

Article 35-D of the General Business Law, hereinafter referred to as “the Law”, sets forth certain rights which arise when a consumer purchases a dog or a cat from a pet dealer. Pursuant to the Law the Commissioner of Agriculture and Markets has promulgated regulations which require a pet dealer to provide certain information to a consumer in writing upon the sale of an animal. Such information shall include a description, including the breed of the animal, the date of purchase, the name, address and telephone number of the consumer and the pet dealer and the amount of the purchase. The pet dealer shall certify such information by signing and dating the document in which it is contained. Additionally, every pet dealer who sells an animal required to be vaccinated against rabies, to a consumer shall provide the consumer at point of sale with a written notice summarizing rabies immunization requirements.

The Law further provides that if, within fourteen business days following the sale of an animal subject to this article or receipt of the written notice required by section seven hundred fifty-four of this article, whichever occurred last, a veterinarian of the consumer's choosing, licensed by a state certifies such animal to be unfit for purchase due to illness or the presence of symptoms of a contagious or infectious disease, or if, within one hundred eighty calendar days following such sale or receipt, whichever occurred last, a licensed veterinarian certifies such animal to be unfit for purchase due to a congenital malformation which adversely affects the health of the animal, the pet dealer shall afford the consumer the right to choose one of the following options:

- ◆ The right to return the animal and receive a refund of the purchase price including sales tax and reasonable veterinary costs directly related to the veterinarian's certification that the animal is unfit for purchase; or
- ◆ The right to return the animal and to receive an exchange animal of the consumer's choice of equivalent value and reasonable veterinary costs directly related to the veterinarian's certification that the animal is unfit for purchase; or
- ◆ The right to retain the animal and to receive reimbursement from a pet dealer for veterinary services from a licensed veterinarian of the consumer's choosing, for the purpose of curing or attempting to cure the animal. The reasonable value of reimbursable services rendered to cure or attempting to cure the animal shall not exceed the purchase price of the animal. The value of such services is reasonable if comparable to the value of similar services rendered by other licensed veterinarians in proximity to treating veterinarians. Such reimbursement shall not include the costs of initial veterinary examination, fees and diagnostic fees not directly related to the veterinarian's certification that the animal is unfit for purchase.

The law requires that any refund and/or reimbursement required shall be made by a pet dealer not later than ten business days following receipt of a signed veterinary certificate as herein required. Such certification shall be presented to the pet dealer not later than three business days following receipt thereof by the consumer.

The Commissioner of Agriculture and Markets has prescribed a form for the certification that an animal is unfit for purchase which shall be provided to a consumer by an examining veterinarian upon the examination of a dog or cat subject to the Law. That form includes information which identifies the type of animal, the owner, the date and diagnosis of the animal, the treatment recommended, if any, and an estimate of the actual cost of such treatment. Such form also includes this notice.

The Law provides that a veterinary finding of intestinal parasites shall not be grounds for declaring the dog or cat unfit for sale unless the animal is clinically ill due to such condition. An animal may not be found unfit for sale on account of an injury sustained or illness contracted subsequent to the consumer taking possession thereof.

The Law provides that if a pet dealer wishes to contest a demand for a refund, exchange or reimbursement made by a consumer such dealer shall have the right to require the consumer to produce the animal for examination by a licensed veterinarian designated by such dealer. Upon examination if the consumer and the dealer are unable to reach an agreement which constitutes one of the options set forth in the Law within ten business days following receipt of the animal for such examination, the consumer may initiate an action in a court of competent jurisdiction to recover or obtain such refund, exchange and/or reimbursement. Nothing in § 753 of the General Business Law, however, in any way limits the rights or remedies which are otherwise available to consumers under any other law.

For the purposes of the Law, “consumer” means an individual purchasing a dog or a cat from a pet dealer. A pet dealer shall not be considered a consumer. “Pet dealer” means any person, firm, partnership, corporation or other association which in the ordinary course of business engages in the sale or offers for sale more than nine dogs or cats per year for profit to the public. Such definition includes breeders of animals who sell or offer to sell animals directly to a consumer but does not include duly incorporated humane societies dedicated to the care of unwanted animals which make such animals available for adoption whether or not a fee for such adoption is charged.