

# The Alpaca Spirit & Win-Win Purchase Agreements

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Too often agreements are seen as conflicts waiting to happen. As soon as one party feels injured and taken advantage of, the words come to life and fight as soldiers on a battlefield. Artfully drawn sentences, syntax and lawyers get caught up in the melee.

When the smoke clears, there is a winner and a loser. Being a loser – one who feels taken advantage of – is not fun. No wonder people tend to steer clear of agreements as they would a snapping dog tied to a nearby tree.

Agreements do not materialize from thin air. They are the product of a drafting process. If one party feels taken advantage of, it is the fault of the drafting process. I suggest that a drafting process is not successful unless a win – win alpaca purchase agreement emerges. The two critical aspects of a successful drafting process are attitude and completeness.

Vivid in my mind is the recent alpaca show my wife and I attended with eight of our alpacas. Alpaca owners seem to bring out the best in people. Competition in the show ring is a game, not a gladiator fight to the finish. An air of cooperation and helping one another prevails. This is the alpaca spirit.

The alpaca adventure is not always roses but with the alpaca spirit nobody is taken advantage of. This is what I mean when I say everybody wins.

Let the alpaca spirit prevail. With this “we” attitude in the drafting process, the best of both parties is brought out and win – win agreements happen. The “me” attitude tends to create agreements serving one party more than the other. As these agreements play out, the disadvantaged party can easily end up a loser.

The “we” attitude brings to the drafting table all the facts and feelings important to both parties. It also enables each party to choose without duress how he will help resolve each issue of the purchase process. An issue is any subject an agreement on which is necessary.

On a farm visit to Mother Goose Alpaca Farm, you see Precious, a bred female alpaca you would like to add to your breeding stock. The first issue is how to get possession of Precious. This is easily resolved. Mother Goose says it will give Precious to you in exchange for \$20,000. You are happy with the price and agree to this exchange. The first term of the purchase agreement is now drafted.

You currently have only two alpacas. Spending \$20,000 and risking a lost pregnancy or inability to reproduce will not work for you. So you tell Mother Goose this is an issue and share your feelings. “We feel that Precious is a good alpaca but also remember our low risk tolerance when we were starting out,” replied Mother Goose. “We will guarantee

Precious is able to reproduce and carry her current pregnancy to term. If she can’t reproduce we will replace her and if she miscarries we will rebreed her.”

While you really would like Precious replaced if she miscarries, you feel Mother Goose is fair under the circumstances and freely accept its guarantee. The issue then resolves into another term of the purchase agreement.

Finally, a purchase agreement is drafted and signed. The purchase process begins to unfold when Mother Goose receives \$20,000. Precious is loaded into your truck and you start for home.

At an intersection a car fails to stop. BAM! Precious survives the crash, aborts the cria and due to injuries cannot be bred again. The other driver has no insurance. You fear your goal is unreachable. “I surely didn’t expect an accident,” you mutter. “Well, I’ll try the guarantee to reach my goal.”

While dialing Mother Goose’s phone number, you are picking out in your mind a replacement alpaca from its herd. You are heart broken. Mother Goose refuses your replacement request on the grounds that failure to reproduce due to auto accident is not covered. “The guarantee does not say that,” you reply. “I expect you to live up to the clear words of your guarantee.”

“Replacing Precious is unreasonable,” responds Mother Goose. “Our responsibility ends with supplying a sound animal. We had no control over the accident.”

This is a mess. A contract interpretation conflict will likely ensue. One of the parties will lose. The problem is that alpaca injury was never discussed. After the accident each party expects the wording to mean a different thing.

This is where the completeness aspect of the drafting process comes into play. Dealing with issues in an agreement is like painting a picture. Words shape and define the resolution of an issue like brush strokes shape and define a picture on canvas.

The Mother Goose guarantee is a smudge. It lacks the many brush strokes that bring into focus the hair, ears and facial features of a portrait. A portrait painted with words is not complete until the questions “how, what, when and where” are answered.

A complete guarantee would include a specific procedure for making claims. It would also include conditions that terminate the guarantee such as: (a) death of Precious or (b) illness, injury or buyer’s abuse or neglect rendering Precious unable to reproduce, carry a pregnancy to term or produce a live birth.

Sharpening the smudge also requires agreement on what Mother Goose is to do if the guarantee is called upon. For example, the agreement might provide that if Precious does not carry to term the only obligation of Mother Goose is to rebreed Precious once at its farm without charge.

Sentences get longer as more details are brought into the picture. They must, however, be short enough to be easily understood. Also, pictures painted with words must be painted clearly so everybody looking at the agreement will see the same picture.

Completeness also requires the parties be imaginative. In the drafting process, they must think of as many conceivable, even though unlikely, issues as they can. If an issue arises as your agreement plays out that is not provided for in the agreement, one of the parties can easily end up a loser.

Consider a different scenario as an example. After you sign the purchase agreement and pay Mother Goose \$20,000 but before you pick up Precious, a lightning bolt strikes a nearby tree dropping a limb on Precious. Her leg requires major surgery. The purchase agreement is silent as to who bears the risk of loss. Consequently, the party ending up paying this surprise bill will likely feel taken advantage of.

An agreement is like a road map. It shows how to get from where you are to where you want to be. Most importantly, though, it also shows alternate routes if the direct route becomes blocked as the agreement plays out. Like dots of ink on a map give rise to a visual path from here to there, words of an agreement string together to describe a procedure to get from here to there.

The most direct path to your goal of having Precious in your breeding stock is to give Mother Goose \$20,000. Two potential roadblocks, or issues, are Precious failing to be able to reproduce and to carry her pregnancy to term. An alternate path is drawn around these roadblocks with Mother Goose's guarantee.

No purchase agreement is perfect. So when a surprise happens, let the alpaca spirit protect all parties from being taken advantage of. This is not legal advice but merely a presentation of material to consider under the supervision of the attorney who guides your alpaca venture.