



Making the decision to get a dog is typically a joyous and exciting time. Hopefully, you've done your research and determined what type of dog is best for you based on your needs — whether you're looking for a show dog, guard dog, service dog, or just a loveable family companion — as well as the time, space and monetary resources you have to devote to caring for a new pet. There are a few things you, as a purchaser, can do to help ensure that you do get the dog that you bargained for, and to enforce your rights if you later find that your new dog turns out to be something other than what you paid for.

To avoid a "surprise" down the line, it is always best to buy from a reputable breeder. You're investing in a long term companion. Go and visit the breeder, if possible, and observe the circumstances under which your potential puppy was bred and reared. Ask to see both the dam and the sire of the dog, and note their general health and temperament. Ask the breeder for references of other people who have previously purchased dogs from him or her. Inquire with previous buyers if they are happy with their dogs and found their experience in dealing with the breeder to be positive in all respects. This could alert you to potential problems, and can be especially important if you are purchasing the dog to show or as a service or guard dog.

Once you have done all of your homework and have decided to purchase a particular dog from a particular breeder or seller, be sure to carefully review any sales contract before signing or tendering payment. As a buyer, you have a duty to read the sales agreement under the law. Be sure to ask questions about any terms you do not understand, and

## Making Sure You Get The Right Bark For Your Buck

By Emily Gardner, Esq.

don't be afraid to raise issues that have not been included, which you feel are important. The time to ask questions or request changes regarding the terms of a sales agreement is BEFORE you sign. Do not make the mistake of signing an agreement when you do not agree with all of the terms, thinking you can later avoid compliance because the terms do not seem "fair" to you. Any disputes regarding enforcement of terms included in a contract which you signed are not likely to be resolved in your favor.

If, however, you do purchase a dog which later turns out to be not as represented by the seller (e.g., not healthy, not pure bred, not of show or breeding caliber) you do have certain remedies under the law. Hawaii, like most states, has adopted the Uniform Commercial Code ("UCC"). The UCC has been codified in Hawaii Revised Statutes ("HRS"), chapter 490.

Under HRS § 490:2-725, any action for a breach of contract for the sale of goods must be commenced within four years of the sale. This time may be reduced to no less than a year by terms in the original contract. It cannot be extended. HRS § 490:2-714, allows a purchaser to recover damages for any "non-conformity" of the goods and the losses that resulted from the seller's breach (in the ordinary course of events).

Damages are typically calculated by subtracting the estimated value of the goods at the time of the purchase from the value of the goods if they would have been as warranted by the seller, and may also include "consequential damages," or, injuries to the buyers or their property resulting from any breach of the seller's warranties.

A "non-conformity" includes not only breaches in warranties about the goods, but also the failure of the seller to perform according to *any* of his or her obligations under the contract.

There are several recorded cases in which buyers of dogs have prevailed in their claims under the non-conforming goods provisions of the UCC. One of the more recent cases involves the buyer of a teacup Maltese, named "Little Miss Muffet." Little Miss Muffet was represented by the seller as being a teacup dog at the time of purchase. The purchaser expressly sought and desired a teacup Maltese. When

Little Miss Muffet grew significantly larger than the purchaser expected or wanted, and it was clear she was not a teacup dog, the purchaser obtained damages from the seller under the UCC's non-conforming goods provision. See *O'Rourke v. American Kennels*, 2005 NY Slip Op. 50656U, 7 Misc. 3d 1018A, N.Y. Sm. Claims Ct. 2005).

The UCC's non-conforming goods provision has been used to provide dog buyers with relief in other cases including those where a pedigreed poodle was found to be "defective" due to the fact that he had an undescended testicle (See *Dempsey v. Rosenthal*, 121 Misc. 2d 612, 468 N.Y.S. 2d 441 (NY Civ. Ct. 1983), and a "healthy" long-haired Chihuahua later developed serious orthopedic and ocular disorders. See *Cahill v. Blume*, 2005 NY Slip Op. 50921U; 8 Misc. 3d 1004A.

Although reported cases are sparse, courts do not seem to be willing to provide relief to buyers under the UCC's non-conforming goods provisions when the sales contract fails to include warranties for specific traits or conditions. See *Anderson v. Craig*, 2001 ML 3028, 2001 Mont. Dist. LEXIS 2554, where a buyer who purchased a mare which was later determined to be pregnant, was not afforded relief because the contract failed to expressly state that the mare was not pregnant at the time of sale.

The "take home" lesson in all of this is to be careful about what you bargain for in the purchase of your pet. Do your research and know your expectations for your pet going into the sale. Don't be afraid to ask questions about terms in a sales contract or to settle for anything less than what you expect in your purchase agreement. Lastly, although it can be tough, try your best to remain focused and not let common sense fly out the window when you see those little brown eyes staring back at you.

*Emily Gardner is an attorney specializing in animal law. In addition to her law degree, Emily holds an M. S. in zoology. For help with animal-related legal issues, contact her office at 735 Bishop Street, Suite 402, Honolulu, HI 96813. tel: (808) 540-0200 or at [www.animallawhawaii.com](http://www.animallawhawaii.com)*