

**Abandonment of Animals**  
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**Question:** *When is an animal, separated from its owner, considered abandoned with the result that a fostering person can assume ownership rights and responsibilities?*

**A. Introduction**

Although the status of animals is changing, animals are legally considered to be property therefore ownership rights are primarily governed by property law including statutes, common law, and case law. This is a qualified property ownership interest in that state legislatures may exercise discretion to the extent that animals will be recognized as property.<sup>1</sup>

There is a difference in property rights in domestic animals (e.g. cats, dogs, horses, cattle, poultry, etc.) versus wild animals. With domestic animals a person has similar rights as to other types of property, however, with wild animals, property rights are acquired through taking possession of the animal or by virtue of ownership of the land on which the animal is located.<sup>2</sup> This memo focuses on domestic animals that have been separated from its owner during an emergency situation such as a hurricane.

Federal, state, and local laws also affect actions by “finders” or “rescuers” such as holding times and actions to locate the owner that must be taken prior to the ownership interest being transferred. Failure to take these steps can leave the rescuer (e.g. individual, shelter, or others) subject to liability.

**B. When Title is Lost or Transferred**

A person owns a domestic animal even when the animal is not directly under the person’s control.<sup>3</sup> Title may be transferred immediately, such as when an owner gives the animal to a third party with the intent to give it as a gift or to relinquish title.

Following seizure by officials or abandonment, title transfers following statutory requirements that govern when an animal including required notice and holding time requirements.

When the title is transferred also may vary based on who takes possession of the animal – an official, individual or shelter. These are discussed further in the following sections.

**1. Owner Transfers Title**

An owner can transfer title of an animal to a third party by giving the animal as a gift to another person or to an animal shelter or organization if the owner shows intent to relinquish title. At this point the title transfers immediately to the third party upon receipt of the gift and the third party has both possession and title of the animal and may transfer the animal to another

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<sup>1</sup> 4 Am. Jur. 2d Animals §6; §7; *Sentell v. New Orleans & C.R. Co.*, 166 US 698, 41 L Ed 1169, 17 S. Ct. 693.

<sup>2</sup> 4 Am. Jr. 2d Animals §5 (2005).

<sup>3</sup> Patricia A. Bolen, *Lost and Found: Humane Societies’ Rights and Obligations Regarding Companion Animal Ownership*, Animal Legal & Historical Center, Michigan State University College of Law, 2005, p. 2.

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party or otherwise dispose of the animal without waiting the statutorily required minimum number of days.<sup>4</sup> Therefore, if following a disaster an owner of an animal could transfer title immediately by giving the animal to someone else such as an individual, rescue organization, or others.

The owner may also give the animal to a person or shelter asking that they keep it until the owner can return and get the animal back. In this case, title has not transferred and there is a bailment established.<sup>5</sup> A bailment is a legal relationship created by the delivery of personal property by one person to another for a specific purpose, pursuant to an express or implied contract to fulfill that trust. The person delivering the property is the bailor and the person receiving the property is the bailee.<sup>6</sup> In this case the duty to care for the animal would continue until the owner returns or there is evidence that the animal has been abandoned and title transfers.

## **2. Animal is Taken by Officials**

An owner may release an animal during an emergency hoping that it will survive and be reunited in the future, or the owner may be forced to leave the animal at the direction of government officials. In these cases state statutes will typically govern on who may take possession of the animal and what actions must be taken before title in the animal can pass to a third party.

State statutes permit a police or law enforcement finding a stray animal to take it to a shelter and after the statutorily mandated number of days, if the animal is not claimed, the animal becomes the property of the shelter and the shelter may transfer the animal's title to another party.<sup>7</sup> Title in the animal does not pass until further actions are taken as described in the sections below related to holding time and notification of the owner.

Under New York law a police officer or an agent or officer of the American Society for the Prevention of Cruelty to Animals ("ASPCA") may take possession of an animal in the following circumstances<sup>8</sup>:

- (i) The animal is lost, stray, homeless or abandoned and found in any street, road or other public place;
- (ii) From other premises where for more than twelve hours it has been confined or kept in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings or not properly cared for or without necessary sustenance, food or drink provided that a compliant listing just and reasonable grounds is made under oath or affirmation to a magistrate who can issue warrants in criminal cases and the warrant authorizing entry and searched is issued;<sup>9</sup>
- (iii) The animal is unwanted by the person in possession or custody thereof;

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4 Ibid. at p. 3. The author of the article notes, however, that an owner may regret their decision and a shelter is immune from any civil liability if it holds the animal for the minimum holding period.

5 David Favre, Animal Legal & Historical Web Center, Michigan State University College of Law, posting on Best Friends blog site 2/6/06.

6 Katie J.L. Scott, *Bailment and Veterinary Malpractice: Doctrinal Exclusivity, of Not?*, 55 Hastings, L.J. 1009 (March, 2004) citing 8A Am. Jr. 2d Bailments §1 (1997); Armistead M. Dobie, *Handbook on the Law of Bailments and Carriers* §1, at 2 (1914).

7 Bolen at p. 3

8 N.Y. Agric. & Mts. Law §373.

9 N.Y. Agric. & Mts. Law §373(1-a - 4)

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- (iv) When a person is arrested and in charge of an animal or their vehicle contains an animal. In this case the police or ASPCA agent/officer can deposit the animal in a safe place or custody or deliver it to the police or sheriff of the county or place where the arrest was made; and
- (v) An animal is seized and impounded based on animal cruelty charges.<sup>10</sup>

Additional statutes permit the seizure of dogs by dog control officers or peace officers or police officer under contract to a municipality to seize a dog that is:

- (i) Not identified and not on the owner's premises,
- (ii) Not licensed and either on or off the owner's premises;
- (iii) A licensed dog not in control of the owner or guardian that is not on the premises of the owner or custodian for which there is probable cause to believe that the dog is a dangerous dog, and
- (iv) Any dog that poses an immediate threat to public safety.<sup>11</sup>

Proceedings will follow seizure of dogs. Holding periods described below must be followed to provide the owner an opportunity to redeem the dog. Title will only be forfeited at the end of the redemption period and at that time the animal may be made available for adoption or euthanized.<sup>12</sup>

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10 N.Y. Agric. & Mts. Law §373(5); §175

11 N.Y. Agric. & Mts. Law §118.

12 N.Y. Agric. & Mts. Law 118(4)

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### 3. Animal is Abandoned

An owner can abandon an animal as defined by statute and case law. In New York an animal is considered to be abandoned when:

- (i) It is placed in the custody of a veterinarian, vet hospital, boarding kennel owner/operator, stable owner or operator, or any other person providing treatment, board or care and the animal was not retrieved at the end of the specified time, and notice was given to remove the animals within ten days;
- (ii) The animal was placed in the custody of those listed in (i) above, for an unspecified time and the animals was not retrieved after a twenty day notice;<sup>13</sup>

In addition an animal is considered abandoned when the owner, possessor, or person having charge or custody of the animal abandons it or leaves it to die in a street, road or public place or allows the animal, if it becomes disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled.<sup>14</sup>

Animals have also been considered abandoned when they were found by ASPCA agents to be under the custody and control of the owner, but where the animals were dead, sick or in an unsanitary environment.<sup>15</sup> In this case under the emergency doctrine, removal of the animals without a warrant was found to permissible.<sup>16</sup>

When an animal has been abandoned, the person having care, custody or control of the animal can take the animal to a humane society, ASPCA, or pound under contract or agreement with the county or municipality where the animal was abandoned.<sup>17</sup> The person with custody must notify the person who had placed the animal in their care with the name and address of the facility where the animal was taken to.<sup>18</sup> In *Animal Hospital of Elmont, Inc. v. Gianfrancisco*<sup>19</sup>, the New York court found that a letter from the animal hospital notifying the owner of the cost of care due, along with notice that if the dog was not picked up the animal hospital would dispose of the dog, was found not to meet the required statutory notice requirements. First, the animal hospital was required to notify the owner that they intended to dispose of the animal if it was not retrieved. Second, §332 of the Agriculture and Markets Law required that the hospital give notice to the owner of the name and address of the animal society or pound to which the animal was being delivered and this was not done. The ASPCA that the animal hospital delivered the animal to was not aware that the animal hospital was not the owner and euthanized the animal within 48 hours rather than holding the animal for the required five day period.

In a disaster situation where an animal has been left in a building, abandonment cannot be assumed. In this case a voluntary bailment is created with a slight duty of care and duty to

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13 N.Y. Agric. & Mts. Law §331

14 N.Y. Agric. & Mts. Law §355

15 *People v. Rogers*, 184 Misc.2d 419 (2000)

16 *Ibid.*; 31 Carmody-Wait 2d §172:432

17 N.Y. Agric. & Mts. Law §332. Note: legislation is pending that would permit a veterinarian, boarding kennel owner or operator or other person providing for the treatment, board or care of an animal that has been abandoned to deliver the animal to a responsible person over the age of 18 to keep or harbor the animal as a companion animal. Notice would also be required of the planned adoption and a five day period given after the notice for the owner to reclaim the animal. New York Assembly Bills No. 9265 and No. 1595.

18 *Ibid.*

19 100 Misc.2d 406, 418 N.Y.S.2d 992 (1979)

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return the animal upon request. Abandonment and the transfer of title would occur by the owner's permission or by passage of time. Passage of time may be determined specifically by statute or in lieu of that by looking at statute of limitations for lost property.<sup>20</sup>

As discussed below, the shelter then has to keep the abandoned animal for statutorily required holding periods and make efforts to locate the owner before the title transfers to the shelter.

#### **4. Animal is Found by Others Not Covered Under The Statute**

State statutes are specific as to who may take possession of an animal and under what circumstances. As noted above in New York those who can take possession of an animal, not voluntarily transferred by the animal's owner, is limited to police and the ASPCA. However following a disaster other individuals may rescue animals left behind including (i) animal welfare organizations not specifically covered in the Statute, (ii) animal welfare organizations acting under a memorandum of understanding with the local state or federal authorities, or (iii) individuals on their own.

If an animal is picked up by a third party not authorized by statute, the owner may retain title for a longer period of time.<sup>21</sup> If the owner takes reasonable efforts to find the pet, such as contacting shelters, putting up signs, etc., then the owner's title to the animal is likely not destroyed.<sup>22</sup> In a 2005 New York case where a cat was missing and the owner took substantial efforts to locate the cat such as posting signs and contacting the ASPCA, the court held that the shelter which had adopted out the pet must provide to the owner, the name of the adoptee so that the owner could seek through a court order to get the cat back. The court noted that there is a distinction between allowing a shelter to make a lost animal available for adoption and extinguishing the original owner's rights to the animal and that one does not necessarily follow the other.<sup>23</sup>

If the animal is licensed, microchipped or tattooed, and the owner has made efforts to find the animal, that animal still belongs to the owner and should be returned. However, if the finder of a lost dog tries to find the owner and cares for the animal for a long period of time, the finder may gain title to the animal.<sup>24</sup>

Generally where a person has taken a stray and has complied with statutory requirements, that person has the right to possess the animal against all others except the rightful owner. The person is a bailee during possession and title would transfer upon failure of the owner to appear and prove their property interest in the animal within the statutory timeframe.<sup>25</sup>

Some states such as New York have statutes that require any person not the true owner to notify the owner, local police authorities, or the state police within ten days of their possession of an animal. Failure to do so for dogs in New York is presumptive evidence of larceny.<sup>26</sup>

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20 David Favre, Animal Legal & Historical Web Center, Michigan State University College of Law, posting on Best Friends blog site 2/6/06; McKinney's Pers. Prop. §251-258.

21 Bolen at p. 4 citing *Williams v McMahan*, 2002 WL 242538 (2002).

22 Ibid.

23 *Woods v. Kittykind, Inc.*, 8 Misc.3d 1003(A) (2005). Note: there was also insufficient evidence to show whether the shelter complied with the required five day notice period or made attempts to locate the owner.

24 3B C.J.S. Animals §253 citing *Hendricks v. Decker*, 35 Barb. 298, 1861 WL 5296 (N.Y. Gen. Term 1861); *Porter v. DiBlasio*, 93 F.3d 301 (7<sup>th</sup> Cir. 1996) and various state specific cases.

25 Ibid.

26 N.Y. Agric. & Mts. Law §363.

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### C. Holding Times and Efforts Required to Locate the Previous Owner

Prior to title passing to a humane society or pound, statutory notice and holding time requirements must be followed. In New York the animal society or pound has to hold the animal for five days. If the animal is not claimed within that time period, the animal may be placed for adoption in a suitable home or euthanized.<sup>27</sup> This is the same whether the animal is brought in to the shelter by a third party or officials authorized by statute.

In addition, the Federal Pet Theft Act requires shelters to hold pets for five days before selling a pet to a dealer to prevent pets from being sold to research companies and to allow the owner to recover the animal.<sup>28</sup> Note that in some states including New York, statutes prevent shelters selling animals to laboratories for research unless they have written permission of the owner or licensee.<sup>29</sup>

Prior to the destruction or disposition of an animal, the owner may redeem it upon proving title and paying any amount that may have been expended by the society in connection with the care and maintenance of the animal.<sup>30</sup>

If an animal was seized and impounded for violations of the New York statute such as for animal cruelty, title will not pass until a petition has been received by the court and a hearing held. The court can order that security be posted and that the seized animal be immediately forfeited to the impounding organization (ASPCA, humane society, pound, animal shelter or authorized agent) if the person ordered to post the security fails to do so. The animal can at that point be made available for adoption or euthanized or the court may order that if the animal is fit (e.g. not maimed, diseased, disabled, or infirm) the animal may be sold with interested persons getting the first opportunity to redeem their interest in the animal and to purchase the interest of the person ordered to post security, subject to court conditions to assure proper care and treatment of the animal.<sup>31</sup>

During the required holding time the shelter must make reasonable efforts to find the owner of the animal. A reasonable effort usually means contacting the owner if the owner is identifiable and publishing a list of stray animals if no owner is determined.<sup>32</sup> Placing a notice on the building where the animal was located and posting on a website may also be considered reasonable notice.<sup>33</sup>

When an animal is micro-chipped, or tattooed it is assumed that someone has actual title to the animal and the shelter must make efforts to contact the owner such as by calling or writing to inform the owner that the shelter has the animal and will hold it for a minimum number of days. Some states require that licensed animals be held for a longer period of time since a license shows that someone owns the animal. If the owner fails to respond within the statutory minimum holding period, the shelter would get title of the animal. If the owner responds but does not pick up the animal, the shelter will also gain title after the holding period.<sup>34</sup>

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27 N.Y. Agric. & Mts. Law § 332; 3 N.Y. Jur. 2d Animals §40.

28 7 U.S.C, 2158

29 N.Y. Agric. & Mts. Law §366-a; 374(5)(b)

30 N.Y. Agric. & Mts. Law §374(4)

31 N.Y. Agric. & Mts. Law §373 (b).

32 Bolen at p. 5 citing Mary Randolph, *Dog Law* (4<sup>th</sup> edition 2001).

33 David Favre, Animal Legal & Historical Web Center, Michigan State University College of Law, posting on Best Friends blog site 2/6/06.

34 Bolen at p. 6.

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If the animal is a dog seized by the dog control officer or others specified in the statute, upon seizure the owner must be notified personally or by certified mail with the facts of seizure and the procedure for redemption. If notification is personal the dog must be held seven days, and if notification is by mail the dog must be held nine days, followed by a five day holding time.<sup>35</sup> After the required redemption period, title will transfer and the animal may be adopted. New York statutes permit a municipality to establish the duration of period by local law or ordinance, as long as they provide a holding period of at least three days and a notice period of at least seven days.<sup>36</sup>

During the possession period, the owner can reclaim the animal and may be required to pay costs, including any costs to treat an injured animal. If costs are not paid, then the animal is forfeited and the title will transfer.<sup>37</sup>

#### **D. If the Animal Dies During or Following Rescue**

**1. During Rescue** (See discussions in previous research for ADLF questions re: rescue and liability during rescue.)

##### **2. Following Rescue**

If an animal died following rescue, the standard of care required determines whether a party may be liable for injury or death caused to an animal. A civil or criminal action may be taken for injury or death to a domestic animal or the failure to provide the required standard of care for the animal while is impounded or confined.<sup>38</sup>

Standards of care for animals may be set by state statutes, particularly for animals seized or picked up ASPCA agents or officers and police specified in abandonment and animal cruelty statutes. New York statutes define a standard of care for seized dogs under dog control ordinances and include proper shelter, proper feeding and water.<sup>39</sup>

A bailee owes a duty to keep and store the animal safely and to provide safe and proper storage facilities.<sup>40</sup> Therefore an owner could also seek damages for an animal if the bailor did not provide adequate facilities while the animal was under its care. In *Chenango County Humane Society v. Polmatier*<sup>41</sup> the court found a criminal misdemeanor where a person has impounded or confined an animal and not supplied sufficient air, food, shelter and water.

If the standard of care is not specified by statute, where a bailment is in place, a standard of reasonable care would be required, e.g. the level of care that a person would provide to their own property under similar circumstances. The bailee would be liable if they neglected to provide this level of care. If the bailee has a specialized skill or knowledge, such as where the bailee would be a veterinarian, a higher level of care is required based on the specialized skill and judgment of the bailee.<sup>42</sup> In addition veterinary malpractice is often governed by state

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35 N.Y. Agric. & Mts. Law §118.

36 N.Y. Agric. & Mts. Law §118 (8)

37 Bolen at p. 5 also citing *Hubbard v. City of Oxford, Inc.* 717 So.2d 814 (1998); *State v. Branstetter*, 45 P.3d 137 (Or. App. 2002)

38 4 Am. Jur. 2d Animals §6; *Chenango County Humane Society v. Polmatier*, 38 N.Y.Crim.R. 1, 188 A.D. 419 (1919); 3B C.J.S. Animals §259.

39 N.Y. Agric. & Mts. Law §77.1; 118(3)

40 N.Y. Jur 2d §52

41 *Chenango*, 38 N.Y.Crim.R. 1, 188 A.D.419. 423

42 Scott at p. 4 citing Edwin C. Goddard, *Outlines of the Law of Bailments and Carriers*, §16, at 9; *Griffin v. Ruping*, 30 Misc.2d 914 (1961); *Siegel v. Eisner*, 138 N.Y.S 174 (1912).. For a detailed discussion of veterinary

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statutes and licensing requirements.<sup>43</sup>

A person could sue the bailee for a breach of the bailment if the animal was damaged or not returned and the bailee was negligent.<sup>44</sup> The bailee would then need to show that any injury or death was the result of an accident or other factor without any negligence on the part of the bailee.<sup>45</sup>

In some cases, the animal may have been euthanized. Shelters are typically protected for euthanizing an animal over an owner's claim if statutory obligations were followed such as the minimum holding time and attempts to contact the owner.<sup>46</sup>

Based on state statute shelters may be able to euthanize an animal before the minimum holding time if the animal is suffering, has a contagious disease or is extremely sick, though the shelter must try to contact the owner before destroying the animal.<sup>47</sup> New York law permits ASPCA agents or officers or police officers to destroy any animal found abandoned and not properly cared for, or any lost, stray, homeless or unwanted animal, if a veterinary surgeon certifies in writing with two witnesses that the animal is so maimed, diseased, disabled, or infirm as to be unfit for any useful purpose, or if the owner in writing consents to the destruction of the animal. In addition following the five day holding time an animal can be humanely destroyed.<sup>48</sup>

If an individual took in a stray animal and had it euthanized without making a minimal effort to locate the owner, it could be guilty of conversion and liable for damages in the amount of the value of the animal and in a few jurisdictions for the owner's mental anguish and humiliation.<sup>49</sup>

## **B. Other Circumstances Affecting Reunion**

### **1. Foster Caretaker Refuses to Release the Animal**

The more modern view is that domestic animals are personal property, having a determinable value and fall within the statutory definitions of personal property or chattels. A foster caretaker is considered a bailee of an animal and can incur liability by any conduct that would constitute a conversion of the animals in their possession such as refusing to return the animal to the rightful owner.<sup>50</sup>

If a foster caretaker refuses to return the animal to the owner they could be subject to criminal charges or civil action for taking the animal and failing to return it; "stealing" the animal.<sup>51</sup> Statutes generally recognize animals as possible subjects of larceny, including under

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malpractice and potential claims also see David S. Favre, *Veterinarian Malpractice*, Michigan State University (undated); Scott at p. 4-7.

43 E.g. N.Y. Educ. Law §6700.

44 N.Y. Jur 2d §11; §50-60.

45 *Peterseil v. Wishner*, 159 N.Y.S. 87 (1916)

46 Bolen citing *Pet Fair, Inc. v. Humane Soc. Of Greater Miami*, 583 So.2d 407 (1991); Rebecca J. Huss, *Valuing Man's and Woman's Best Friend: The Moral and Legal Status of Companion Animals*, 86 Marq. L. Rev. 47 (2002)

47 Bolen at pg. 6 citing Mary Randolph, *Dog Law* (4<sup>th</sup> edition 2001)

48 ) N.Y. Agric. & Mts. Law §374

49 3B C.J.S. Animals §259.; Also see Sonia S. Weisman and Barbara R. Newell, *Recovery of "Non-Economic" Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend*, 7 Animal L. 45 (2001) for a discussion of valuation of animals and statutes permitting more than fair market value for an animal's death.

50 3 Cal. Jur. 3d Animals §110; *Wlech v. Mohr*, 93 Cal. 371 (1892).

51 James T. Payne, *Cat as Subject of Larceny*, 55 A.L.R. 4<sup>th</sup> 1080(1987); *Mullaly v. People of the State of New York*,

41 Sickles 365, 86 N.Y. 365, 1881 WL 12991 (N.Y.), (1881).

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criminal statutes.<sup>52</sup> An owner of a domestic animal could also recover in a civil action for conversion for the unlawful taking or detention of the animal.<sup>53</sup>

## **2. New Adoptive Owner Refuses to Return the Animal to the Previous Owner**

As noted above liability (or a court requiring the return of the animal) against a new adoptive owner for failing to return an animal to a previous owner would be based on whether the title had been transferred to the shelter or individual based on whether statutory requirements including holding times and attempts to locate the owner had been met. Statutes typically provide for a time for redemption and following that a shelter may lawfully and without liability deliver the animal for adoption.<sup>54</sup>

## **3. Concerns Regarding Return to Negligent Owners**

If an owner has valid title and a shelter or party possessing an animal that does not want to return the animal to the owner due to cruelty concerns, the third party would need to follow statutory requirements providing for the removal and forfeiture of the animal. This gives the owner an opportunity to be heard, as well as a court determination of charges of any animal cruelty against the owner.

In New York a complaint can be made to a magistrate that the complainant has just and reasonable cause to suspect that statutes affecting animals are being or about to be violated and a warrant can be issued giving a person authorized to make arrests to enter a building and arrest the person and remove allegedly neglected animals.<sup>55</sup> This includes taking possession of animals where an animal has been kept for more than twelve hours confined or in a crowded or unhealthy condition, in unhealthful or unsanitary surroundings, not properly cared for or without necessary sustenance, food or drink. Following a hearing, the court may order the owner to forfeit to the ASPCA the animal which is the basis of the conviction. At this point the person has relinquished all rights to the animal.<sup>56</sup> While charges are pending, an animal rights organization can commence an action seeking permanent custody of animals seized from the owner.<sup>57</sup>

A shelter may also gain title of the animal where an owner fails to pay a security bond. A shelter can file a petition requesting posting of a security to cover expenses pending disposition of the charges. After receipt of the petition, the court will set a hearing. The court may order immediate forfeiture of the seized animal if the security is not posted or the court may determine charges against the person and not return the animal to the owner, and title will transfer to the shelter.<sup>58</sup>

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52 For example see McKinney's Ag. & Market Laws §363 for unauthorized possession of dogs.

53 4 Am. Jur. 2d Animals §5; §6 (2005); 50 Am. Jr. 2d Larceny §64, §65 (2005); 3B C.J.S. Animals §253; §259.

54 N.Y. Agric. & Mts. Law § 374(3); 3B C.J.S. Animals §253.

55 N.Y. Agric. & Mts. Law § 372.

56 N.Y. Agric. & Mts. Law § 374(5)

57 *Montgomery County Soc. For Prevention of Cruelty to Animals v. Bennett-Blue*, (3 Dept. 1998) 255 A.D.2d 705, 681 N.Y.S.2d 106.

58 N.Y. Agric. & Mts. Law §371; §373

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