

A Guide to Dog Friendly Consumer Laws



Presented by The National Animal Interest Alliance

Introduction to Dog Friendly Consumer Laws

The National Animal Interest Alliance understands that dogs, dog breeders, puppy buyers, and their communities benefit from carefully-constructed, well-balanced laws and policies that address the many issues that can impact the canine-human bond. Among these laws and policies are those that promote the responsible breeding, raising, and selling of healthy pets to educated and responsible consumers.

While we advocate reasonable efforts to hold breeders and sellers responsible for the health of the puppies they offer to the public, we also know that today's challenges such as overcrowded shelters, dangerous dogs, and neighborhood nuisances can be resolved if we help people make a good pet selection. Thus we believe that laws and policies should not only set reasonable requirements for selling dogs, they should also encourage potential buyers to do their homework and to follow through with appropriate health and training recommendations made by breeders and others who sell puppies.

When pet buyers investigate breeds and breeders and prepare themselves to accept a new puppy, they are more likely to

- provide proper housing, training, and medical care for the pet;
- understand the special needs of the purebred they have chosen to share their lives;
- recognize and avoid unreliable and unscrupulous breeders;
- hold realistic expectations of the pet they purchase; and
- recognize that even carefully-bred puppies can develop health or temperament problems.

Without this knowledge, disappointed pet buyers may resort to lawsuits and encourage lawmakers to draft lopsided and unworkable legislation that places total responsibility on breeders.

The NAIA approach

Many so-called pet lemon laws follow complaints about sick puppies or are enacted as provisions in bills directed at dog breeders. NAIA has a fresh approach: encourage consumers to do some research before they select a pet or a pet provider while requiring breeders and other sellers to meet some consumer protection standards. This approach gives buyers a screening process to help distinguish good pet suppliers from bad, whether they are breeders, pet stores, rescue groups, commercial kennels, or shelters.

Like other sunshine laws, our approach focuses on the open exchange of information between parties, including full disclosure of records and facts. We believe it will be a far more effective alternative to laws that treat animals like manufactured goods and attempt to anticipate every conceivable problem that could affect a pet.

It is our hope that this model, if implemented, will protect pets, buyers and sellers, reduce the number of irresponsible pet owners and ferret out the problematic pet suppliers. Pets, pet owners, and communities stand to benefit tremendously.

Characteristics of an effective consumer protection law

Consumers need protection from unscrupulous and irresponsible pet sellers, and from fraud, unsound business practices and the purchase of unhealthy animals. However, to be effective, these laws should reasonably reflect the obligations of both parties.

Unfortunately, most lemon laws fall short of these goals. They attempt to mandate "perfect world" solutions aimed at protecting consumers from every conceivable problem. They miss opportunities to educate pet buyers before they purchase a pet, and they are often difficult to enforce. In addition, lemon laws often place all of the responsibility on the seller whether the animal is obtained through purchase or adoption, even though the acquisition of a pet is a two-way street.

Reasonable protections and guarantees

Consumer laws should offer protection from fraud, misrepresentation and breach of contract and require sound business practices.

In order to assure that purchasers receive what they are promised, sellers and adopting agencies should provide purchasers with a detailed bill of sale or adoption terms or a contract describing the animal and the conditions of the transaction. That information should include:

- The names, the home, business and e-mail addresses, and the phone numbers of buyers and sellers;
- The date of sale;
- The purchase price;
- The conditions of the sale, including warranties and disclosures and the responsibilities of both parties;
- The age of the pet (estimated if a shelter animal);
- The sex of the pet and its breeding status, i.e., whether it can be bred, must be altered, or has been altered;
- The pet's color and distinctive markings; and
- The breed, if applicable.

In the case of a purebred dog purchased from a breeder or a pet store, the seller should also provide in writing, prior to the consummation of the sale:

- A pedigree showing at least three generations of the animal's lineage;
- The name of the registering organization if the pet is sold as registered or eligible for registration (i.e., the American Kennel Club); and
- A guarantee that the registration papers will be delivered within three months of the sale if they are not available at the time of the sale and transfer.

Consumers have a right to expect that they are purchasing a healthy pet. To assure this, the seller should provide:

- A guarantee stating that the pet is healthy and free of parasitical infestation at the time of sale;
- A health record warranting that the pet has received all appropriate vaccinations and treatments for parasites along with a medical history showing all relevant veterinary check ups, procedures or treatments;
- A reference to parent club (described below) contacts for educational information about the breed; and
- A checklist enumerating these items for the buyer to sign.

Health screenings

Consumers have a right to know and an obligation to discover the background of a particular pet regarding congenital or hereditary conditions and diseases if they have been identified.

Although the relative uniformity of purebreds makes them more predictable than mixed-breeds in skeletal structure, size, temperament, coat type and certain characteristics related to longevity and health, they possess practically infinite genetic variation and potential and never produce identical phenotypes or genetic heritage. As a result, fail-safe warranties are not possible.

Some genetic diseases run in breeds as they do in some human families. Mixed breeds suffer from the same array of maladies as purebreds, but they do so in a less predictable manner. Nonetheless, the degree of variation that makes dogs infinitely more complex than a machine also renders them absolutely impossible to unequivocally guarantee. As such, there is some degree of risk that must be recognized and knowingly undertaken in the purchase or adoption of a pet.

The good news is that the degree of predictability found in purebreds allows conscientious breeders to perform health screening tests on potential breeding stock and identify carriers before using them in their breeding programs. This enables responsible breeders to reduce the incidence of certain genetic diseases in their puppies and in their breeds. For diseases with simple modes of inheritance, genetic testing allows breeders to totally eliminate some diseases. In some breeds, responsible breeders routinely x-ray their stock before allowing them to breed. Others screen potential breeding stock for heart or eye diseases and other disorders that are sometimes found in their breed.

The bad news is that no screening test yet exists for many diseases and for some, the mode of inheritance is so complicated, the tests that have been developed are not very useful in predicting outcomes for individual progeny. The inheritance of diseases such as hip dysplasia is so complex that, in many breeds, even the most conscientious breeders will find its total elimination virtually impossible. HD occurs in large and rapidly growing breeds and mixes; even when the parents showed no outward or clinical signs of the disorder, it can still crop up. With new genetic findings and the improvement of screening tests and selection methods, the number of affected offspring can be greatly reduced; but similar to human medical progress, animal husbandry is not a perfect science and total elimination is not always possible.

Buyer responsibility

Unlike some consumer advocates, NAIA believes that the public is better protected by lemon laws that educate consumers prior to the sale – thus enabling purchasers to distinguish between responsible and careless breeders or sellers – than by laws that attempt to protect customers from every conceivable possibility after the sale.

NAIA also believes that buyers have some level of responsibility to discover the nature, medical background and tendencies of the animal they are purchasing. Achieving this goal is possible through the parent club network of the American Kennel Club, The Cat Fanciers Association and other resources.

The AKC is a club of clubs. AKC-recognized breeds are represented within the organization by a parent club for each breed. Parent club members have a special interest in and love for their breed and actively work to improve it. They are breed advocates prepared to share important breed information with the public. Buyers can obtain breed-specific information and expertise by contacting the parent breed clubs or visiting their websites. They can locate parent clubs through the AKC website.

The most useful lemon law would disclose that such resources exist and encourage potential buyers to read up on the breeds they are considering before purchasing. Knowing the right questions to ask is half the battle for uninformed consumers. The answers they receive will help them make an educated purchase and enable them to draw distinctions between responsible and casual breeders. For instance, if the purchaser is considering a breed that is known to have a higher incidence of hip dysplasia than others, he will know to ask if the parents were x-rayed and to see the OFA number and rating. Simultaneously they will learn if they are dealing with a conscientious breeder or someone who is just trying to make a quick buck. In many cases, disclosure alone will provide the informed consent necessary for all parties to go forward in an ethical and businesslike way. In other cases, knowledge of a higher incidence of a specific disease in a particular background or breed may encourage the parties to initiate warranty language covering the possibility of its development.

Buyers should also inform sellers of any known situations that might affect the health of the pet, i.e., that a previous pet died of an infectious disease, whether other pets have been treated for an infectious disease or parasite invasion, or if the buyer is fighting a flea, tick, or worm infestation on his property.

Finally, compensation for pet illness, genetic abnormality, or registration ineligibility should be based on two considerations: whether buyers followed seller recommendations or requirements for veterinary visits,

registration paperwork, and puppy care and training, and whether the illness or injury was caused by consumer negligence or carelessness.¹

Seller responsibility

Beyond the health screenings and other protections listed above, sellers and adopting agencies need to disclose their policies regarding preexisting diseases or parasites; congenital or hereditary diseases that may develop later; or preexisting temperament problems in the case of older dogs and cats.

Sellers should also disclose their policies regarding refunds, returns, replacements or reimbursement of veterinary expenses.

Finally, lemon laws should give sellers the opportunity to opt out of the provisions as long as they post signs informing consumers that the pet is being sold “as is” and provide a document for buyers to sign that acknowledges that they understand the conditions of the sale.

Implementation

Obviously, laws affecting the breeding and ownership of animals vary from state to state and community to community, so pet consumer laws must be individually tailored to fit existing ordinances, worked into ordinance amendments, and adapted to local situations. However, certain universal provisions can become an important part of any legislative draft.

The most important aspect of consumer protection law is to tell consumers that they are protected and inform them of their responsibilities in transactions with sellers. To this end, the bulleted points above and a set of points derived from the “buyer responsibility” section can be published as a checklist available from consumer protection offices, state or local departments dealing with animal matters, and pet sellers and adoption agencies.

It’s equally important to tell buyers if they are not protected. Thus the law should allow sellers to opt out of the provisions as long as they so inform potential buyers in writing prior to the sale. If the consumer purchases a puppy regardless of this statement, he should not be entitled to compensation if the puppy is ill or develops a genetic health problem, or cannot be registered.

It is also necessary to determine which state or local government department will be responsible for administration and enforcement of the law. State governments may assign animal law to agriculture departments and local governments may delegate all animal matters to animal control agencies. However, consumer protection agencies might also claim jurisdiction.

Finally, because public and private shelters have become major sources of pets, lawmakers should reconsider the exemptions generally given these entities by requiring them to abide by the conditions applied to pet sellers unless they opt out with a public statement that all adoptions are “as is.”

Notes

1. NAIA article (2002) introducing new concept in pet consumer laws.
http://www.naiaonline.org/articles/archives/public_policy.htm
2. An Ohio state representative introduced a pet consumer protection bill in the 2005-06 legislative session that not only protected pet buyers as outlined above, it included the following protections for pet sellers:

(E)(1) In the case of a dog that has a congenital defect or common hereditary disorder or has died from a congenital defect or common hereditary disorder, the seller shall not be required to

accept the return of the dog, replace the dog with a healthy dog of the same pedigree if one is available, or provide the buyer with a refund or reimbursement for veterinary fees in any of the following situations:

- (a) The seller informed the buyer, both orally and through a statement contained in the receipt, bill of sale, or contract required by division (B) of this section, that the congenital defect or common hereditary disorder existed in the dog at the time of sale.
- (b) The defect, disorder, or death resulted from maltreatment, neglect, illness, or an injury that occurred after the buyer obtained physical possession of the dog.
- (c) Following the seller's request that the buyer return to the seller copies of all documents provided, if any, for the purpose of registering the dog with a pedigree organization, the buyer fails to return the documents or provide the seller with a statement certifying that the documents have been inadvertently lost or destroyed.
- (d) The buyer failed to carry out a treatment protocol, if any, that was recommended by the veterinarian who examined the dog and confirmed the defect or disorder, and veterinary fees plus the cost of the treatment, if it had been carried out, would be equal to or less than the dog's purchase price.
- (e) If the receipt, bill of sale, or contract required by division (B) of this section included recommended care instructions for the dog, the buyer failed to carry out those instructions.

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