

## Pet Purchaser Protection/Puppy "Lemon Laws"

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### **Brief Summary of Pet Sales Rebecca F. Wisch (2005; updated 2010)**



Legal issues concerning the sale of pets start with two questions: is there a specific sales contract that sets out certain terms of the sale and are there any state laws governing pet sales? Contract law will always apply to the sale of companion animals because the purchase itself constitutes a contract. A seller offers a dog or cat for sale, a buyer accepts the offer, and then pays the seller a determined sum of money. If the seller is a merchant (discussed below), then a buyer of these "goods" has some additional rights if the pet is unfit in some way.

While distilling the purchase of what is essentially a new family member down to contractual obligations may seem calloused, it is important for buyers to understand the process. Companion animals, while loved by their owners, have no independent legal status in this country and instead are governed by contract and commercial transaction laws. In fact, due to their unique and valued status, many states have added further laws that protect buyers of companion animals and regulate the pet industry.

All purchasers of dogs from merchants (breeders, retail pet stores, and individuals who routinely sell dogs) are protected their states' Uniform Commercial Code (UCC). The UCC is essentially a part of state law that governs all sales and business transactions.

Not only does the UCC provide some uniformity and stability to this area of law, but it also describes the rights and responsibilities of buyers and sellers. With the sale of companion animals, the UCC's provisions concerning the sale of goods is at issue. Dogs, cats, and other companion animals are deemed "goods" under the UCC. This legal term, while not accurately reflecting the true value we place upon these creatures, gives buyers certain legal remedies.

With any sale of goods by a merchant comes an implied warranty of merchantability. This warranty provides that the goods a merchant sells are fit for their ordinary purposes for which the goods are

used. In other words, the heels of shoes must not break off under ordinary wear, the back of a chair must not break when one sits down, and toothpaste must not contain shards of glass. With companion animals, the issue of what constitutes “fit for ordinary purposes” is not so clear. This will depend on why the dog was purchased (i.e., was it as a companion or for specific breeding or hunting purposes) and sometimes on the breed of the dog itself. For example, one New York court found that a “teacup” Maltese dog who was three pounds above the breed’s upper weight limit fell into the category of a defective good. (For a more detailed discussion of implied warranties, [click here](#).)

Buyers should be aware that an implied warranty of merchantability only applies to sales from **merchants**. This term means someone who deals in goods of the kind or someone who holds him or herself out to have a particular knowledge in the field. Again, this will be determined by the factual circumstances of the sale. Generally, a merchant in the pet world is limited to a retail pet shop, a breeder, or someone who routinely sells multiple litters of puppies. A neighbor down the road who has to unexpectedly sell a litter of puppies from his dog will not be considered a merchant. (For a more detailed discussion of merchants, [click here](#).)

Should a buyer find him or herself with a “defective” dog, the first avenue is always to examine the

language of the sales contract. Under general contract law, parties may limit or expand common law or UCC contractual obligations. Your contract may have an express warranty that overrides any implied warranty under the UCC. If the contract is not clear or does not change your available options, the next step may be to approach the merchant. The merchant may be willing to compensate the buyer in some fashion or even offer to exchange the animal. To most reputable merchants, reputation and word of mouth advertising are far more important than strictly abiding contract terms. (For a more detailed discussion of dogs as "defective goods", [click here](#) .)

If those options fail, a buyer may want to contact a licensed attorney. He or she will inform the buyer of relevant state laws on pet purchases and common law contract remedies. State laws may provide specific remedies to buyers, including returning the animal to the store for a refund or reimbursement for reasonable veterinary expenses. Under the UCC, buyers typically are limited to what is termed "rescission and refund." A buyer may return the dog and cancel the contract; he or she then receives his or her money back. Most of the time, a buyer will be proceeding *pro se* (without an attorney) in small claims court due to the low dollar amount in dispute. (For a more detailed discussion of UCC and contract remedies, [click here](#) .)

An important point to remember is that several states (approximately twenty) have enacted laws that govern the sales of cats and dogs. (For a link to a list of these statutes, [click here](#) ). These laws specifically set out what information a seller must provide to a buyer at the time of purchase and what remedies a buyer has if a pet is sick or “defective.” Under these laws, a buyer usually has between seven and fourteen days to have a veterinarian examine a dog. If the veterinarian finds the dog is ill or congenitally deformed, the buyer then has certain remedies. Generally, the buyer can return the dog and get a refund, return the dog and select a new dog, or keep the dog and get some compensation for veterinary expenses. The time frame and remedies available depend on the specific state’s law (ten to fourteen days is the usual). Moreover, a claim under state law does not usually bar any other claims under the UCC or common law contract actions. Buyers should also be aware that under many of these laws, sellers who intentionally or knowingly misrepresent a dog’s health or fitness may also face additional civil or criminal penalties. (For a more detailed discussion of state pet purchaser laws, [click here](#) .)

Finally, two other issues often arise with pet sales: pedigreed companion animals and pets purchased over the Internet. The most famous dog registration association, the American Kennel Club, informs readers on its website that a dog’s pedigree

does not in and of itself guarantee good health. Buyers of pedigreed dogs are still protected under UCC and state laws governing the sales of pets. Additionally , some states make it an additional crime for sellers to knowingly misrepresent a dog's pedigree or registry. General contract law and some states make it necessary for sellers to provide registration papers upon the sale of pedigreed dogs. Failure to adhere to state and contract laws governing the sale of such pets may entitle the purchaser to rescind the contract. (For a more detailed discussion of the sale of pedigreed dogs, [click here](#) .)

The advent of technology has made it possible for dog buyers to find specific pedigreed breeds over the Internet. While this may certainly provide a convenient way to find a pet, buyers should be aware of the dangers. No state laws specifically govern Internet pet sales. Also, in the case of companies doing business in other states or even other countries, the choice of which state law applies in the event of a contract dispute is also present. Federal law is highly unlikely to apply in these cases (as the amount to get into federal court is currently at \$75,000 for multi-state, or diversity, jurisdiction). The process of returning a defective pet to the company may be costly or impossible for the unhappy purchaser. The trauma of further transportation for the animal is likewise costly. Since purchasers are unlikely to inspect the premises

from which they are purchasing the dogs, there is also a greater likelihood that they are buying from a disreputable "puppy mill." (For a more detailed discussion Internet pet sales, [click here](#).)

While the old adage of *caveat emptor* ("let the buyer beware") still applies to the purchase of pets, many states have recognized the need to give purchasers more leverage in these transactions. Pet stores do not cater to the savvy, veterinary-schooled purchaser, but rather to the animal lover who cannot resist those puppy-dog eyes. A contract for the sale of a pet often puts the buyer in an unequal bargaining position, as he or she depends on the seller to be forthright in an animal's health history. The UCC and pet purchaser protection laws seek to add some balance to this sometimes emotionally-weighted transaction.

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