

NEW YORK STATE BAR ASSOCIATION

Animal Law in New York State



LEGALease



Introduction

This pamphlet is presented by the New York State Bar Association Special Committee on Animals and the Law. It is intended as a basic introduction to animal law and animal related issues in New York State for both the public and lawyers. Each section will provide general information about the topic covered as well as the relevant New York State and Federal laws that may apply. Always remember to check your local municipal laws or codes, as your municipality may have its own laws regarding a topic.

“The greatness of a nation and its moral progress can be judged by the way its animals are treated.” —

Mahatma Gandhi

Dog Licensing

Agriculture and Markets Law, Article 7 (NYS, excluding NYC)

Dogs four months of age or older must be licensed. License applications must be accompanied by the license fee and a certificate of rabies vaccination. In the case of spayed/neutered dogs, the application must be accompanied by a certificate signed by a veterinarian or an affidavit signed by the owner showing that the dog has been spayed or neutered. The license tag shall be worn by the dog at all times, except that dogs participating in a dog show are exempt from this requirement during such participation.

Leash Law

There is no statewide leash law but almost all municipalities have adopted their own leash laws. Generally, leash laws require that dogs be maintained on leash when off the owner's property.

Note: Please see your local municipality's leash law.

Spay/Neuter Laws

Section 377-a, Agriculture and Markets Law

This law provides that animal shelters, dog control officers, and humane organizations may not release a dog or cat for adoption unless:

1. The dog or cat has been spayed or neutered; or
2. The adopter of the dog or cat signs a written agreement to have the dog or cat spayed or neutered within 30 days of adoption or 30 days from the date the animal reaches six months of age. The adopter must also place a deposit with the adoption entity; or
3. The adopter signs an agreement to have the dog or cat spayed or neutered within 30 days of adoption or 30 days from the date the animal reaches six months of age and the adopter pays an adoption fee which includes the cost of the spay or neuter procedure.

The deposits made under Section 2 may be refunded upon proof of spaying/neutering or if a veterinarian certifies that spaying or neutering would endanger the animal's life.

This law specifically states that towns, cities, villages or counties may enact a local law or ordinance requiring animal shelters and humane organizations to spay/neuter dogs and cats prior to releasing them for adoption. In New York City, the law prohibits shelters from releasing dogs and cats eight weeks of age or older for adoption or to their owners unless the dog or cat is spayed or neutered. Exceptions are made if a veterinarian certifies that the spay/neuter procedure would endanger the life of the animal, or the dog or cat has a recent breed ring show record, or has completed registry requirements for the title of Champion or its equivalent. (Section 17-804, NYC Administrative Code).

Purchasing a Dog or Cat **General Business Law, Article 35 D**

Consumers who purchase sick dogs or cats from pet dealers, including pet stores and breeders who sell more than nine dogs or cats per year to the public, have certain remedies under the law in the event the animal becomes ill. The remedies are as follows:

1. The right to keep the animal and to receive reimbursement in an amount not to exceed the purchase price of the animal for veterinary services by a veterinarian of the consumer's choosing for the purpose of curing or attempting to cure the animal;
2. The right to return the animal and receive a refund of the purchase price and reasonable veterinary costs related to the veterinarian's certification that the animal is unfit for purchase; or
3. The right to return the animal and to receive another animal of the consumer's choice of equivalent value and reasonable veterinary costs related to the veterinarian's certification that the animal was unfit for purchase.

Consumers must exercise their rights under this law within fourteen business days of the purchase date of the dog or cat or within fourteen business days of the receipt from the pet dealer of a written notice which informs consumers of their rights under this law, whichever occurs later. A veterinary finding of intestinal parasites shall not be grounds for declaring the animal unfit for sale unless the animal is clinically ill due to such condition.

This law does not apply to animals adopted from duly incorporated humane societies whether or not a fee for such adoption is charged.

ANIMAL LAW IN NEW YORK STATE

This law is intended to provide specific rights to consumers but consumers should be aware that they may have additional rights under other more general laws, such as the Uniform Commercial Code which concerns the sale of goods.

Pet dealers who represents that an animal is registered or capable of registration with an animal pedigree registry organization shall provide the purchaser with necessary documents within 120 days following sale.

New York Laws Providing Penalties for Animal Cruelty/Abandonment/Neglect **Agriculture and Markets Law § 350** **Definitions.**

§ 350 (1) "Animal," as used in this article, includes every living creature except a human being;

§ 350 (5) "Companion animal" or "pet" means any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. "Pet" or "companion animal" shall not include a "farm animal" as defined in this section.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the website:
<http://public.leginfo.state.ny.us>

Agriculture and Markets Law § 353-b **Appropriate Shelter for Dogs Left Outdoors**

Section 353-b of the Agriculture and Markets Law requires that any person who owns or has custody or control of a dog that is left outdoors provide them with appropriate shelter. Violations can trigger a series of escalating

finer, which the court can reduce by an amount the owner or custodian proves he or she has spent to correct the deficiencies in the dog's shelter.

*Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the website:
<http://public.leginfo.state.ny.us>*

Agriculture and Markets Law § 353.

Overdriving, Torturing and Injuring Animals

§ 353. Overdriving, torturing and injuring animals; failure to provide proper sustenance.

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

Agriculture and Markets Law § 353 applies to *all* animals and thus farm animals and wildlife are covered under this statute as well.

*Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the website:
<http://public.leginfo.state.ny.us>*

Agriculture and Markets Law § 353-a

Aggravated Cruelty to Animals

ANIMAL LAW IN NEW YORK STATE

Popularly known as “Buster’s Law,” Agriculture and Markets Law § 353-a provides that a person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, “aggravated cruelty” shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner. Aggravated cruelty to animals is a felony.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the website:

<http://public.leginfo.state.ny.us>

Abandonment of Animals

Under **Agriculture & Markets Law § 355**, an owner or person having charge or custody of an animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows such animal, if it become disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor. In addition, under **Agriculture & Markets Law § 331**, an animal is deemed to be abandoned when it is placed in the custody of a veterinarian, veterinary hospital, boarding kennel owner or operator, stable owner or operator, or any other person for treatment, board, or care and is not removed at the end of the specified period for care or boarding.

Notice must be mailed to the person who had placed such animal in his custody within ten days thereafter by means of registered mail to the last known address of such person. An animal may also be deemed abandoned if after having been placed in such custody for an unspecified period of time is not removed within twenty days after notice to remove the animal has been given to the person who placed the animal in such custody, by registered mail to the last known address of such person.

Under § 332 of the **Agriculture & Markets Law**, any person having in his care, custody, or control of any abandoned animal, as defined in section three hundred thirty-one of his chapter, and after giving the required notice, may deliver the abandoned animal to any humane society or society for the prevention of cruelty to animals having facilities for the care and eventual disposition. However, the person with whom the animal was abandoned must on the day of divesting himself of possession of the animal, notify the person who had placed such animal in his custody of the name and address of the animal society or pound to which the animal has been delivered, by registered mail to the last known address of the person intended to be so notified. The giving of notice required under §331 shall be deemed a waiver of any lien on the animal for the treatment, board or care of the animal, but shall not relieve the owner of the animal removed of his contractual liability for such treatment, board or care furnished.

*Note: Please see New York State Consolidated Laws for the above sections in their entirety by visiting the website:
<http://public.leginfo.state.ny.us>*

Important Federal Law **“Animal Welfare Act” as Amended (7 USC, 2131-2156)**

The Animal Welfare Act is administered by the United States Department of Agriculture and regulates the purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research, exhibition, or holding them for sale as pets or for any such purpose or use. The act also establishes minimum standards for animal care including, but not limited to, handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds it necessary for humane han-

ding, exercise for dogs, and for a physical environment adequate to promote the psychological well-being of primates.

Note: Please see the Animal Welfare Act in its entirety by visiting the United States Department of Agriculture website: <http://www.nal.usda.gov/awic/legislat/usda-leg1.htm>

Reporting Animal Cruelty

To report animal cruelty, please contact your *local* county Society for the Prevention of Cruelty to Animals (“SPCA”) or other humane enforcement agency or contact your local police department. The agency you call must have police powers to investigate, file a report, and arrest. Usually, each county has one agency that possesses these powers in addition to the police. For assistance in locating your local SPCA, you may contact The American Society for the Prevention of Cruelty to Animals (“ASPCA”) at (212)-876-7700. You can also access the ASPCA’s website at www.asPCA.org. The ASPCA has law enforcement powers only in New York State. Remember to give your local humane officers as much information as possible including names, addresses, witnesses, dates, times and pictures, if possible.

New York State Agriculture and Markets Law § 121 Dangerous Dogs

Any person who witnesses an attack or threatened attack upon a person or a companion animal, farm or domestic animal may complain to a dog control officer or police officer, who shall immediately tell the complaining person of his right to start a legal action. If there is reason to believe the dog is a dangerous dog, the officer shall immediately begin an action himself.

A judge will decide whether there is probable

cause to believe the dog is dangerous. A hearing must be held within 5 days, with at least 2 days prior written notice to the dog's owner. At the judicial hearing, the person who brings the complaint must prove, by clear and convincing evidence, that the dog is a "dangerous dog." A dog shall not be declared dangerous if its conduct was justified because the person who was injured, threatened or killed was then or had previously tormented, abused, assaulted or physically threatened the dog or its offspring.

A dog shall not be declared dangerous if the conduct of the dog was justified because the dog was responding to pain or injury, or was protecting itself, its people, its kennels or its offspring; or was justified because the companion animal, farm animal or domestic animal that was injured, threatened or killed was attacking or threatening to attack the dog or its offspring.

Note: Always remember to check your local municipal laws or codes as your county or city may have its own laws or codes regarding Dangerous Dogs.

Pet Trusts

Article 7 of the Estates Powers and Trusts Law

Today, people are more aware of the need to plan for their pet's care in the event of their death. New York State Law, as set forth in Article 7 of the Estates Powers and Trusts Law, gives people the ability to establish honorary trusts for their pets. A pet trust can be set up in a person's will or as a living trust. The trust is then funded with a portion of the decedent's assets. Like any other trust, the trust must provide for a trustee to administer the trust and make arrangements for the care and maintenance of the pet by the appointed guardian. The trustee and the guardian (or caregiver) can be two different people.

Access Rights of Individuals with Disabilities and their Service Animals

Legal Protection for Service Animals

The rights of persons with disabilities to use service animals are protected under a network of federal, state and local laws and regulations. Federal regulations under the Americans With Disabilities Act (“ADA”) specify that a service animal is any guide dog, signal dog or other animal that has been trained to perform tasks for individuals with disabilities. The New York Civil Rights Law specifically protects individuals who use guide dogs, hearing dogs and service dogs. Discrimination against persons with disabilities is prohibited under other New York laws, which may protect all service animals in addition to service dogs.

Furthermore, because the law giving the broadest protection applies, the ADA protects the use of all service animals in New York regardless of any limitation of the New York Civil Rights Law.

Both New York State and federal laws protect the rights of individuals with disabilities to bring a service animal into the workplace.

New York State law and the ADA forbid places of public accommodation from discriminating against individuals with disabilities. These laws provide that service animals must be permitted in all areas of a facility where customers are generally permitted.

Transportation

Title II of the ADA forbids discrimination against individuals with disabilities from using public services accompanied by their service animals, including public transportation.

Enforcement

Criminal and civil sanctions apply to violations

of the access rights of individuals with disabilities using service animals.

Veterinary Malpractice and Negligence

Veterinarians are licensed by the New York State Education Department. Veterinarians like medical and other health care providers, are required to possess and exercise the degree of skill and learning ordinarily possessed and exercised, under similar circumstances, by other members of their profession. They are bound by a “standard of care.”

What is a “standard of care”?

The standard of care varies according to locality and is a measure against which allegedly negligent conduct is compared. It is not an exact science. It is a reference point against which the conduct complained of can be measured. A medical provider is charged with a duty to exercise due care, “as measured against the conduct of his or her own peers – the reasonably prudent doctor standard.” Veterinary misconduct or negligence should be reported to the New York State Education Department Office of the Professions.

Companion Animals and Housing Issues

It is not always readily apparent when a person can keep a companion animal in a home. While people who keep a companion animal in a house are not usually challenged unless the animal seriously provokes a neighbor, people living in apartments and condominium-type communities face different challenges. For example, many leases prohibit pets and often house rules in a co-op or condominium ban pets without written board permission. But just as a lease does not allow a landlord to withhold essential services such as heat and hot water, or allow a co-op to unlawfully dis-

ANIMAL LAW IN NEW YORK STATE

criminate, a no-pet clause also is not always enforceable. For example, in New York City and in Westchester County, laws commonly referred to as the "Pet Law", prohibit the enforcement of a "no pet" clause, even if there is an applicable "no pet" clause in the lease, if a landlord fails, within three months of his knowledge of a tenant's harboring of a pet, to enforce the "no pet" provision. The law applies to both owners and renters, in apartment complexes, co-ops and condos, whether privately owned or government subsidized.

Just as a landlord must accommodate a disabled tenant who requires a wheelchair, a companion animal must similarly be permitted. The only limitations are generally that the disability substantially interfere with a major life activity (work, social activities, etc.), and that the pet is under control (i.e. it would be reasonable to allow the pet).

These disability laws are set forth in the Federal Fair Housing Act, as well as, the Americans with Disabilities Act, and in state and local human rights laws. Some federal laws allow pets for all people over 62 years of age in federal or federally-funded housing. Other laws allow animals trained as "service animals" to reside with their companion human.

Note: Please see the above referenced "Pet Law" in its entirety under the (Administrative Code of the City of New York Section 27-2009.1) by visiting: www.nyc.gov, and in Westchester County under the Laws of Westchester County Section 694). Please also see the above referenced "Federal Fair Housing Act" under Title 42 of the United States Code by visiting: <http://www.gpoaccess.gov/uscode/index.html>, and the "Americans with Disabilities Act" by visiting <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi>.

Feral Cats

Unlike dogs, which are regulated by the government with licensing requirements, New York animal care and control and municipal animal shelters, are not required by law to take in cats whether they be domestic or otherwise. Domesticated cats are regulated under New York State Agriculture and Markets Law, Articles 25 & 26 regardless of whether they have been abandoned or born “feral”.

Public Health Law § 2140, See Definitions Section (13). “Feral animal” shall mean any cat, dog or ferret that is born in the wild and is not socialized; is the offspring of an owned or feral cat, dog or ferret and is not socialized; or is a formerly owned cat, dog or ferret that has been abandoned and is no longer socialized.

Environmental Conservation Law § 11-0103 See Definitions section (5)(e). “Wild animal” shall not include “companion animal” as defined in section three hundred fifty of the agriculture and markets law. Wild animal includes, and is limited to, any or all of the following orders and families:

- (1) Nonhuman primates and prosimians;
- (2) Felidae and all hybrids thereof, with the exception of the species *Felis catus* (domesticated and feral cats, which shall mean domesticated cats that were formerly owned and that have been abandoned and that are no longer socialized, as well as offspring of such cats) and hybrids of *Felis catus* that are registered by the American Cat Fanciers Association or the International Cat Association provided that such cats be without any wild felid parentage for a minimum of five generations.

As the human population has grown over time, so has the number of free roaming cats that are left outdoors unspayed and unchecked. An unspayed free roaming female cat can have several thousand kittens over her lifetime. Once surviving kittens reach maturity, this cycle is then multiplied exponentially

when her kittens breed and give birth to their own litters and on and on. Because many of these outside cats are born and raised without human contact they are often fearful of humans and are often referred to as “feral cats”. These cats often form what are known as “colonies” and live short lives falling victim to starvation, disease, freezing, cruelty and are commonly found hit by cars leaving a litter behind. In response to the overwhelming demand for assistance, many animal rescue organizations have initiated what are known as trap-neuter-release or (“TNR”) programs. Trap-Neuter-Release (“TNR”) has proven to be a most effective way of humanely reducing feral cat populations. Through TNR programs, stray and feral cats are humanly trapped and transported to veterinarians, where they are spayed or neutered and ear tipped under anesthesia for future identification. Cats are often assessed to see whether they are social enough to be adopted, if not, they are transported back to their original location under the care of a cooperating neighborhood resident who will continue to provide a food source. Through TNR feral cat populations are slowly decreased through attrition. Cats should always be kept indoors for their own safety.

*Note: Always remember to check your local municipal codes as your municipality may have its own laws or codes regarding feral cats. Please see New York State Consolidated Laws for the above sections in their entirety by visiting the website:
<http://public.leginfo.state.ny.us>*

Conclusion

The New York State Bar Association Special Committee on Animals and the Law hopes that this pamphlet has been a useful guide to introducing you to the field of animal law. Due to space limitations, not every animal-related law or topic is covered. Many of the laws cited in this pamphlet have been abbreviated and or paraphrased and should be

ANIMAL LAW IN NEW YORK STATE

viewed in their full statutory form. For more information regarding Animal Law, please visit the Special Committee on Animals and the Law on the New York Bar Association's website at: www.nysba.org.

This pamphlet, which is based on New York law, is intended to inform, not advise. No one should attempt to interpret or apply any law without the aid of an attorney. For counsel please contact your local bar association. Produced by the New York State Bar Association Special Committee on Animals and the Law.



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