

Co-Ownership Contracts: When Two Can Be A Crowd

Lisa M. Curry, Esq.

Co-ownership of dogs is a popular arrangement with many breeders who wish to retain some control over the showing and breeding of the puppies they produce. It also is common where a kennel name is owned by a partnership and all dogs produced are co-owned.¹ Another instance of co-ownership occurs when a financial backer is recognized through adding his/her name to the list of owners.

Co-ownership is more than an arrangement, though: it is actually a contract, with significant benefits but also possible drawbacks for the parties. As with any contract, dog co-owners agree to exchange consideration, i.e., something of value, for some other consideration. The types of consideration involved in a co-ownership contract usually include a combination of: (a) money, (b) promises to do various things, and, of course, (c) a share of ownership in the dog.

There are virtually no restrictions, under the law or the AKC Rules, as to the specifics of the contract that co-owners can make in dividing up the duties and benefits of dog co-ownership. They are free to decide among themselves how to divide up the various rights and responsibilities (such as housing the dog, financing its health care and show career, choosing breeding partners and placing the offspring).

Even if the co-owners never commit their agreement to writing, it is cognizable as a contract. For obvious reasons, it is easier to rely on and to enforce a written contract than an oral one, and it is also easier to understand exactly what your rights and responsibilities are if they are spelled out clearly in writing. Therefore, anyone considering co-ownership would be well advised to have the entire agreement in writing before agreeing to it. A written contract should contain all the relevant terms, promises, and obligations, and it should be reviewed and signed by both parties. Including a clause to the effect that 'any future amendments must also be in writing

¹ The AKC permits ownership of a dog to be held by an individual, a partnership, firm, corporation, association, or organization of any kind. Nonetheless it is common for members of an entity to list themselves as individual owners on the AKC registration.

and signed by both parties' can also be very helpful to avoid misunderstandings about later side agreements that may be made. Depending on the laws of your state, it may not be necessary to have the contract notarized or witnessed. You should consult an attorney with experience in drafting such contracts in your state, as the relevant laws can differ between states.

While the AKC recognizes co-ownership, it will not acknowledge one co-owner as primary over the other, nor will it recognize the way in which co-owners choose to divide the various duties of ownership. In fact, the AKC states that it discourages co-ownership because of the legal problems that co-owners habitually encounter. These problems most often occur when the co-owners encounter circumstances which they did not anticipate, and therefore did not resolve, when they first entered into a contract together.

To get you thinking about the sorts of problems that can arise in co-ownership, consider these examples:

- *Scenario #1: Two friends agree to co-own a promising bitch puppy, and plan to obtain her championship and then have her serve as the foundation bitch for their breeding program. After a year, one co-owner remains convinced of the bitch's promise, but the other one decides she is not turning out, refuses to allow her to be shown, and wants to sell her as a pet to avoid producing inferior specimens of the breed.*

This scenario has the makings of a lose-lose situation for both co-owners, whereby the dog lives in limbo, not being shown but also not placed in a loving permanent pet home:. It could have been avoided by including a contract clause whereby a decision by one owner alone that the dog was not promising would trigger the other party's right to buy out the non-believer, for a stated sum.

- *Scenario #2: A bitch is bred to a stud dog owned by two co-owners. The stud fee is one pick puppy, which the contract states "shall be delivered to the stud's co-owners". After the breeding, the stud's co-owners get into a dispute, no longer wish to be co-owners of the stud, and argue over which of them is entitled to take possession of the puppy. The*

bitch owner receives demands from both stud owners, each vigorously insisting that the puppy be given to him and not the other.

Here, the co-ownership agreement could have specified which of the owners would take possession of any stud fees, perhaps giving half the monetary value to the other owner. Their agreement (or an amendment to it) also should have defined who would be designated the owner of the pick puppy. The bitch's owner, too, could have reasonably insisted *beforehand* that the stud contract specify the person to whom possession of the puppy would be delivered and who should be designated owner on the AKC paperwork.

- *Scenario #3: A dog breeder enters into a written co-ownership agreement for one of her dogs with a 16 year-old who wants to show the dog in Junior Handling. When the minor turns 18, he refuses to return the dog to the breeder and proceeds to use the dog at stud.*

This scenario is a bit more complicated. Certainly, it could have been avoided if the contract had provided that when the minor turned 18, possession of the dog would be returned to the breeder. (Since AKC regulations prohibit leasing a dog for purposes of showing, the dog could not have been leased to the minor; ownership had to be transferred). The contract also could have provided that the minor would have no legal right to make the dog available for stud and no right to sign a litter registration form, with a defined sum of money damages to be paid to the breeder in case of breach of these provisions. The breeder also should have foreseen that a contract with a minor, in most states, is not enforceable. Therefore, unless an adult (perhaps a parent) co-signed, the entire agreement may be worthless, and a court may well determine that the dog simply belongs to the minor who had possession of it for virtually all of the dog's life.

Parties to a contract should include language as to what circumstances will constitute a "breach", or violation of the contract, and the consequences for causing such a breach. The most obvious consequence to impose is to require the breaching party to pay money damages to the other person, and in some cases where both parties want sole ownership of the dog, money damages is the only reasonable consequence since a dog cannot be split in two! A hefty sum of money damages written in the contract also has a certain chilling effect on a party who is

contemplating breaching. Too small a sum of money damage, on the other hand, can make the breach seem worth the price, to someone who wants to avoid the contract. Your contract might also, in case of breach, call for the breaching party to perform some action, such as substituting another dog or promising a future puppy. But be aware that the person who is to produce this other dog or puppy may not be willing or able to do so in the future – and you may not be able to compel them. Courts tend to take a conservative stance when asked to compel a party to do something: for example, to give up possession of a dog, or to conduct a breeding merely to produce a puppy for the aggrieved party to the contract. It can happen, but it is not common.

If you need to terminate a co-ownership agreement, ensure that you do so both under the laws of your state and under AKC regulations. It is helpful to include language in a written contract that requires the terminating co-owner to do all things necessary to effectuate the transfer of AKC title to the other owner. If the terminating co-owner thereafter is unwilling or unable to complete the necessary AKC paperwork, you may be able to use that written contract to urge the AKC to recognize you as the legal owner.

Finally, remember that AKC discipline of a person potentially can affect the AKC status of any dogs co-owned by that person. AKC discipline can include suspension of some or all AKC privileges, including those for showing, transferring, breeding, and registering any dogs co-owned by that individual. Clearly, these circumstances could be a severe hardship on someone who happens to co-own a dog with the disciplined person. While this may seem a remote circumstance, it may be worth considering when contemplating co-ownership with multiple persons in an arm's length transaction.

Concluding Thoughts

Co-ownership is a delicate balance of duties and rights. Done correctly, it has many positive aspects, enriching the lives of dog fanciers and of dogs in ways that single-owner arrangements cannot always provide. Anyone contemplating co-ownership should invest the time needed to create a thorough, comprehensive co-ownership contract which addresses all aspects of the relationship. Reviewing your co-ownership contracts with an attorney familiar

with such agreements is an important step that can save you a great deal of confusion, frustration and money in the future.

Copyright 2007. May not be reproduced in whole or in part without permission.

Lisa Curry practices law in New Jersey and has represented breeders, owners and handlers. She can be reached at 201-400-7407 or lmcurry@gmail.com.

This article first appeared in the AKC Gazette, November 2007, and is reprinted with the permission of the American Kennel Club.