear, at worst a B-Carrier (when the dog was nearly two years old the breeder then reported the sire was affected). We knew the pup was not tested at the time of purchase, but we trusted what we were told, thinking the breeder knew his bloodline; was worthy of our trust and had integrity. He would honor his guarantee to us. So, we called the breeder to tell him about the test results. He thanked us for the information and then reminded us that he had told us the sire was affected the year. Now what do we do? We chalked it up to a hard and very expensive lesson learned.

We *thought* we understood the agreement. This is a hard way to learn you don't have the same understanding of an agreement and there was no mutual understanding about all those important issues that are detailed in a written contract. We were responsible for *not insisting* on a test before finalizing the purchase. We were also wrong not to have the warranties on any genetic disease specified in writing.

Another example of an unwritten contract was when a buyer dealt with this same breeder but insisted on a PRCD Mutation Test *before* purchasing the puppy. The agreement was that if the test result was a PRA - Normal (Clear) he would

purchase the pup. When that result came through, the breeder refused to sell the puppy as agreed. No doubt disappointed, the potential buyer had no written agreement and had not put down a deposit. There was no contract although the buyer thought there was one in place.

There are many pitfalls with an unwritten contract. First, oral agreements are by their nature subject to misunderstandings. Understandings are subject to interpretation. Second, oral agreements are dependent upon memory and memories change and fade. An unwritten agreement can be enforced but, in our experience, the enforcement may not be to your liking or be what you think is right. Justice and the law is not necessarily one and the same thing.

Now, this does not mean all unwritten contracts are unsuccessful. When we bred Teddee's Arohne Pal Joey we were told exactly what the breeder expected and what we needed to provide. We tested the female for brucellosis and presented the results when we took Joey to the male. Joey did not become pregnant and we were given a second opportunity to breed, this time successfully. No contract was necessary because the owner of the male did not want payment by either cash or puppy. These breeders were friends helping us. In this instance, there was genuine kindness and generosity. This particular breeder was honorable.

In another experience we made an agreement for the sale of a purebred female adult, 4 years old. The key part of the contract was the bitch would be bred and if successfully bred, would be purchased. That sounded simple and direct to us. We repeated the offer to the purchaser to be sure we understood all the terms. The potential buyer bred the female unsuccessfully and, when we requested her return, he refused. He was not satisfied and wanted additional breeding attempts, perhaps two or three more, while the dog remained with him!

A written contract can anticipate and avoid most disputes. Had this particular contract been in writing, there would have been no conflict, no loss of friendship, no court case. Both of us would have known and understood exactly to what we agreed. We would have defined the conditions of the exchange and possible sale. Most importantly, instead of assuming what veterinary care would be provided, we would have known exactly what examinations and tests would be given to the stud and the bitch. We made an agreement and let our dog, who we love dearly, down. When we fulfilled our portion of the agreement, the other person tried to change the agreement for a new and different deal more to his liking.

If a person says to you, *"I shake hands; it's worked for over 30 years,"* or anything similar to that, Turn and RUN! Do not pass Go! Do not collect \$200.00. Do not go to jail. *Do avoid a court case.*

Let us be perfectly clear. A written contract signed by both the breeder and seller **is NOT about trust**. It is **not** about offending a person. A written contract **is about** knowing exactly what you are purchasing with your money. Finally, a

written contract delineating the terms will usually be upheld in a court of law.

A reputable breeder will not be offended if you request a written contract. A reputable breeder will insist upon a written contract and respect you for requesting one. A reputable breeder will provide a copy of the contract to take to your attorney before the date of purchase. A reputable breeder will insist on going over each point in the contract with you to prevent possible misunderstandings and to make sure you are not disappointed or surprised later. A reputable breeder is protecting the puppy they bred, not just selling a product or commodity. A reputable buyer is protecting the future of the puppy and promising to properly care for it.

We have come to realize that just because a person tells funny stories, is charming, and has excellent dogs, does not mean he is a person of integrity. Just because we enjoyed the company and liked the person does not mean he has ethics. Just because we try to treat others the way we want to be treated does not mean everyone does. Just because you tell the truth doesn't mean others do not exaggerate or outright lie.

Written contracts state precisely what the breeder is selling, the warranties, and the purchase price. Written contracts also state what the buyer is going to provide including veterinary tests, housing and proper foods, and even training for the puppy. For example, the breeder may list requirements, like a CERF test, OFA Hip Evaluation, and age, to be accomplished before any breeding of the puppy. There is the opportunity to add or subtract specific terms and make specific decisions.

Common Elements to All Written Contracts

The **Name, Address, and Telephone Numbers** of both the seller and buyer are clearly stated. This might seem like a no-brainer, but our service of court documents was objected to by the defendant because they were delivered to an address that he denied was his residence. To this day we don't know where he lives or where his dogs are located other than somewhere in one or two counties.

Dates of birth, sale, and time specific warranties will be clearly stated as well as describing the sire and dam with dates of birth, AKC/UKC registration names and numbers. These are very important to help assure that you are receiving a pure bred puppy from a particular breeding. With DNA testing this information can be verified.

A written contract contains a **Description of exactly what you are receiving** and for what you are paying. It is not enough to state the breed of puppy, but includes gender, color, and any specific markings as well as litter registration, as well as a description and registration numbers of the sire and dam, microchip/ tattoo numbers. Pictures and pedigree are often provided.

What **Warranties or Guarantees** are provided by the seller? Usually breeders make time specific warranties on certain genetic diseases and have specific

documentation requirements. They will also provide copies of certifications on the sire and dam upon request. The replacement puppy or reimbursement options are spelled out in the event of unforeseen and unknown genetic disorders. Had this been specified and written on paper, we would have known exactly what our contractual rights were when we learned our dog was a Carrier.

Kennel Club registration and county/city license expenses are normally the responsibility of the buyer, but proof that a puppy can be registered is provided by the breeder at the time of exchange. We heard of one breeder who kept promising registration papers to buyers for the puppies from a particular litter. He finally told the buyers that he said the sire and dam were registered, not the litter!

If there is a **Dispute**, the contract should specify how and where the seller and buyer will settle any disagreement. For example, we live in Missouri but had to hire an attorney and file our lawsuit in another state. In any future contracts, we will try to specify that disagreements will be resolved first by arbitration and lastly by legal action in the State of Missouri.

These are not all the items that can be detailed in a contract, but it is a beginning. Learn from our mistakes, the easier softer way. Insist on a written contract and, after both the breeder's and your signatures are written, then shake hands!

We are not attorneys. We are simply sharing our experience here in an effort to help others from making our mistakes. Anything we write here about legal documents is subject to laws and regulations in your state; and should not in any way be regarded as legal advice.