

Whose Animal is it?

The importance of establishing ownership in surrender cases

BY CHERIE TRAVIS



Each day across the country, the staff working at intake desks at animal shelters are confronted with a variety of people giving up pets for a variety of reasons: they can no longer afford to care for them; they're moving and think they can't find pet-friendly housing in their new city; their pet has become aggressive. Some surrenders can be avoided with good counseling and medical or behavioral assistance; others are unsolvable and can be heartbreaking—though

even these can lead to positive outcomes when a new home for the animal can be found.

Surrenders present enough challenges without the more troubling cases, in which someone presents an animal for surrender and the shelter or rescue only finds out later that this person did not have the legal authority to do so.

These cases are infrequent, but the trouble they cause makes it worthwhile to con-

sider your organization's procedures. What documentation do you require in order to take in—and potentially adopt out—a surrendered animal?

For example, consider the following scenarios: Your shelter gets a visit from a woman who wants to surrender a cat. She says that she found him several months ago, and has been holding onto him while attempting to find his owner. She has posted numerous fliers in the area and at the local

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animal control facility in an attempt to find his owner.

Or perhaps a man comes into your municipal shelter with a dog he says is his. He says the dog bit him and requests that your facility euthanize the dog.

Animals are still considered property in every state in the country. But how do you know whether the person at your front desk is the animal's legal owner? Are you legally protected if you immediately put the cat up for adoption? What about if you put the dog to sleep, according to his apparent owner's request?

It Ain't Necessarily So

In the Chicago area, both the situations above have occurred. Neither had a pleasant outcome.

A shelter took in a "found" dog and placed him with a new owner. Someone claiming to be the dog's original owner saw a picture of him on the "Adopted" section of the shelter's website, and contacted the media to protest the transfer of ownership.

The woman claimed to have visited animal control regularly to look for her pet and was willing to pay for a DNA test to prove that the dog was hers. The new adopter of the dog, who had acted in good faith, was none too happy about being dragged into the conflict. Ultimately, a DNA test determined that the adopted dog was not the one in question, but only after a great deal of unpleasantness and negative media coverage.

In the second scenario, a municipal shelter euthanized the dog later that afternoon. That evening, a woman came in with proof that she owned the dog and was devastated to learn that the dog had been killed as a result of her angry ex-boyfriend bringing the dog to the shelter and lying to staff.

Unfortunately, it is difficult to look to the law for clarity on this issue. Since animals are considered property, the term "owner" may be referenced in several places in the law. For example, for the purposes of establishing criminal or civil liability, many states (including Arizona, Maine, and Illinois) define an "owner" as a person who keeps or harbors



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an animal. Arizona's animal control statute defines owner as any person keeping an animal other than livestock for more than six consecutive days.

Legal Loopholes

Such definitions can be useful when it comes to establishing wrongdoing; for example, a person who takes in a stray for a period of time but fails to provide proper care for that animal can be treated as an owner and held responsible for the animal's mistreatment. But the laws don't always address the transfer of ownership from one person to another. So while keeping an animal in Arizona for more than six consecutive days can make a person responsible for harm to the animal, it doesn't establish legal title, which can then be transferred to the shelter upon surrender.

Only a few states have settled the question for animal shelters. For example, California's Hayden law requires that animals relinquished by a "purported owner" be offered the same amount of hold time as stray animals (a minimum of four days, not including the day of impoundment) before euthanasia.

In the absence of legislation, it's smart for shelters and rescues to develop policies to ad-

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dress these concerns. Intake practices should include asking owners for their identification (such as a driver's license or state ID card) and for proof of ownership, including vet records; these documents should be photocopied and kept on file. If a person surrendering an animal cannot provide these documents, the animal should be treated as a stray and given a period of time for redemption.

This is especially important in cases of owner-requested euthanasia; if someone is surrendering an animal and asking that she be put to sleep, verifying that the person is the legal owner is particularly important. It may be smart to establish a standard, written hold policy for any surrendered animal (perhaps 24-48 hours), and stipulate that, in cases where ownership cannot be definitively proven, euthanasia will be performed only at the shelter's discretion.

A policy to treat surrendered animals whose ownership could not be definitively established would have prevented protracted litigation for a New York shelter. In *Feger v. Warwick Animal Shelter*, a white Persian cat was surrendered by an unidentified person and then placed into a new home. Plaintiff Darlene Feger claimed that the cat was actually Kisses, her champion purebred Persian cat who had been stolen from her home. Although the trial court dismissed the case, Feger appealed and won her case at the appellate level.

Language in an organization's relinquishment agreement should state clearly—preferably in bold or capital letters—that the person signing the form is representing that he or she is the legal owner of the animal and that a false statement on a legal document can be considered perjury or misrepresentation and will be punished to the fullest extent of the law. The shelter should consult with legal counsel to draft this agreement and to include applicable state law as to the punishment for perjury.

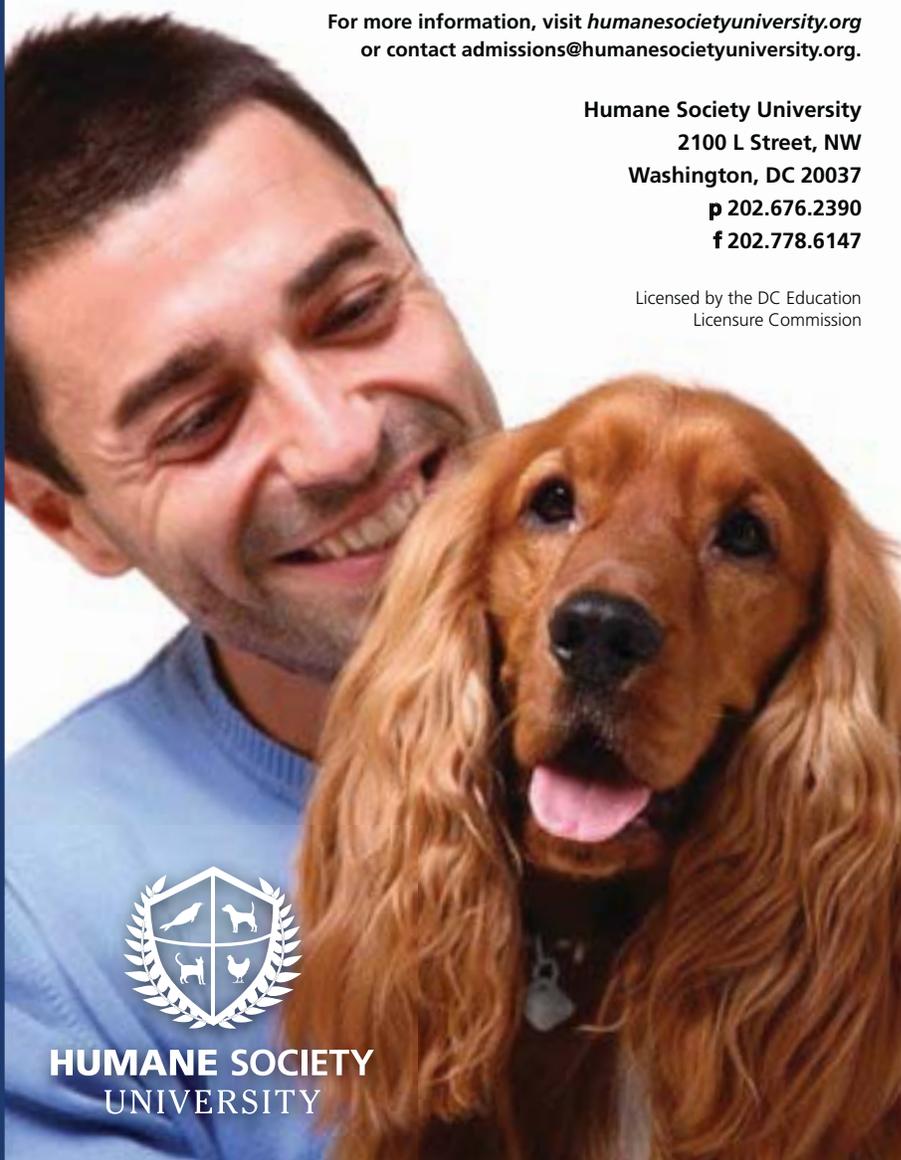
Additionally, most states require shelters to scan for microchips for stray animals. And even if you're in a state that doesn't require it, it's a basic practice: Sometimes a microchip can help you establish ownership quickly, and help you determine whether the person at your front counter deserves your sympathy and counseling, or whether their story deserves a little scrutiny. 

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