

**LOOKING FOR A GOOD HOME:
BALANCING INTERESTS IN THE DISPOSITION OF
IMPOUNDED ANIMALS TO OWNERS AND RESCUES**

Francesca Ortiz[†]

CONTENTS

INTRODUCTION	116
I. ANIMAL CONTROL REGULATION	119
A. <i>Licensing</i>	121
B. <i>Running at Large and Impoundment</i>	123
C. <i>Hold Period</i>	124
D. <i>Notification and Redemption</i>	126
E. <i>Disposition of Unclaimed Animals</i>	127
1. <i>Direct Adoption</i>	127
2. <i>Transfer</i>	128
II. OWNERSHIP OF UNCLAIMED ANIMALS	131
A. <i>Authority to Regulate</i>	133
B. <i>Constitutional Limitations</i>	138
C. <i>Termination of Title</i>	141
1. <i>Pound Seizure Laws</i>	141
2. <i>Transfer to Rescue or Private Shelter</i>	143
A. <i>Ruling for Adopter or Transferee</i>	144
(1) <i>Georgia</i>	144
(2) <i>Vermont</i>	146
(3) <i>Ohio</i>	147
B. <i>Ruling for Owner</i>	151
(1) <i>Alabama</i>	151
(2) <i>Washington</i>	155
(3) <i>Texas</i>	158
III. BENEFITS OF TITLE TRANSFER.....	165
IV. BALANCING INTERESTS	168
CONCLUSION.....	171

[†] Professor of Law, South Texas College of Law Houston. The author wishes to thank Edward Jaramillo for his diligent and able research assistance.

INTRODUCTION

Approximately sixty-five percent of all households in the United States own a pet,¹ with most households owning either a dog or a cat.² Yet many of these animals end up on the streets.³ Some escape or are released accidentally.⁴ Others are allowed to roam unattended or might intentionally be abandoned by their owners.⁵ And, once out on the street, beloved or not, these animals join the thousands upon thousands of other stray and feral dogs and cats⁶ that beset local jurisdictions across the nation.⁷

1. *Pet Industry Market Size & Ownership Statistics*, AM. PET PRODUCTS ASS'N, http://americanpetproducts.org/press_industrytrends.asp (last visited Oct. 26, 2016) (reporting 2015–2016 statistics generated from marketing research and from other sources within the pet industry). In 1988, only fifty-six percent of households owned a pet, resulting in a nine percent increase to 2015. *See id.*

2. *Id.* Of the U.S. households owning pets, 54.4 million households own a dog and 42.9 million own a cat. *Id.* Other household pets in the survey included birds, horses, freshwater and saltwater fish, reptiles, and small animals. *Id.*

3. *See Shelter Intake and Surrender: Pet Statistics*, AM. SOC'Y PREVENTION CRUELTY ANIMALS, <http://www.aspc.org/about-us/faq/pet-statistics> (last visited Oct. 26, 2016).

4. *Lost Dog Behavior*, MISSING PET PARTNERSHIP, <http://www.missingpetpartnership.org/recovery-tips/lost-dog-behavior/> (last visited Oct. 26, 2016).

5. STEPHEN ARONSON, ANIMAL CONTROL MANAGEMENT: A NEW LOOK AT A PUBLIC RESPONSIBILITY 277 (2010).

6. The total number of strays, of course, is uncertain, but the American Society for the Prevention of Cruelty to Animals suggests that the number of stray cats alone may run as high as seventy million. *See Shelter Intake and Surrender: Pet Statistics, supra* note 3.

7. Stray and feral animals are a problem for all jurisdictions, regardless of size. Exeter, Missouri, for example, has a human population of only 775 and has fewer strays than a larger city or town. 2015 Population Estimate for Exeter City, Missouri, U.S. CENSUS BUREAU, http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (search in search bar for “Exeter City, Missouri”; follow “Go” hyperlink; select “2015 Population Estimate (as of July 1, 2015)” dropdown under “Population”) (last visited Oct. 26, 2016). Unable to afford a public animal shelter, the city finds itself forced to hold its strays at the city’s wastewater treatment plant. The city also relies on a local animal rescue to take in excess strays and owner-relinquished animals. Lauren Pozen, *Animal Control Not an Option for Many Small Towns*, KSPR (Sept. 1, 2014), *reprinted in* ACCESS WORLD NEWS, <http://infoweb.newsbank.com/resources/doc/nb/news/1501566879A654D0?p=AWNB> (last visited Oct. 26, 2016). The City of Houston and its surrounding area, with a human population of over 2.2 million, finds itself grappling with a stray population ranging between 800,000 and 1.2 million. *See* 2015 Population Estimate for Houston City, Texas, U.S. CENSUS BUREAU, http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml# (search at starting point for “Houston City, Texas”; follow “Go” hyperlink; select “2015 Population Estimate (as of July 1, 2015)” dropdown under “Population”) (last visited Oct. 26, 2016); Nakia Cooper, *City Council Approves Major Initiative to Decrease Animal Overpopulation*, CLICK2HOUSTON (Mar. 4, 2015, 6:09 PM), <http://www.click2houston.com/news/city-council-approves-major-initiative-to-decrease-animal-overpopulation/31610090>.

To combat the health and safety problems posed by stray dogs and cat,⁸ local jurisdictions have created animal control programs designed to, among other things, reduce the number of animals that become strays, pick up those that are, reunite licensed or tagged animals with their owners, find homes for those animals for which no owner is known, and destroy unhealthy and dangerous animals.⁹ Sadly, because of a constant influx of animals to be impounded and a shortage of permanent homes to which animals might be adopted, overcrowded conditions at county and municipal shelters (“public shelters”)¹⁰ often result in destruction of healthy animals to make room for incoming animals.¹¹ A 1997 survey of 1000 shelters by the National Council on Pet Population Study and Policy is instructive.¹² Those shelters alone handled 4.3 million animals, with 64% (2.7 million) of the animals euthanized because of overcrowding, sickness, injury, or aggression.¹³ Further survey results showed that, at those shelters, 56% of dogs and 71% of cats were euthanized, 25% of dogs and 24% of cats were adopted, and only 15.8% of dogs and 2% of cats were reclaimed by their owners.¹⁴

Seeking to increase the number of animal lives saved, a greater number of public shelters rely on animal rescues and private shelters¹⁵ to take animals from the shelter to provide care and housing prior to adoption through those organizations.¹⁶ Although some public shelters

8. Safety and health risks posed by stray animals include spreading rabies and attacking residents. Cooper, *supra* note 7. Stray animals may also cause property damage. *Cf.* City of Akron *ex rel.* Christman-Resch v. City of Akron, 825 N.E.2d 189, 196 (Ohio Ct. App. 2005) (“Appellants [failed to] assert that free-roaming cats do not scratch cars, defecate in gardens, spray windows, and carry disease which may be spread to both humans and other animals.”).

9. See ARONSON, *supra* note 5, at 144–48 (discussing animal control shelter services); *cf.* JOAN E. SCHAFFNER, AN INTRODUCTION TO ANIMALS AND THE LAW 118 (2011) (“As implied by the title, the goal of these laws is to ‘control’ animals.”).

10. The term “public shelter” is used in this Article to indicate an open-admission shelter run by a state or local government and includes private shelters contracted by the state or local government to perform services on behalf of the government.

11. See *Fact Sheet: Animal Shelter Euthanasia*, AM. HUMANE, <http://www.americanhumane.org/animals/stop-animal-abuse/fact-sheets/animal-shelter-euthanasia.html> (last visited Oct. 26, 2016).

12. *Id.* Estimates at the time were that 3500 shelters were operating in the United States, but only 1000 shelters responded to the survey. *Id.*

13. *Id.*

14. *Id.*

15. The term “private shelters” as used in this Article refers to privately owned and operated shelters that have not been contracted to provide animal control or shelter services on behalf of a local government. The term does include, however, shelters that have agreements to receive transferred animals from the public shelter for later adoption through the private shelter.

16. ARONSON, *supra* note 5, at 197. Some shelters are attempting to save even more lives

will not adopt out unhealthy animals to members of the general public, most will transfer them to rescue organizations or private shelters that will, at their own expense, provide more specialized veterinary care or behavioral training to the animals prior to adoption.¹⁷ Adoptions and transfers to rescues and private shelters generally do not occur until after the animal has been held by the public shelter for a minimum period of time (“hold period” or “redemption period”) because that period is reserved for redemption by the owner.¹⁸

The problem arises when a prior owner¹⁹ asserts a claim to an animal after a hold period has expired and the animal has already been placed by direct adoption with a member of the public or transferred to a rescue or private shelter.²⁰ In those cases, the claim is disruptive, often occurring after an adopter has bonded with the animal or after the rescue has expended money for care and treatment.²¹ It subjects the adopter or transferee to costs of litigation in defending a claim to the animal and makes the public shelter’s management of stray animals less efficient.²² Yet the previous owner may have a strong emotional or pecuniary basis for making the claim, especially in situations involving a long-time family pet or an animal used for breeding purposes.²³ Those courts that

by following the “No Kill Equation,” which is “an innovative, cost-effective model of animal sheltering that allows open admission animal control shelters to save all healthy and treatable animals.” Nathan Winograd, *No Kill Quick Facts*, NATHAN J. WINOGRAD, <http://www.nathanwinograd.com/?p=11718> (last visited Oct. 26, 2016). For more information on the No Kill Equation, see NO KILL ADVOCACY CENTER, NO KILL 101: A PRIMER ON NO KILL ANIMAL CONTROL SHELTERING FOR PUBLIC OFFICIALS, http://www.nokilladvocacycenter.org/uploads/4/8/6/2/48624081/no_kill_101.pdf (last visited Oct. 26, 2016).

17. See ARONSON, *supra* note 5, at 199 (discussing why government shelters partner with private rescue groups); *id.* at 277 (“Some local ordinances prohibit offering an impounded animal for adoption if it is temperamentally unsuitable or for health reasons.”).

18. See *infra* Section I.C.

19. This Article uses the terms “owner” and, at times, “pet” to emphasize the current legal structure on which its discussion is based. It is worth noting, however, the growing trend to use the terms “guardian” and “animal companion” to show society’s changing view of the human-animal relationship. See, e.g., R.I. GEN. LAWS § 4-13-1.2(10) (1998 & Supp. 2015) (“‘Guardian’ means a person(s) having the same rights and responsibilities as an owner or keeper, and the terms may be used interchangeably. A guardian shall also mean a person who possesses, has title to or an interest in, harbors or has control, custody or possession of an animal and who is responsible for an animal’s safety and well-being.”); S.F., CAL., HEALTH CODE § 41 (2016) (“‘Guardian’ shall mean owner, and both terms shall be used interchangeably”); BOULDER, COLO., MUNICIPAL CODE § 6-1-2 (2010) (defining “guardian” as “owner”).

20. See *infra* Part IV.

21. See *infra* Part IV.

22. See *infra* Part IV.

23. See *infra* Part IV.

have been called upon to determine which party has the ownership right²⁴ generally acknowledge that a local government has the power to terminate an owner's right to an animal after the hold period has expired so long as the public shelter followed the procedure set out by local legislation.²⁵ The cases, though, have not been consistent as to application of the rule, with some courts strictly terminating an owner's rights and other courts finding reasons to return an animal to the owner on other grounds.²⁶

This Article explores the scope of governmental authority to interfere with or terminate the property rights of pet owners in the interest of efficiency and effectiveness. Part I sets out the regulatory framework for local animal control programs, describing the process for handling and disposing of stray animals and the provisions designed to help reunite owners with their pets. Part II then turns to the issue of post-redemption ownership, discussing the recognized reach of the law and its limitations as well as the cases that have contemplated termination of an owner's rights to a pet. Part III explores the policy reasons that support a clear demarcation of when ownership of an unclaimed, impounded animal should be established in the government, making possible a clear transfer of title from a public shelter to an adopter or transferee, and Part IV suggests means by which a local government might increase the possibility of reuniting an owner with a pet within the appropriate timeframe to avoid the conflicts created by late-redeeming owners.

I. ANIMAL CONTROL REGULATION

Regulation of animals traditionally falls within the province of the states, and through the states, local governments, so long as the regulation is not in conflict with superior law.²⁷ The authority to regulate is based

24. Pets, like other domesticated and captured wild animals, are considered personal property. *See generally* SCHAFFNER, *supra* note 9, at 19–21 (“[O]wnership of an animal means that the owner has (1) the right to possess, use, transfer, dispose of, and exclude others from taking the animal, and (2) the obligation to the animal, if defined by law, such as the duty to provide adequate food, water and shelter.”); *see also* Eric W. Neilsen, *Is the Law of Acquisition of Property by Find Going to the Dogs?*, 15 T.M. COOLEY L. REV. 479, 487 & n.82 (1998) (collecting cases where courts began recognizing the property nature of animals beginning in the late nineteenth century).

25. *See infra* Section II.C.2.

26. *See infra* Section II.C.2.

27. *See, e.g.*, Bd. of Supervisors v. Valadco, 504 N.W.2d 267, 271 (Minn. Ct. App. 1993) (“Although municipalities have the power to regulate in the interest of public health, safety, and welfare, a township cannot invoke ‘police power’ to accomplish what is otherwise preempted by state statute.”); *see also* Cal. Veterinary Med. Ass’n v. City of W. Hollywood, 61 Cal. Rptr. 3d. 318, 326–38 (Cal. Ct. App. 2007) (discussing preemption and holding that

on the state's police power, and that authority extends to regulation of all types of animals—wild,²⁸ agricultural,²⁹ and companion.³⁰ Thus, for example, animal control provisions that limit or prohibit ownership of exotic or wild animals or livestock,³¹ or that “regulat[e] the ownership, possession and control of dogs, are a proper exercise of a municipality's police power if they are designed to secure the safety, health and welfare of the public.”³²

Local animal control programs are geared toward just that: providing for public health and safety and code enforcement functions.³³ For example, typical animal control programs include leash and enclosure provisions, vaccination and licensing requirements, dangerous animal collection, nuisance prevention, and enforcement measures.³⁴ Animal control applies to all types of animals,³⁵ but impoundment provisions are used most often for the collection of dogs and cats running at large or that pose a threat to health and safety.³⁶

To better understand ownership rights in impounded animals that are established and/or terminated by local animal control programs, an

an ordinance prohibiting the declawing of cats is not preempted by state law regulating veterinarians).

28. See *Hughes v. State*, 572 P.2d 573, 575 (Okla. Crim. App. 1977) (“[P]rotection of the wildlife of a state is peculiarly within the police power of the state, and the state has great latitude in determining what means are appropriate for its protection.”), *rev'd*, 441 U.S. 322, 325 (1979) (citing *Lacoste v. Dep't of Conservation*, 263 U.S. 545, 551 (1924)).

29. See *Boyle Cty. Stockyards Co. v. Ky. Dep't of Agric.*, 570 S.W.2d 650, 653–54 (Ky. Ct. App. 1978) (upholding state regulation requiring brucellosis testing of cattle).

30. See *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 706 (1897).

31. See, e.g., *Town of Atlanta Beach v. Young*, 298 S.E.2d 686, 689, 691–92 (N.C. 1983) (upholding an ordinance that prohibited the keeping of “livestock, animals, or poultry” other than house pets within town limits); *Peoples Program for Endangered Species v. Sexton*, 476 S.E.2d 477, 479, 481 (S.C. 1996) (upholding an ordinance prohibiting wild animals within town limits); *Rhoades v. City of Battle Ground*, 63 P.3d 142, 145, 149 (Wash. Ct. App. 2002) (affirming a grant of summary judgment on violation of ordinance excluding exotic animals from city).

32. *Leibowitz v. City of Mineola*, 660 F. Supp. 2d 775, 784 (E.D. Tex. 2009) (citing *Vargas v. City of San Antonio*, 650 S.W.2d 177, 179 (Tex. App. 1983)).

33. See ARONSON, *supra* note 5, at 12–17.

34. See *id.* at 7, 15–17, 271–72. Nuisances include barking dogs, free-roaming cats and dogs, and the accumulation of animal waste. See *id.* at 15.

35. See generally Laurell E. Taylor, *Training of Animal Control Officers*, MD. BAR J., Sept./Oct. 2007, at 44, 46 (“[M]any of the laws pertaining to domestic and (in some cases) wild animals are enforced . . . by animal control officers.”).

36. Cf. Phyllis Coleman et al., *It's Raining Cats and Dogs . . . Government Lawyers Take Note: Differential Licensing Laws Generate Revenue, Reduce Costs, Protect Citizens, and Save Lives*, 40 STETSON L. REV. 393, 400 (2011) (discussing pet overpopulation); *id.* at 401–02 (“Approximately six to eight million dogs and cats enter shelters annually.”).

overview of modern regulation of animals at large is necessary. This section sets out the basic scheme for animal control as it relates to at-large (i.e., roaming) dogs³⁷ and includes a general overview of rescues and private shelters and their working relationship with public shelters.

A. Licensing

Most animal control programs are based on a licensing system for dogs that are over a certain age, generally three to six months old.³⁸ Under a licensing program, a resident of a city or county must license his or her dog with the appropriate governmental authority. Licensing requires proof of a rabies vaccination as required by state law³⁹ (reflecting the roots of the licensing system in public health and safety),⁴⁰ submission of contact information of the owner, and, for many jurisdictions, payment of a fee that may vary depending on whether the animal has been spayed or neutered.⁴¹ Once licensed, an owner receives a tag that must be placed on the dog's collar along with the dog's rabies tag.⁴² The tag contains an identification number on it that allows animal control to link the dog to the owner using its database.⁴³ Renewal is on an annual basis, requiring the same proof of vaccination, updated confirmation, and payment of a fee.⁴⁴

Licensing programs serve several functions. First, they promote public health, safety, and welfare by ensuring that dogs—at least those

37. Regulation of cats may differ from dogs in important ways, such as provisions for shorter holding times, the authorization of maintained feral cat colonies, and even the complete exemption from leash laws and prohibitions from running at large. *See* SCHAFFNER, *supra* note 9, at 119–20; *see also* CAL. FOOD & AGRIC. CODE § 31752(a) (West 2001 & Supp. 2015); *id.* § 31752.5(c) (West 2001) (requiring only a three-day hold period for “truly feral” cats prior to euthanasia, whereas “tame” cats receive a minimum of six days for same).

38. *See* ARONSON, *supra* note 5, at 101–02.

39. *See* CHARLES K. COE, HANDBOOK OF URBAN SERVICES: A BASIC GUIDE FOR LOCAL GOVERNMENTS 74 (2009). All states require that owners vaccinate their dogs for rabies. *See* ARONSON, *supra* note 5, at 273.

40. *See* ARONSON, *supra* note 5, at 16. Rabies vaccination may be required for other animals as well, such as ferrets and dog-wolf hybrids. *Id.* at 273.

41. In those jurisdictions that impose a fee based on whether the animal has been altered, a higher fee is charged to those owners who have not spayed or neutered their pets. *See id.* at 104. Many jurisdictions also provide for discounted fees for senior citizens. *See id.* at 103.

42. *Fact Sheet: Identification Tags & Microchips*, AM. HUMANE, <http://www.americanhumane.org/fact-sheet/identification-tags-microchips/> (last updated Aug. 25, 2016).

43. *Cf.* COE, *supra* note 39, at 74 (stating that identification is placed on tag).

44. *See, e.g.,* McCall v. Parish of Jefferson, 178 So. 3d 174, 175 & n.2 (La. Ct. App. 2015) (citing JEFFERSON PARISH, LA., CODE OF ORDINANCES § 7-66 (2016)).

that are licensed—receive their rabies vaccinations.⁴⁵ Second, they serve as a source of revenue that helps fund the jurisdiction’s licensing program and other aspects of animal control, such as impoundment or spaying and neutering.⁴⁶ Third, licensing programs function as an identification system, matching stray animals with their owners.⁴⁷ Such identification is important not only for returning stray animals to their owners, but also for meeting due process requirements of notice prior to forfeiture or destruction of the animals.⁴⁸ Identification may also be used to establish potentially liable parties in the event an animal causes physical harm or property damage to others.⁴⁹

The problem with dog licensing programs is that they rely on self-reporting of ownership, so large numbers of owned dogs escape the system.⁵⁰ Lack of licensing might be intentional by the owner,⁵¹ but is more often due to a lack of knowledge about licensing or renewal requirements.⁵² Despite the cost, licensing is worthwhile for an owner because of the link it creates between owner and animal.⁵³ Should an owner’s dog get loose and be picked up by animal control, the dog can be traced back to the owner through the dog’s license, and the owner can be notified of the dog’s location for redemption.⁵⁴ In many cases, animal control regulations make distinctions between licensed and unlicensed animals, and those that have licenses often receive a longer hold period

45. See *State v. Clarke*, 396 A.2d 228, 232 (Me. 1979).

46. See ARONSON, *supra* note 5, at 101 (noting that larger cities may find substantial revenue in licensing the large numbers of animals owned within the jurisdiction). Licensing fees have been upheld under both federal and state constitutions. See, e.g., *Nicchia v. New York*, 254 U.S. 228, 231 (1920) (discussing use of police powers for animal control purposes) (citing *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 706 (1897)); *City of Carthage v. Rhoads*, 14 S.W. 181, 1 (Mo. 1890) (discussing “dog-license tax”); *McQueen v. Kittitas County*, 198 P. 394, 395–96 (Wash. 1921).

47. See *Fact Sheet: Identification Tags & Microchips*, *supra* note 42.

48. See *infra* notes 161–88 and accompanying text.

49. Cf. *Ponder v. State*, 212 S.W. 417, 419 (Tenn. 1919) (“Such [a licensing] requirement will enable the owner of sheep or other property damaged by such dog, if the dog should be killed or captured, to discover the owner of the dog, who may be held liable for damages for the injury done by him.”).

50. See ARONSON, *supra* note 5, at 101.

51. See *id.* at 102.

52. See Amy Sacks, *\$120 Fine If Dog Is Caught Without City License Tag on Collar*, N.Y. DAILY NEWS (Aug. 29, 2009, 1:29 AM), <http://www.nydailynews.com/life-style/120-fine-dog-caught-city-license-tag-collar-article-1.394882> (noting some owners’ confusion in licensing requirements).

53. See *id.*

54. See Rebecca F. Wisch, *Detailed Discussion of State Dog Impound Laws*, ANIMAL LEGAL & HIST. CTR. (2003), <https://www.animallaw.info/article/detailed-discussion-state-dog-impound-laws#id-5>.

than those whose owners are unknown.⁵⁵

B. Running at Large and Impoundment

In addition to a licensing requirement, dog and cat owners have additional obligations under animal control programs. Chief among those is maintaining control of their animals. Many ordinances provide that dogs, and sometimes cats, must be leashed when they are not in an enclosed area, such as a house or fenced yard.⁵⁶ Such “leash laws” go toward protecting public health and safety by preventing animals from running loose, individually or in groups, and causing harm to people, property, or other animals.⁵⁷

Once a stray has been picked up, the animal is impounded for a period of time designated by statute or ordinance, unless there is an immediate need for the animal’s destruction because the animal is ill, has an infectious disease, or is in pain and suffering.⁵⁸ Animals that are impounded by a county or municipality go to an open admission,⁵⁹ government-funded public shelter or to a private shelter authorized to operate on behalf of the local government.⁶⁰ Strays may also be picked up by private individuals and dropped off at the shelter for impoundment, and owners may bring in their own pets for impoundment or destruction.⁶¹ While in the shelter, dogs are provided food, water, and

55. *See id.*

56. *See* ARONSON, *supra* note 5, at 279.

57. *See* Endresen v. Allen, 574 P.2d 1219, 1224 (Wyo. 1978).

58. *See* Jane McBride, *Legal Issues for Shelters*, in SHELTER MEDICINE FOR VETERINARIANS AND STAFF 59, 63–64 (Lila Miller & Stephen Zawistowski eds., 2d ed. 2013) [hereinafter SHELTER MEDICINE] (discussing hold period); Martha Smith-Blackmore, *Euthanasia*, in SHELTER MEDICINE, *supra*, at 470 (“In shelters, euthanasia sometimes must be considered for stray animals to end suffering that cannot otherwise be alleviated, even though the owner cannot be found and the shelter does not yet have legal possession of the animal.”).

59. The term “open admission” refers to the obligation of a shelter to take any animal that is brought to its doors. Rebecca J. Huss, *Rescue Me: Legislating Cooperation Between Animal Control Authorities and Rescue Organizations*, 39 CONN. L. REV. 2059, 2072 (2007).

60. *See* McBride, *supra* note 58, at 63; *see also* DAVID FLAGLER, AM. HUMANE ASS’N, OPERATIONAL GUIDE: RECOMMENDATIONS FOR CITY/COUNTY ANIMAL CONTROL CONTRACTS 4 (2010), <http://www.americanhumane.org/app/uploads/2016/08/op-guide-citycounty-contracts.pdf> (“The city/county may ask the humane agency to assume all or only part of the animal control program. There are three common variations: 1. The humane association assumes all of the duties of animal control. 2. The humane association assumes all of the duties, with the exception of the licensing program. 3. The humane organization takes responsibility for housing the animals, and the city/count[y] maintains the remainder of the program.”).

61. *Surrender Your Pet*, PANHANDLE ANIMAL SHELTER, <http://pasidaho.org/relinquishing/> (last visited Oct. 26, 2016).

shelter, but veterinary care is generally limited and geared only toward first aid measures, such as stabilizing an animal's condition and pain management.⁶²

C. Hold Period

All animal control ordinances provide for a hold period after a stray is picked up and impounded.⁶³ Hold periods are established either by the state or local government under the police power.⁶⁴ Minimum hold periods vary by jurisdiction and are meant to provide an owner time to find a pet before the animal is destroyed or otherwise disposed of by the shelter.⁶⁵ How long an animal is held prior to disposition often depends on how the animal came to be impounded, with longer periods applying to animals with some kind of owner identification (e.g., collar tags or microchip).⁶⁶

The length of the hold period is critical because it generally limits an owner's automatic right to return of the animal upon proof of ownership and payment of all fees.⁶⁷ The hold period also serves to meet constitutional due process requirements.⁶⁸ Because animals are property, an owner of an impounded animal is entitled to minimum standards of due process, which includes the provision of notice and time during which an owner can reclaim the animal.⁶⁹ Hold periods range from as little as seventy-two hours to as much as ten days or more,⁷⁰ but generally fall between five and seven days.⁷¹ The length of the period depends on a variety of factors, including the cost of housing, the money available, the need for space, and the rate of intake.⁷²

62. See McBride, *supra* note 58, at 64; see also DIV. OF ANIMAL INDUS., N.Y. STATE DEP'T OF AGRIC. & MKTS., DOG CONTROL OFFICER & MUNICIPAL SHELTER GUIDE 5 (2014) [hereinafter N.Y. DOG CONTROL GUIDE], http://www.agriculture.ny.gov/AI/small_animals/DCO_Shelter_Guide.pdf (describing when basic veterinary care is needed).

63. See McBride, *supra* note 58, at 63.

64. See *infra* Section II.A (discussing local government authority under the police power).

65. See generally Wisch, *supra* note 54 (comparing the statutory notice requirements and hold periods in various states).

66. See *id.* (comparing hold periods for dogs with and without identification).

67. See *id.* (describing fees associated with reclaiming impounded dogs).

68. *Id.*

69. See *infra* Section II.B.

70. Compare HOUS., TEX., CODE OF ORDINANCES § 6-102(c) (2016) (requiring hold period of seventy-two hours for unidentified dogs), with BRUNSWICK, ME., CODE § 4-32 (2016) (requiring hold period of ten days for all impounded dogs).

71. See Wisch, *supra* note 54.

72. Cf. CITYGATE ASSOCIATES, LLC, STUDY FOR THE ANIMAL SERVICES PROGRAM FOR

Once an animal arrives at a shelter, the animal is processed by an employee or volunteer.⁷³ Intake generally begins with the assignment of a unique identification number to each incoming animal.⁷⁴ The number is placed on all documentation relating to the animal and noted on a card placed on the animal's cage or kennel.⁷⁵ The employee will note particulars about the animal, including breed, sex, and a physical description, and will identify the means of arrival at the shelter, whether relinquished by the owner or as a stray picked up by animal control or an individual.⁷⁶ If an owner relinquishes a pet, the owner must sign a form that identifies the person as the owner and transfers title to the shelter.⁷⁷ Animals turned in by their owner generally are not subject to the hold period prior to disposition by the shelter.⁷⁸

At intake, stray animals are searched for collar tags, microchips, and tattoos that may lead to identification of the owner.⁷⁹ A medical evaluation is also conducted and any available vaccination information from license or veterinary tags is noted.⁸⁰ During the animal's stay at the shelter, animal shelter employees will also make a behavioral evaluation to determine the adoptability of the animal should the owner, if there is

THE CITY OF ANTIOCH, CA: FINAL REPORT (2009), <http://www.ci.antioch.ca.us/Community/studies/Antioch-Animal-Services-Study.pdf> (discussing considerations in an animal holding policy).

73. *Examine Animals at Intake*, AM. SOC'Y PREVENTION CRUELTY ANIMALS PROF., <http://aspcapro.org/resource/shelter-health-animal-care-intake/examine-animals-intake> (last visited Oct. 26, 2016).

74. AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS PROF'L, SHELTER CARE CHECKLISTS: PUTTING ASV GUIDELINES INTO ACTION 9, <http://aspcapro.org/sites/default/files/aspcapro-asv-checklist-2014.pdf>.

75. *See id.* at 4.

76. *Id.* at 4, 18.

77. *See, e.g.*, NICHOLAS CTY. ANIMAL CONTROL, NICHOLAS CTY. FISCAL COURT, POLICIES, PROCEDURES AND OPERATIONS MANUAL FOR NICHOLAS COUNTY ANIMAL CONTROL 4 (Sept. 21, 2012) [hereinafter NICHOLAS COUNTY PROCEDURES MANUAL], <http://nicholascounty.ky.gov/FiscalCourt/Documents/120921-Animal%20Control%20Manual.pdf>; *see also* AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, ANIMAL SURRENDER FORM, http://www.aspcapro.org/sites/default/files/surrender_form_aspcapro_0.pdf (sample form).

78. *See* Taimie Bryant, *Hayden Law Update*, MADDIE'S FUND, <http://www.maddiesfund.org/hayden-law-update.htm> (last visited Oct. 26, 2016) (discussing conflict over owner-surrender provisions and immediate euthanasia without possibility of adoption).

79. *See, e.g.*, NICHOLAS COUNTY PROCEDURES MANUAL, *supra* note 77, at 6.

80. *See id.* at 6–7. Because of the population of animals within the shelter, medical evaluations include a search for signs of infectious diseases, parasites and pain and suffering. *See Examine Animals at Intake*, *supra* note 73. Vaccinations and parasite control are administered as soon as possible, but non-critical care is generally delayed until after the hold period when it can be financed by an adopter, rescue, or private shelter. *See* McBride, *supra* note 58, at 64.

one, fail to redeem the animal.⁸¹

D. Notification and Redemption

After intake, any identifying information found on a stray is used to try to contact the owner. Depending on the statute or ordinance, notification may be by telephone, mail or hand delivery.⁸² Notification must include both the location of the animal and the date by which the owner must reclaim the animal.⁸³ Because of this contact, owners whose animals have identification have a greater likelihood of recovering their animals than owners of animals without identification.⁸⁴

In addition, information about impounded animals is posted in public places as designated by law⁸⁵ and is now often posted on shelter websites and regional or national websites like *PetHarbor* or *Petfinder*.⁸⁶ Some pet-finder search engines allow for concurrent searches of all area shelters and even some local rescues, which increase an owner's probability of finding a lost animal.⁸⁷ Because of the limited hold period, public shelters must also maintain reasonable hours during which an owner can visit the shelter and search for lost pets.⁸⁸ Actual hold-times for any particular animal may vary depending on which day the animal arrived at the shelter.⁸⁹ For those animals whose hold period falls on days that the shelter is closed, the hold period may be extended to cover that unavailable period.⁹⁰

Owners have, at a minimum, until the end of the hold period to

81. See *Behavior Assessment of Shelter Animals*, MADDIE'S SHELTER MED. PROGRAM CORNELL, <http://www.sheltermedicine.vet.cornell.edu/Resources/Assessment.cfm> (last visited Oct. 26, 2016).

82. See, e.g., HOUS., TEX., CODE OF ORDINANCES § 6-102(b) (2016).

83. See, e.g., N.Y. DOG CONTROL GUIDE, *supra* note 62, at 3.

84. Arden Moore, *What Are the Chances of Finding My Lost Pet? ASPCA Survey Has the Answers*, VETSTREET (July 9, 2012), <http://www.vetstreet.com/our-pet-experts/what-are-the-chances-of-finding-my-lost-pet-aspca-survey-has-the-answers>.

85. See, e.g., *Lamare v. N. Cty. Animal League*, 743 A.2d 598, 599 (Vt. 1999) (discussing notification provision in dog control ordinance for Town of Wolcott, Vermont).

86. PETHARBOR, <http://www.petharbor.com> (last visited Oct. 26, 2016); PETFINDER, <https://www.petfinder.com/> (last visited Oct. 26, 2016); see also ARONSON, *supra* note 5, at 243 (discussing the relationship between *Petfinder* and local animal controls).

87. Cf. Huss, *supra* note 59, at 2071–72 (“Perhaps the most significant innovation is the development of the Internet and the ability of people to search for animals online.”).

88. *Position Statement on Responsibilities of Animal Shelters*, AM. SOC'Y PREVENTION CRUELTY ANIMALS, <http://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-responsibilities-animal-shelters> (last visited Oct. 26, 2016).

89. See, e.g., N.Y. DOG CONTROL GUIDE, *supra* note 62, at 3.

90. *Id.*

redeem their animals from public shelters, although some legislative provisions may allow a secondary redemption of the animal from an adopter.⁹¹ Usually secondary redemption provisions limit the time for redemption (e.g., thirty days from the date of adoption) and require the owner to pay double the costs and fees to the adopter for maintaining the animal.⁹² After the secondary redemption period ends, if the animal still remains unclaimed, then the adopter takes title to the animal.⁹³

To reclaim an animal, an owner must provide proof of ownership and pay all impoundment costs and fees, which may include a fee that escalates upon each subsequent impoundment and costs of boarding, feeding, and veterinary care.⁹⁴ Some jurisdictions may also require unlicensed animals to be licensed, spayed or neutered, and microchipped prior to release.⁹⁵ Once the owner makes payment, the animal will be released into the owner's custody.⁹⁶ Some ordinances also prohibit an owner from adopting his or her impounded animal as a way to avoid paying accrued fees by limiting owners to use of the redemption procedures for reclaiming a pet.⁹⁷

E. Disposition of Unclaimed Animals

Those animals that are not reclaimed by an owner by the end of the hold period are then subject to the disposition procedures provided in the animal control ordinance.⁹⁸ Generally, there are three ways that shelters dispose of animals: through direct adoption from the shelter, transfer to an animal rescue or private shelter, or by destruction.⁹⁹

1. Direct Adoption

Public shelters usually have the option of adopting out unclaimed

91. See, e.g., WHITE OAK, TEX., CODE OF ORDINANCES § 10-72(h), (k) (2016) (establishing a hold period of seventy-two hours, after which the animal can be euthanized or adopted); see also *id.* § 10-75 (providing for a thirty-day secondary redemption period from the adopter).

92. See, e.g., WHITE OAK, TEX., CODE OF ORDINANCES § 10-75.

93. See, e.g., *id.* § 10-75(2).

94. See, e.g., HOUS., TEX., CODE OF ORDINANCES § 6-137(a)(1), (4), (6) (2016) (proof of ownership might include vaccination or licensing certificates, veterinary records and photographs); *id.* § 6-137(b) (setting out fee schedule).

95. See, e.g., *id.* § 6-137 (b)(2), (h).

96. See, e.g., *id.* § 6-137(b).

97. See, e.g., *id.* § 6-137(e).

98. See, e.g., HOUS., TEX., CODE OF ORDINANCES § 6-138; WHITE OAK, TEX., CODE OF ORDINANCES § 10-78.

99. See, e.g., HOUS., TEX., CODE OF ORDINANCES § 6-138; WHITE OAK, TEX., CODE OF ORDINANCES § 10-78.

and owner-relinquished animals directly to the public.¹⁰⁰ The adoption is technically a sale of the animal,¹⁰¹ and the transfer of ownership of the animal is completed upon the signing of an adoption contract and payment of an adoption fee.¹⁰² Adoption contracts typically contain provisions that commit the adopter to providing food, shelter, and veterinary care for the animal, prohibit transfer of the animal without prior consultation with or approval by the shelter, allow the shelter to take back the animal if the contract is breached, and limit the liability of the shelter for harm caused by the animal.¹⁰³

2. Transfer

A public shelter might also meet its disposition obligation by transferring the animal to a private shelter or rescue.¹⁰⁴ Private shelters are similar to public shelters in that they generally keep their animals in a main facility for housing, but are not necessarily open admission and can reserve their limited space to animals of their choice.¹⁰⁵ Private shelters are generally non-profit organizations that rely on donations or

100. HOUS., TEX., CODE OF ORDINANCES § 6-138(3).

101. See, e.g., *id.* § 6-1(b) (“Adoption means the sale of an animal that is owned by and in the custody of [the Bureau of Animal Regulation and Care] to a member of the general public in exchange for cash or other financial consideration.”).

102. See *Frank v. Animal Haven, Inc.*, 967 N.Y.S.2d 370, 371 (App. Div. 2013). In those jurisdictions with a secondary redemption period, ownership is conditional until the redemption period has passed. See *supra* text accompanying note 91.

103. See, e.g., 1 NICHOLS CYCLOPEDIA OF LEGAL FORMS ANNOTATED § 16:87.15 paras. (3)(a), (4), (5)(b), (7) (Supp. 2015); TWP. OF EDISON ANIMAL SHELTER, EDISON MUNICIPAL ANIMAL SHELTER ADOPTION CONTRACT paras. 1–4, 8–10, http://www.edisonnj.org/town_hall/administrative_departments/animal_shelter/forms/docs/EMAS_Dog_and_Cat_Adoption_Contract.pdf. Adoption contracts that contain repossession clauses potentially create liability for the facility that adopted out the animal because of its remaining interest in the animal. See, e.g., Nancy E. Halpern, *Concerns About “Contracts” for Pet Adoption*, FOX ROTHSCHILD LLP (Aug. 1, 2013), <https://animallaw.foxrothschild.com/2013/08/01/change-of-ownership-upon-adoption-of-pets/>. At least one court, however, has found that such a clause imposes no remaining liability on the facility. See *Frank*, 967 N.Y.S.2d at 371 (“Although Animal Haven reserved the right to have the dog returned if Skimbirauskas breached the contract’s provisions, the purpose of doing so was clearly to protect the well-being of the dog, not to reserve ownership. Indeed, the contract provides that Skimbirauskas explicitly release[s] Animal Haven from all liability once the animal is in [his] possession, and that the adoption of this pet is at [his] own risk and that the destruction of any personal or private property is [his] responsibility.” (alterations in original)).

104. See, e.g., HOUS., TEX., CODE OF ORDINANCES § 6-138.

105. See Kristen Pariser, *Detailed Discussion of the Laws Regulating Rescue and Foster Care Programs for Companion Animals*, ANIMAL LEGAL & HIST. CTR. (2014), <https://www.animallaw.info/article/detailed-discussion-laws-regulating-rescue-and-foster-care-programs-companion-animals#id-4>. The term “open admission” refers to the obligation of a municipal shelter to take any animal that is brought to its doors. *Id.*

grants to operate and are often run by a humane society or the American Society for the Prevention of Cruelty to Animals.¹⁰⁶ They are subject to minimum standards set out by statutes or ordinances.¹⁰⁷

Animal rescues operate at a smaller scale than shelters, but provide similar services.¹⁰⁸ Types of animal rescues vary, but they generally focus on a particular type of animal or a specific breed.¹⁰⁹ They operate by virtue of private fundraising and adoption fees, so funds tend to be limited, especially for smaller rescues.¹¹⁰ Although they may have a central location for housing, rescues tend to use fosters who take the animals into their homes and often feed the animals at their own expense.¹¹¹

Transfer to a rescue might occur in two ways. First, the rescue may send representatives to a public shelter, or even a private shelter, to look for animals that meet the criteria on which the rescue is based (e.g., seeking impounded animals of a certain breed).¹¹² Second, a governmental or private shelter might contact a rescue directly and ask the rescue to take a specific animal scheduled to be euthanized because the animal is ill or injured or has behavioral problems or to make space for other animals.¹¹³

106. *Id.*

107. *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. § 823.003 (West 2015) (establishing standards for all animal shelters in Texas); *see also* AIMEE N. WALL, A NORTH CAROLINA GUIDE TO ANIMAL CONTROL LAW 105–10 (2008), <https://www.sog.unc.edu/resources/microsites/animal-control-law/north-carolina-guide-animal-control-law> (follow “Chapter 7: Regulation of Animal Shelters, Kennels, and Other Operations” hyperlink) (discussing the North Carolina Animal Welfare Act, which regulates animal shelters, kennels, pet shops, public auctions, and dealers of animals).

108. Lila Miller, *Animal Sheltering in the United States: Yesterday, Today, and Tomorrow*, DVM360.COM, <http://veterinarymedicine.dvm360.com/animal-sheltering-united-states-yesterday-today-and-tomorrow?id=&sk=&date=&pageID=2> (last visited Oct. 26, 2016).

109. *Id.*

110. Eleanor Duse, *How Animal Rescue Organizations Work*, HOW STUFF WORKS: MONEY, <http://money.howstuffworks.com/economics/volunteer/organizations/animal-rescue-organizations2.htm> (last visited Oct. 26, 2016).

111. *See* Pariser, *supra* note 105.

112. Lisa L. Colangelo, *Rescuing the Rescuers? Help Groups Pull Unwanted Animals from Shelters*, N.Y. DAILY NEWS (May 23, 2011, 12:19 PM), <http://www.nydailynews.com/new-york/queens/rescuing-rescuers-groups-pull-unwanted-animals-shelters-article-1.146218> (discussing potential legislation that would aid rescue groups in pulling animals from shelters and noting shelter concerns regarding same).

113. *See* Dana Salkoski, *Animal Shelters and Rescues Partnering to Save Pets*, BEST FRIENDS ANIMAL SOC’Y, <http://bestfriends.org/resources/animal-shelters-and-rescues-partnering-save-pets#top> (last visited Oct. 26, 2016) (discussing shelter-rescue relationships and providing a sample plea letter).

Upon transfer,¹¹⁴ the private shelter or rescue then invests funds to increase the animal's adoptability by providing the animal with further medical care, sterilization, training, and socialization or other behavior modification, as needed.¹¹⁵ When the private shelter or rescue deems the animal adoptable, the group will expend efforts to find the animal a permanent home by advertising and taking the animal to local adoption events.¹¹⁶ Once an adopter is found, adoption from private shelters and rescues work similarly to public shelters and include adoption contracts with similar limiting provisions that pass ownership to the adopter.¹¹⁷

3. Destruction

The final option for disposition of an animal is by destruction, meaning that the public shelter euthanizes the animal.¹¹⁸ Although destruction tended to be the preferred method of disposition in the past,¹¹⁹ and may still be the most common cause of death for unwanted animals now,¹²⁰ animal shelters have increased efforts at live release (adoption, transfer, and owner redemption).¹²¹ Indeed, some jurisdictions have made

114. The shelter may require payment of a transfer fee by the rescue, although some shelters waive the fee to encourage more transfers. See Sarah Fearing, *King William Animal Shelter Waives Transfer Fee*, DAILY PRESS (Dec. 22, 2015, 11:14 AM), <http://www.dailypress.com/tidewater-review/news/va-tr-animal-shelter-waives-fee-1223-20151222-story.html>.

115. Cf. Duse, *supra* note 110 (describing rescue assistance to animals).

116. Cf. *Position Statement on Responsibilities of Animal Shelters*, *supra* note 88 (describing best practices for shelters to ensure placement of as many animals in their custody as possible).

117. Cf. *The Adoption Process*, ROVER RESCUE, <http://www.roverrescue.com/process.php> (last visited Oct. 26, 2016) (describing the adoption process and including links to a rescue adoption application and contract).

118. Cf. *BLM Advisory Board Recommends Euthanasia for 45,000 Wild Horses*, HUMANE SOC'Y U.S. (Sept. 9, 2016), http://www.humanesociety.org/news/press_releases/2016/09/blm-recommendation-090916.html?referrer=https://www.google.com/ (using "euthanize" and "destruction" interchangeably).

119. See Miller, *supra* note 108. In many jurisdictions methods of euthanasia have also improved, with some states banning outdated methods such as fear-inducing gas chambers and replacing them with lethal sodium pentobarbital injections. See Sara A. Wiswall, *Animal Euthanasia and Duties Owed to Animals*, 30 MCGEORGE L. REV. 801, 803–05 (1999) (discussing the arguments for and against the use of gas chambers); *Bringing an End to Inhumane Euthanasia*, HUMANE SOC'Y U.S., <http://www.humanesociety.org/animals/resources/facts/end-inhumane-gas-chambers.html> (select "Gas Chambers Current Landscape" to enlarge) (last visited Oct. 26, 2016) (identifying states that have instituted bans).

120. Wiswall, *supra* note 119, at 802.

121. *Live Release Rate and Animals at Risk*, AM. SOC'Y PREVENTION CRUELTY ANIMALS PROF., <http://www.aspcapro.org/live-release-rate-and-animals-risk> (last visited Oct. 26, 2016); Andrew N. Rowan, *Animal Sheltering Trends in the U.S.*, HUMANE SOC'Y U.S.,

live release the preferred method of disposition, with euthanasia only allowed in cases of injury, illness, or aggression.¹²²

II. OWNERSHIP OF UNCLAIMED ANIMALS

A common understanding of many scholars and lawyers has been that title in an owner of an unclaimed animal held in a public shelter terminates once the relevant hold period ends.¹²³ The basis for this presumption is that animals are property, meaning that the animal's owner has an interest in the animal that is protected by law until it has been cut off for disposition by the shelter.¹²⁴ If title were not cut off under governmental authority, any adopter or transferee (or adopter from the transferee) could remain vulnerable to an attack for conversion.¹²⁵ The basis for governmental authority, of course, is the police power, which authorizes local governments to regulate animals for purposes of health, safety, and the general welfare.¹²⁶ The power to regulate includes the power to destroy an animal owned by another person for the same

http://www.humanesociety.org/animal_community/resources/timelines/animal_sheltering_tr_ends.html (last visited Oct. 26, 2016).

122. See, e.g., CAL. CIV. CODE § 1834.4 (West 2010); see also Bryant, *supra* note 78 (discussing California's Hayden Law).

123. See, e.g., McBride, *supra* note 58, at 63–64.

124. See, e.g., Neilsen, *supra* note 24, at 494–95.

125. See *Lira v. Greater Hous. German Shepherd Dog Rescue, Inc. (Lira II)*, 488 S.W.3d 300, 305 (Tex. 2016) (per curiam) (upholding trial court's finding of conversion because nothing in the ordinance indicated that transfer from a public shelter to a rescue cuts off an owner's title). Rescues and private shelters acting on their own, of course, do not have the power to terminate title merely by holding an animal for the redemption period established for public shelters. See *Regents of Univ. of Wis. v. Dane Cty. Humane Soc'y*, 51 N.W.2d 56, 59 (Wis. 1952) (“We have not found any law which confers a property right in such a dog in the person or [private humane] society reducing the dog to custody. Without a property right in the dog there is no property right to dispose of it. Such rights do not accrue from mere custody.”). Thus, an owner of a stray animal not processed through a public shelter will retain title to that animal unless and until that title is ended either by the common law of find or by a lost property statute or ordinance, if applicable. See Neilsen, *supra* note 24, at 487–93. It is not uncommon, then, for rescues or private shelters to limit the intake of stray animals to those that have been processed and held by a public shelter through the hold period or to owner-relinquished animals. E.g., *About, TEX. HUMANE HEROES*, <https://www.texashumaneheroes.org/about-us/> (last visited Oct. 26, 2016). Indeed, “laundering” an owner's title through a public shelter might even be advisable for a rescue or private shelter to ensure that the group can later convey good title to an adopting party. See McBride, *supra* note 58, at 64.

126. See *Leibowitz v. City of Mineola*, 660 F. Supp. 2d 775, 784 (E.D. Tex. 2009) (first citing *Vargas v. City of San Antonio*, 650 S.W.2d 177, 178 (Tex. App. 1983); and then citing *Hargrave v. City of Rotan*, 553 S.W.2d 246, 248 (Tex. Civ. App. 1977)); *State v. Fifteen Impounded Cats*, 785 N.W.2d 272, 279 (S.D. 2010) (quoting *City of Marion v. Schoenwald*, 631 N.W.2d 213, 217 (S.D. 2001)).

reasons.¹²⁷ Therefore, if a local government has the power to destroy an animal that is the property of another, logic dictates that the government should also have the right to terminate an owner's title to the same under conditions that the local government deems appropriate.¹²⁸ Indeed, discerning their own authority to terminate, some local governments include a provision in their legislation that explicitly places title of the animal in the local government after the hold period (or secondary redemption period) expires.¹²⁹

Recognizing the authority of a state or local government to terminate an owner's property right and convey good title to another is consistent with other aspects of property law.¹³⁰ Estray laws are a good example. Estray laws are similar to public shelter impoundment provisions, but apply to stray livestock.¹³¹ The purpose of an estray law is to help reunite owners with their livestock while at the same time providing for disposal by sale if the owner fails to reclaim the livestock within a specified period after notice of the livestock's location is posted.¹³² If the owner fails to reclaim the livestock, title shifts to the governmental authority, and the livestock may be sold at public auction.¹³³ In some jurisdictions, the prior owner may be entitled to any proceeds of the sale that exceed the costs of impoundment and payment for damages caused by the estray.¹³⁴ This payment differs from the sale (i.e., adoption) of impounded companion

127. See *Robinson v. City of Bluefield*, 764 S.E.2d 740, 743 (W. Va. 2014).

128. Cf. *id.* (discussing power to regulate property).

129. See, e.g., DALL., TEX., CITY CODE § 7-2.6(e) (2016) (“If an animal is not redeemed within the appropriate time period specified . . . , the animal will become the property of the city and may be placed for adoption, euthanized, or otherwise disposed of as recommended by the [city].”).

130. See generally *Neilsen*, *supra* note 24, at 492–95 (discussing the Michigan judiciary's recognition of a property interest in dogs and the state's right to sell unclaimed, lost animals).

131. See *id.* at 493–94.

132. See, e.g., *Morgan v. Kroupa*, 702 A.2d 630, 632 (Vt. 1997) (quoting *Harriman v. Fifield*, 36 Vt. 341, 346 (1863)) (noting that the purpose of a lost property statute that includes a stray beast provision is to quickly return or dispose of valuable property). The Texas estray law, for example, provides that a sheriff or sheriff's designee must impound stray livestock (i.e., the estray) found on public or private land if not removed by the owner as required by law. TEX. AGRIC. CODE ANN. § 142.009(a) (West 2004 & Supp. 2015). The sheriff must post notice of the impoundment with the county clerk, in a newspaper (twice), and on the county's website. *Id.* § 142.009(b)–(d). The estray is then held for 15 days before title is placed in the county. *Id.* § 142.009(d). If the owner is unknown, the sheriff must also attempt to find the owner by searching the county records of recorded brands if the animal has a brand that is recognizable. *Id.*

133. Texas allows estrays to be sold at public auction, donated to a non-profit organization, or retained by the county. *Id.* § 142.013(a), (e).

134. See, e.g., TEX. AGRIC. CODE ANN. § 142.013(d).

animals,¹³⁵ but the difference may easily be accounted for in the difference in value of livestock and companion animals.¹³⁶

The historical difference between the legal treatment of livestock and the legal treatment of companion animals plays into the extent of local authority over the disposition of impounded dogs and cats.¹³⁷ This section reviews this authority, explores its constitutional limits, and examines the cases that have considered termination of an owner's title to impounded animals.

A. Authority to Regulate

At one time, dogs and cats held an inferior status to that held by domestic livestock in the eyes of the law and, in some respects, that view still holds today.¹³⁸ The distinction between the two classes of animals lies in their usefulness.¹³⁹ The more useful the animal, the greater the property interest recognized in the owner.¹⁴⁰ Historically, dogs and cats were not considered as useful to the owner as “horses, cattle, sheep, and other domesticated animals,” but instead were merely “kept for pleasure, curiosity, or caprice.”¹⁴¹ As such, they merited less protection under both common law¹⁴² and criminal law.¹⁴³

135. *But see* WHITE OAK, TEX., CODE OF ORDINANCES § 10-74 (allowing owner to apply to city council for proceeds of sale for up to six months after adoption upon proof of prior ownership).

136. *See infra* text accompanying notes 138–43 (discussing historical differences in the treatment of livestock and companion animals based on the value of each).

137. *See infra* Section II.A.

138. *See* David Favre, *Living Property: A New Status for Animals Within the Legal System*, 93 MARQ. L. REV. 1021, 1026 (2010).

139. *Id.*

140. *Id.*

141. *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 701 (1897).

142. For example, dogs and cats could not be the subject of larceny. *See* Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENVTL. AFF. L. REV. 471, 521 & n.327 (1996) (“Larceny was then a capital offense and [t]hey ought not to be things of a base nature, as Dogs, Cats, Bears, Foxes, Monkeys, Ferrets, and the like, which, howsoever they may be valued by the Owner, shall never be so highly regarded by the Law, that for their sakes a Man shall die.” (alteration in original)).

143. *See* Favre, *supra* note 138, at 1026 (quoting FRANK HALL CHILDS, *PRINCIPLES OF THE LAW OF PERSONAL PROPERTY, CHATTELS, AND CHOSSES* 35–36 (1914)) (noting that a criminal action could not be brought for “maliciously killing” of dogs or cats). Professor Favre further explains,

The reader may be surprised to learn that dogs remained in this non-property status into the early 1900s. This meant that the keeper of the non-property animal could not look to the protections of the law; an owner could not call the police if her dog had been stolen or killed. If the human owner's interest in her dog was not recognized by the law, then clearly the interests of the dog also were not recognized. In a curious

In 1897, the United States Supreme Court in *Sentell v. New Orleans & Carrollton R.R.* explained the reason for the different treatment of dogs in more detail:

[Dogs] have no intrinsic value, by which we understand a value common to all dogs as such, and independent of the particular breed or individual. Unlike other domestic animals, they are useful neither as beasts of burden, for draught (except to a limited extent), nor for food. They are peculiar in the fact that they differ among themselves more widely than any other class of animals, and can hardly be said to have a characteristic common to the entire race. While the higher breeds rank among the noblest representatives of the animal kingdom, and are justly esteemed for their intelligence, sagacity, fidelity, watchfulness, affection, and, above all, for their natural companionship with man, others are afflicted with such serious infirmities of temper as to be little better than a public nuisance.¹⁴⁴

It was because of this disparity in usefulness that the court considered dogs to be merely “qualified property” and “holding their lives at the will of the legislature.”¹⁴⁵ The owner of a dog that had real value, the Court explained, would “feel sufficient interest in him to comply with any reasonable regulation designed to distinguish him from the common herd.”¹⁴⁶ Those dogs that were not distinguishable, as by wearing a collar indicating ownership, were deemed worthless, and “public interests

twist of social development, the interests of the dog would come to be recognized by the law, by the adoption of anti-cruelty laws, before the property status of the dog, protecting the interests of the owners, was established.

Id. at 1026–27.

144. *Sentell*, 166 U.S. at 701.

145. *Id.* at 701–02. Interestingly, the Animal Legal Defense Fund (ALDF) has taken the position that use of the language “qualified property” has been misinterpreted by courts and that “the property right in dogs is a complete personal property right.” Brief of Amicus Curiae Animal Legal Defense Fund in Support of Petitioner Wilton Rabon at 3–4, *Rabon v. City of Seattle*, 957 P.2d 621 (Wash. 1998) (No. 64942-1) (en banc). The ALDF explains,

[T]he *Sentell* Court misinterpreted English common law when it defined a “qualified” property right in dogs. In *Sentell*, Mr. Justice Brown simply got it wrong.

The statement of the common law found in Blackstone and misconstrued by the *Sentell* Court is that a person’s interest in a dog domesticated to that person is perfect against all other persons, and thus against the state, so long as the dog remained in its domesticated state. This right was “qualified” only because it was defeasible by action of the dog should it voluntarily remove itself permanently from the relationship with the person and return to a wild state.

Id. at 4. ALDF recognized, however, that this interpretation did not limit municipal authority under the police power: “This does not mean that the City cannot regulate dogs. Clearly the police power extends to dogs. It does mean, however, that dogs are on an even plane with other forms of property.” *Id.* at 5.

146. *Sentell*, 166 U.S. at 701.

demand that the worthless shall be exterminated.”¹⁴⁷

Indeed, in many jurisdictions unlicensed dogs at large were considered public nuisances,¹⁴⁸ and local authorities were authorized to kill dogs without collars or other identification on sight, without need for prior impoundment or notice to unknown owners.¹⁴⁹ Courts upheld this authority to distinguish between licensed and unlicensed dogs based on the same analysis as in *Sentell*, that is, that the police power authorized this regulation and that an owner wishing to protect his or her property right need only comply with the ordinance by either licensing the dog or preventing the dog from running at large.¹⁵⁰ As stated by the Tennessee Supreme Court in *Ponder v. State* in 1919,

We think the registering of the dog and requiring him to wear a collar, which bears a tag containing a number by which the name of the owner can be ascertained on reference to the books in the office of the circuit court clerk, is a reasonable distinguishing mark, and the enactment that dogs not so identified are a public nuisance, when found running at large, while the dog so identified is permitted to run at large, is not an arbitrary and unreasonable discrimination. The state, in the exercise of its police power through the Legislature, has full power to provide that a dog may not be allowed to run at large unless he bears such mark of identification. Such requirement will enable the owner of sheep or other property damaged by such dog, if the dog should be killed or captured, to discover the owner of the dog, who may be held liable for damages for the injury done by him. Also, . . . the requirement of a small

147. *Id.* at 702.

148. *See, e.g.,* *Ponder v. State*, 212 S.W. 417, 419 (Tenn. 1918) (upholding constitutionality of an ordinance that declared unregistered dogs running at large a public nuisance); *see also* *Bugai v. Rickert*, 242 N.W. 774, 774–75 (Mich. 1932) (upholding ordinance that declared unaccompanied dogs trespassing on land to be private nuisances). Some jurisdictions today continue to declare dogs running at large to be nuisances, regardless of whether the dogs cause any harm or annoyance. *See, e.g.,* MD. CODE ANN., LOCAL GOV'T § 13-115(f)(1)(i) (LexisNexis 2013); N.H. REV. STAT. ANN. § 466:31(II)(a) (2004 & Supp. 2015); WYO. STAT. ANN. § 11-31-301(a) (2015); HOUS., TEX., CODE OF ORDINANCES, § 6-4(a) (2016). States and municipalities may also distinguish a dog as a nuisance for other reasons, such as sustained barking, digging or defecating on private property, or chasing people, bicycles, or cars. *See, e.g.,* N.H. REV. STAT. ANN. § 466:31(II)(b)–(g) (Supp. 2015); HOUS., TEX., CODE OF ORDINANCES § 6-151.

149. *See, e.g.,* *Blair v. Forehand*, 100 Mass. 136, 143–44 (1868) (upholding a statute that allowed a police officer or constable to kill unlicensed and untagged dogs “whenever and wherever found”); *Jenkins v. Ballantyne*, 30 P. 760, 761 (Utah 1892) (finding that an ordinance that required registration and tagging of dogs and allowed the killing of unregistered and untagged dogs running at large did not violate due process of law).

150. *Blair*, 100 Mass. at 144; *Jenkins*, 30 P. at 761.

registration fee will tend to reduce the number of worthless dogs.¹⁵¹

Both *Sentell* and *Ponder* and many other early cases focus on the owner's obligations to ensure security in his or her property.¹⁵² If an owner is responsible and registers a dog, properly tagging the dog's collar, the dog can run freely without immediate destruction as long as the dog is wearing the collar.¹⁵³ If an owner is less responsible by failing to license the dog and allows the dog to run loose, then the owner takes the risk that the dog will be destroyed with no chance for owner redemption.¹⁵⁴

Since these early cases, the property status of dogs has become more secure, with many states recognizing an owner's full property interest in a dog by statute.¹⁵⁵ Regulatory authority under the police power, however, remains the same despite the change in status,¹⁵⁶ and dogs at large are still subject to collection and destruction "to secure the safety, health and welfare of the public."¹⁵⁷ With the passage of time, though, local regulation of at-large animals has become less of a one-size-fits-all program.¹⁵⁸ Through the assistance and motivation provided by the ASPCA and similar humane organizations,¹⁵⁹ local regulation and the nineteenth century dog pound slowly changed.¹⁶⁰ Laws and ordinances

151. *Ponder*, 212 S.W. 417 at 419.

152. *See, e.g., Blair*, 100 Mass. at 143 ("If any dog is an object of value or of affection to its owner, he has only to procure and record a license and put on a collar, in order to bring it under the protection of the law."); *see also* *Morey v. Brown*, 42 N.H. 373, 374-75 (1861) (finding that use of an owner's engraved initials on a collar failed to meet the statutory requirement of use of the owner's name because the purpose of the requirement is to provide notice of the owner's name).

153. *Jenkins*, 30 P. at 761.

154. *Id.*

155. *See, e.g.,* KAN. STAT. ANN. § 79-1301 (1997); N.M. STAT. ANN. § 77-1-1 (1999); W. VA. CODE § 19-20-1 (2016).

156. *Thiele v. City & County of Denver*, 312 P.2d 786, 789 (Colo. 1957) (finding that even where states have accorded full property status to dogs, some courts continue to interpret the dog owner's right as qualified due to the dog's unique status in property law).

157. *Leibowitz v. City of Mineola*, 660 F. Supp. 2d 775, 784 (E.D. Tex. 2009) (citing *Vargas v. City of San Antonio*, 650 S.W.2d 177, 179 (Tex. App. 1983)).

158. *See generally* *150 Years of Saving Lives: The ASPCA Celebrates a Milestone Anniversary*, AM. SOC'Y PREVENTION CRUELTY ANIMALS, <http://www.aspc.org/about-us/150-years-of-saving-lives> (last visited Oct. 26, 2016) (discussing efforts of ASPCA to change laws throughout the United States).

159. *See generally id.* (discussing the history of the ASPCA); *History*, WOMEN'S HUMANE SOC'Y, <http://womenshumane.org/history> (last visited Oct. 26, 2016) (discussing the development of the first animal shelter in the United States).

160. One commentator describes the beginning of animal shelters as follows:

Shelters for companion animals developed from the impoundments that were common in colonial towns and that were used to contain wandering livestock and

were amended requiring animals to be held for a minimum amount of time to give an owner a chance to find and reclaim a dog prior to destruction and to provide for alternative means of disposition.¹⁶¹

Although regulations still provide for summary destruction of dogs in certain circumstances—such as in the event of a dog attacking a person¹⁶² or livestock,¹⁶³ a rabid dog,¹⁶⁴ or an injured or sick animal that cannot be treated¹⁶⁵—animal control programs today continue to evolve, with the goal in many jurisdictions turning from one of mere “control” of animals to that of “care and control.”¹⁶⁶ Such a move reflects society’s interest in not just protecting public health and safety, but also in providing for the welfare of impounded animals both during and after impoundment.¹⁶⁷ Indeed, care and control programs now often include minimum statutory standards of animal care¹⁶⁸ and authorize cooperation with rescues and private shelters to provide greater opportunity for animal

strays. The poundmaster would then take these wandering animals and confine them at the impoundment. If the owner wanted to reclaim the animal they would need to pay the poundmaster a redemption fee. The poundmaster did not earn a salary and, therefore, depended on redemption fees to live. If animals were not reclaimed, the poundmaster would slaughter the livestock and sell the meat. Unfortunately, since companion animals did not generate a profit, it was not uncommon for them to suffer an untimely death.

Miriam Ramos, *Animal Shelters*, LEARNING GIVE (citing STEPHEN ZAWISTOWSKI, *COMPANION ANIMALS IN SOCIETY* (2008)), <http://www.learningtogive.org/papers/paper358.html> (last visited Oct. 26, 2016).

161. See, e.g., *Purifoy v. Howell*, 107 Cal. Rptr. 3d 213, 220 (Cal. Ct. App. 2010) (discussing legislative history of amendments to animal control statute that increased hold time to allow additional time for owner redemption and third-party adoption).

162. See, e.g., N.Y. AGRIC. & MKTS. LAW § 123-a(1) (McKinney Supp. 2016); VT. STAT. ANN. tit. 20, § 3545 (Repl. ed. 2011).

163. See, e.g., COLO. REV. STAT. § 35-43-126 (2016); MICH. COMP. LAWS § 287.279 (2015); see also *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 702 (1897) (citing *Putnam v. Payne*, 13 Johns. 312, 312 (N.Y. Sup. Ct. 1816)) (“Laws for the protection of domestic animals are regarded as having but a limited application to dogs and cats; and, regardless of statute, a ferocious dog is looked upon as *hostis humani generis*, and as having no right to his life which man is bound to respect.”).

164. See, e.g., IOWA CODE § 351.26 (2015); MISS. CODE ANN. § 41-53-11(2) (2013).

165. See, e.g., ME. STAT. tit. 7, § 3913 (2015).

166. See SCHAFFNER, *supra* note 9, at 118.

167. *Id.*

168. See, e.g., DEL. CODE ANN. tit. 16, § 3008F(a) (2003); TEX. HEALTH & SAFETY CODE ANN. § 823.003 (West 2016). Many animal shelters also voluntarily comply with more stringent standards of care, such as those prepared by the Association of Shelter Veterinarians. See SANDRA NEWBURY ET AL., ASS’N OF SHELTER VETERINARIANS GUIDELINES FOR STANDARDS OF CARE IN ANIMAL SHELTERS (2010), <http://www.sheltervet.org/assets/docs/shelter-standards-oct2011-wforward.pdf> (articulating guidelines for maintaining animal welfare within animal shelters).

adoption.¹⁶⁹ Although many shelters voluntarily partner with rescues, some states have enacted legislation mandating cooperation between rescues and shelters.¹⁷⁰ In 1998, for example, California enacted the “Hayden Law,” which, among other things, (1) created a preference for adoption of animals deemed adoptable or treatable (including owner-relinquished animals), (2) increased hold periods from seventy-two hours to four to six days, (3) applied hold periods to owner-relinquished animals, and (4) required release of animals prior to euthanasia when requested by eligible non-profit rescues.¹⁷¹

B. Constitutional Limitations

As a class, impoundment provisions have been upheld as a reasonable exercise of local authority, and disposition provisions in particular do not violate due process “even though some harmless or inoffensive animals might be destroyed.”¹⁷² However, because pets hold the status of property, an owner is entitled to procedural due process prior to disposition of his or her animal.¹⁷³ At a minimum, this requirement is met if the owner is provided with notice and a chance to be heard prior to an animal’s adoption, transfer, or destruction, although a “full-scale hearing” is not required.¹⁷⁴

The issue often raised with impoundment provisions is the sufficiency of notice, especially with regard to unknown owners.¹⁷⁵

169. See ARONSON, *supra* note 5, at 197, 199.

170. See Bryant, *supra* note 78.

171. *Id.* (discussing arguments asserted by opponents of the legislation). Enactment of the Hayden Law was not without its difficulties as it was strongly opposed by various groups, including shelters. See *id.* Common arguments used by shelters in opposing mandated cooperation with rescues relate to the quality of the rescues, unreasonable demands and complaints made by rescues against shelters, rescue resale of the animals for profit, and indiscriminate animal selection. See generally Huss, *supra* note 59, at 2078–87 (discussing problems surrounding animal shelters).

172. City of Akron *ex rel.* Christman-Resch v. City of Akron, 825 N.E.2d 189, 197 (Ohio Ct. App. 2005) (citing City of Akron v. Tipton, 559 N.E.2d 1385, 1388 (Ohio Akron Mun. Ct. 1989)). Animal impoundment provisions have been challenged on a variety of constitutional bases, but procedural due process is a claim consistently raised. See generally *id.* at 196–200 (finding that impoundment provision for free-roaming cats did not violate substantive or procedural due process rights or equal protection and did not constitute a seizure under the Fourth Amendment).

173. See Leibowitz v. City of Mineola, 660 F. Supp. 2d 775, 784–85 (E.D. Tex. 2009).

174. Haggblom v. City of Dillingham, 191 P.3d 991, 995–96 (Alaska 2008) (quoting Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd., 524 P.2d 657, 661 (Alaska 1974)).

175. See generally Prof'l Houndsmen of Mo., Inc. v. County of Boone, 836 S.W.2d 17, 21 (Mo. Ct. App. 1992) (ruling that procedures employed by public health employees before the impoundment and destruction of animals constituted sufficient notice); Lamare v. N.

Under most local legislation, owners of tagged dogs receive actual notice via a mailed notice or telephone call (assuming, of course, that the information on the tags is accurate).¹⁷⁶ Unknown owners, by contrast, are given constructive notice through physical posting at the public shelter, courthouse, or other public place designated by law.¹⁷⁷ Courts have found that either type of notice is sufficient based on the considerations set out in *Mathews v. Eldridge* for determining the sufficiency of procedures for due process: (1) the private interest affected; (2) the possibility of “erroneous deprivation” of the interest; (3) the “probable value . . . of additional or substitute procedural safeguards”; and (4) the governmental interest, including “fiscal and administrative burdens” imposed by substitute procedures.¹⁷⁸

Under this analysis, the loss of a pet constitutes an interest afforded protection because it is property.¹⁷⁹ Courts have also consistently held that the erroneous deprivation of a pet—even under the time constraints of a short hold period—are small because it is expected that owners will make “reasonable efforts to protect their property interests.”¹⁸⁰ As an Ohio appellate court explained in *City of Akron ex rel. Christman-Resch v. City of Akron* with regard to an ordinance providing for impoundment and destruction of free-roaming cats,

Given the three-day redemption period, there . . . exists little risk of erroneous deprivation of an owner’s rights. He should know within that time period that his cat has vanished and make some effort to locate his missing property. He may also provide even greater protection of his right to his property by either collaring or microchipping his pet so that the [shelter] can immediately notify him if it received his pet. A pet owner may also minimize his risk greatly simply by keeping his pet restrained on his own property, preventing the animal from trespassing

Country Animal League, 743 A.2d 598, 604 (Vt. 1999) (finding that a posting at a town clerk’s office constitutes sufficient notice).

176. See *supra* Section I.D.

177. See, e.g., *Lamare*, 743 A.2d at 600–01 (requiring posting at town clerk’s office and a public place). Although there are currently no cases addressing the issue, electronic posting on shelter websites may also be considered constructive notice as it is a posting in a public place that is available for search by anyone.

178. 424 U.S. 319, 335 (1976) (citing *Goldberg v. Kelly*, 397 U.S. 254, 263–71 (1970)).

179. See *Hagblom*, 191 P.3d 991, 996 (Alaska 2008) (“While pets are considered property under the law of Alaska, we agree with the parties that the emotional bond people feel towards their pets elevates this interest above most property.” (citing *Richardson v. Fairbanks North Star Borough*, 705 P.2d 454, 456 (Alaska 1985))).

180. *Lamare*, 743 A.2d at 604 (citing *Sec’y Vt. Agency of Nat. Res. v. Irish*, 738 A.2d 571, 576 (Vt. 1999)).

on another's land.¹⁸¹

Comparing the owner's effort to that of providing additional safeguards and adding to the government's current burden, the court continued,

[A]lternative safeguards, when considered with the accompanying administrative and financial burdens, simply do not make sense: sheltering animals indefinitely would lead to exorbitant support costs; an arbitrary extension of the redemption period has not been shown to have any effect on redemption rates; and the financial burden of creating an investigative or advertising division in charge of locating the owners of stray cats, especially when a large number of those animals have no owner, would be substantial. In any of these situations, this court cannot say that the minimal risk of erroneous deprivation of a pet cat could ever overcome the necessary financial and administrative burden of searching for every cat owner, existent or not.¹⁸²

Although constructive notice and short hold periods have been upheld as providing sufficient due process, the decisions have been based on the idea that the owner can prevent the loss from occurring.¹⁸³ However, that ignores the reality that sometimes things go wrong. A properly licensed and tagged pet can become lost through no fault of the owner, yet still wind up in a public shelter, collarless with no owner identifiable, or an owner may simply not find his or her pet at the shelter before the hold period has expired.¹⁸⁴ In those situations, an owner may seek to reclaim the animal, but find the pet has already been adopted out, transferred or destroyed.¹⁸⁵ In such situations, the owner may seek relief, often in the form of return of the dog from adopters and transferees.¹⁸⁶ Whether the adopter or transferee must return the animal depends on

181. 825 N.E.2d 189, 198 (Ohio Ct. App. 2005); *see also* *Simpson v. City of Los Angeles*, 253 P.2d 464, 470 (Cal. 1953) ("By prescribing a system of licenses and requiring dogs to wear a numbered tag at all times when at large on the streets, the city has done all it can to make sure that it will know the owner's identity. The tag requirement is reasonable, and an owner can insure his getting notice in all but exceptional cases by complying with the ordinance. If a dog is not wearing a license tag when impounded, its owner will not have any ground to complain of a failure to receive notice, because the ordinance places upon him the duty to make sure that the dog wears its license tag at all times except when it is indoors or in an enclosed yard or pen."); *Lamare*, 743 A.2d at 604 ("[T]he owner of a lost dog may be expected to . . . contact[] humane societies and other agencies and check[] other public locations where notices may be posted.").

182. *Christman-Resch*, 825 N.E.2d at 198.

183. *Id.*

184. *See* Christopher A. Berry, *Frequently Asked Questions on Lost Pets*, ANIMAL LEGAL & HIST. CTR., www.animallaw.info/intro/lost-dogs (last visited Oct. 26, 2016).

185. *Id.*

186. *Id.*

whether the court considers the owner's property interest extinguished.¹⁸⁷ This issue is explored in the next section.

C. Termination of Title

Few cases discuss the authority of a municipality to sell, transfer, or adopt out an animal and pass good title. Those that do have arisen under two sets of circumstances. The first involves statutes that require municipal shelters to provide unclaimed animals to certain research facilities on demand.¹⁸⁸ The second involves attempted owner redemption after the hold period expires.¹⁸⁹

1. Pound Seizure Laws

The first two cases dealing with title to unclaimed animals arose under pound seizure laws, which are laws that require a shelter—usually, a public shelter—to deliver over to certain research facilities animals that remained unclaimed after a designated hold period.¹⁹⁰ In the first case, *Simpson v. City of Los Angeles*, the California Supreme Court was very clear that an owner's rights to an animal terminate after the hold period and title thereafter resides in the city.¹⁹¹ The statute had been challenged on due process grounds by several owners of licensed, but unclaimed, dogs who had diligently searched for their pets but were unable to locate them. In upholding the statute, the court stated, "It is clear . . . that when dogs have been lawfully impounded under the police power and have become subject to disposition under the terms of the ordinance . . . private property rights in such dogs must, in the interests of public welfare, be treated as having been terminated."¹⁹²

The Massachusetts Supreme Judicial Court, in *Massachusetts SPCA*

187. See *infra* Section II.C.

188. See *infra* Section II.C.1.

189. See *infra* Section II.C.2

190. Pound seizure laws became common after World War II and were used by research facilities to obtain free or low-cost research animals from animal shelters. See Cecile C. Edwards, *The Pound Seizure Controversy: A Suggested Compromise in the Use of Impounded Animals for Research and Education*, 11 J. ENERGY NAT. RESOURCES & ENVTL. L. 241, 242 (1991). As the use of pets for medical research became less popular, a number of jurisdictions repealed their pound seizure laws and instead passed laws prohibiting the use of shelter dogs for research. See *id.* at 243–44. Some shelters now include provisions in their adoption contracts prohibiting new owners from selling their animals for medical research. See generally ALLIE PHILLIPS, HOW SHELTER PETS ARE BROKERED FOR EXPERIMENTATION: UNDERSTANDING POUND SEIZURE 11 (2010) (discussing current and former policies of animal shelters).

191. 253 P.2d 464, 469 (Cal. 1953).

192. *Id.*

v. Commissioner of Public Health, by contrast, reviewed the issue of whether the state's pound seizure law applied to private shelters contracting with municipalities to provide impoundment services.¹⁹³ Although strict as to the fulfillment of an institution's needs for animals, the statute was clear that animals whose owners were known or who were adoptable or had not been held for at least ten days were excluded from the statute.¹⁹⁴ The statute also provided that an institution "shall at its own expense return to the pound any animal identified, claimed and redeemed by its owner," but excluded the institution from liability for any harm or death that might occur as a result of its use by the institution.¹⁹⁵

In its discussion of the municipality's authority under the statute, the Massachusetts court viewed the statute as being linked to a common law theory of abandonment.¹⁹⁶ The court stated, "The statute reasonably treats lost cats and dogs as abandoned property. The former owners have no remaining property interest which the Constitutions protect, and the State may assert a paramount interest in respect of the *ownership*, disposition or use of the property."¹⁹⁷ The court then noted that, at common law, abandoned property could be appropriated by the state and "subject to constitutional limitations, [the state could] use its legislative power to dispose of property within its reach, belonging to unknown persons."¹⁹⁸ The court also noted that the state could "assert its prerogative . . . to take title . . . or to destroy the property, or authorize its destruction, as a potential nuisance."¹⁹⁹ The court specifically held, though, that the state did not take title to the unredeemed animals delivered to research institutions under this provision because to hold otherwise would violate

193. 158 N.E.2d 487, 491 (Mass. 1959).

194. *Id.*

195. *Id.* at 490 (citing Act of April 18, 1957, ch. 298, 1957 Mass. Acts 190, 192 (repealed 1983)).

196. *Id.* at 493.

197. *Id.* (emphasis added); *see also* Regents of Univ. of Wis. v. Dane Cty. Humane Soc'y, 51 N.W.2d 56, 60 (Wis. 1952) ("If the custodian of funds, regularly deposited, could not defeat the claim of the state to [unclaimed bank deposits] when they appeared to be abandoned, surely the custodian of an unclaimed dog cannot be held to have a property right to retain or dispose of it superior to that of the state when the interest of the state in the animal has been declared . . . and the state has specifically designated the disposition to be made of it. The preeminent authority over the unclaimed dogs is in the state, as it was over the unclaimed bank deposits and we consider it is well within the legislative power to take for public purposes the animals which no one owns or, at least, which the owner does not claim or redeem.").

198. *Mass. SPCA*, 158 N.E.2d at 493 (quoting *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 436 (1951)).

199. *Id.* at 493-94 (emphasis added) (citing *Tower v. Tower*, 18 Pick. 262, 263 (Mass. 1836)).

a statutory prohibition against making public appropriations for the benefit of private institutions.²⁰⁰ Instead, the state was merely a custodian:

It is not necessary to adopt the concept embodied in some of the decisions in other jurisdictions . . . that the State has appropriated property in the animals devoted to experimentation. Our statute allows institutions to requisition abandoned animals from their custodians subject to regulation by an agency of the Commonwealth. There are no forfeiture proceedings. Title has never been taken by the Commonwealth.²⁰¹

Although ultimately finding that the state did not take title to unredeemed animals in this instance, the court's references to state ownership and the state's right to take title to abandoned property suggests that a local government, through the police power, could take title to unclaimed animals if it so desires.²⁰²

2. *Transfer to Rescue or Private Shelter*

The second set of cases discussing title to unclaimed animals arose in the circumstances at the heart of this Article—a late-redeeming owner seeking post-hold period return of a pet after the animal was adopted out or transferred to a shelter or private rescue.²⁰³ A thorough reading of the cases makes clear that an owner's title can be terminated after the hold period, but the cases are inconsistent on whether the termination is automatic as part of the disposition provisions or are contingent on some other factor.²⁰⁴

Because the reasoning in some of the cases differs significantly, this section discusses the cases in some detail below, dividing the cases based

200. *See id.* at 496 & n.4.

201. *Id.* at 496.

202. *Id.* at 494.

203. *See e.g.*, *Nicchia v. New York*, 254 U.S. 228, 230–31 (1920) (holding that the contested law does not deprive a dog owner of property without due process when it exercises its police power to possess a dog); *Johnston v. Atlanta Humane Soc'y*, 326 S.E.2d 585, 587 (Ga. Ct. App. 1985) (concluding that an owner's rights terminate if the animal is not redeemed within the hold period); *Covatch v. Cent. Ohio Sheltie Rescue, Inc.*, No. 15AP-699, 2016 Ohio App. LEXIS 1132, at *9 (Ohio Ct. App. Mar. 24, 2016) (ruling that owner's rights to an animal can be terminated by a shelter); *Green v. Animal Prot. League of Mercer Cty.*, 51 N.E.3d 718, 723 (Ohio Ct. App. 2016) (ruling that replevin should not have been granted because an owner's rights to an animal terminate at the end of the hold period); *Lamare v. N. Country Animal League*, 743 A.2d 598, 602 (Vt. 1999) (holding that because title transferred to the shelter, the shelter had ultimate authority over the animal after the hold period).

204. *Nicchia*, 254 U.S. at 230–31; *Johnston*, 326 S.E.2d at 587; *Covatch*, 2016 Ohio App. LEXIS 1132, at *9; *Green*, 51 N.E. at 722–23; *Lamare*, 743 A.2d at 602.

on ultimate result.²⁰⁵

A. Ruling for Adopter or Transferee

In the first three cases, courts in Georgia, Vermont, and Ohio upheld adoptions or transfers from a public shelter, concluding that an owner's interest in an animal does not continue if the animal is not redeemed during the hold period.²⁰⁶ In each case, the court focused on the actions of the owner, finding that failure to comply with the relevant ordinances resulted in loss of the owner's rights.²⁰⁷

(1) Georgia

In *Johnston v. Atlanta Humane Society*, a Georgia appellate court considered ownership of a stray keeshond dog, valued at one thousand dollars.²⁰⁸ The dog had wandered from the owner's property to a shopping center, where it was picked up by a private individual, and turned over to the Atlanta Humane Society (AHS).²⁰⁹ The dog was untagged, so the owner received no actual notice of the dog's location from the shelter.²¹⁰ The applicable county ordinance provided for a three-day hold period for untagged animals, after which the dog could be put up for adoption if not redeemed by the owner.²¹¹ AHS complied with the ordinance and, after holding the animal for nine days, adopted the dog out to a third party.²¹² The owner sued AHS, seeking either return of the dog or damages.²¹³ The trial court granted summary judgment to AHS.²¹⁴

205. See *infra* Section II.C.2.A.

206. *Johnston*, 326 S.E.2d at 587; *Lamare*, 743 A.2d at 604; *Green*, 51 N.E. at 722–23.

207. *Nicchia*, 254 U.S. at 230–31; *Johnston*, 326 S.E.2d at 587; *Covatch*, 2016 Ohio App. LEXIS 1132, at *9; *Green*, 51 N.E. at 722; *Lamare*, 743 A.2d at 602.

208. *Johnston*, 326 S.E.2d at 586.

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.* Although it is unclear from this case whether AHS was operating on behalf of the county by virtue of a contract, the court's reference to the ordinance requirements suggests that it was. *Johnston*, 326 S.E.2d at 586. In further support, a 2003 case involving AHS indicates that it had contracts to provide animal control services to both Atlanta and Fulton County. See *Harkins v. Atlanta Humane Soc'y*, 590 S.E.2d 737, 738 (Ga. Ct. App. 2003), *aff'd in part, rev'd in part*, 603 S.E.2d 289 (Ga. 2004).

213. *Johnston*, 326 S.E.2d at 586 (discussing the findings and procedural history of the trial court).

214. *Id.* The owner also sought the identity of the adopting party, but AHS filed a motion for a protective order based on public policy reasons. *Id.* at 586. The trial court denied the owner's discovery request for the adopter's name, and the appellate court affirmed, explaining that revealing the name would lead to harassment of adopters, which might lead AHS to eschew adoption in favor of destruction. *Id.* at 586, 588. A concurring judge also noted that,

On appeal, the court addressed the plaintiff's argument that, because he held title to the dog, AHS could not transfer title to the new owner without giving him notice, because AHS had only "temporary possession" of the dog.²¹⁵ The court avoided any discussion of title, however, by noting that the ordinance does not reference a transfer of title, but only an "adoption" of unredeemed dogs.²¹⁶ Reciting the language of *Nicchia v. New York* that "[p]roperty in dogs is of an imperfect or qualified nature,"²¹⁷ the *Johnston* Court identified the rights of both the plaintiff and AHS as merely possessory interests that could be limited by the police power.²¹⁸ The court stated,

As we view the purview of the ordinance, it is to grant to every citizen a limited right to possess a dog as a pet. That possession is governed by overriding public policy. The ordinance thus in effect provides that if the possessor does not abide by the governing statute, his right to possession is forfeited and the right to possession is transferred to [AHS] An official of that agency then has the right to dispose of the animal by destruction or preferably by putting the animal up for adoption. There is no issue of title, merely the transfer of a right to possession. [AHS] had as much authority to transfer possession to an adopter as it did to assume possession of the dog when it was impounded for failure to wear either an identification tag or a vaccination tag.²¹⁹

Finding that possession was rightfully held by AHS, the court affirmed the lower court's summary judgment.²²⁰ Despite the court's reference to an owner's right to possession rather than ownership of an animal, the court makes clear that, whatever interest the owner held prior to impoundment and expiration of the hold period, that interest was extinguished once the owner failed to reclaim the animal in accordance with the ordinance.²²¹

not only might harassment result, but the identity of the adopter is irrelevant because any available relief would come from AHS, not from the adopter. *See id.* at 588. (Beasley, J., concurring specially) ("The question is whether [the] defendant had a right to dispose of the dog, not who it gave the dog to. If it *did* have that right, that is the end of it. If it *did not* have that right, it would have to get the dog back or pay for it. In no event is the adopter's identity necessary.").

215. *Johnston*, 326 S.E.2d at 587.

216. *Id.*

217. 254 U.S. 228, 230 (1920).

218. *Johnston*, 326 S.E.2d at 587 (citing *Nicchia*, 254 U.S. at 230).

219. *Id.* at 587.

220. *Id.* at 588.

221. *Id.* at 587 (indicating that the shelter may adopt out a dog after a three-day hold period if the dog has not been reclaimed during that time).

(2) *Vermont*

The Vermont Supreme Court faced a similar issue in *Lamare v. North Country Animal League*.²²² In that case, the plaintiffs' German shepherd broke free from her tether and was found running along a road by a passing couple.²²³ The couple took the dog to a nearby kennel; the kennel contacted an animal control officer who took custody of the dog and posted notice as required by ordinance.²²⁴ The dog was not wearing her collar, so had no identifying tags.²²⁵ The local ordinance provided for a seven-day hold period after posting notice but did not specifically state that the town took title after expiration of the hold period.²²⁶ After impounding the dog and holding her for nine days without any claim by an owner, animal control transferred the dog to North Country Animal League (NCAL).²²⁷

Although the plaintiffs continued to search for the dog, it was not until a month later that the plaintiffs contacted animal control and learned that the dog was with NCAL; when the plaintiffs went to NCAL, identified the dog, showed proof of ownership, and offered to pay expenses, the plaintiffs were told that they would have to submit an adoption application for the dog.²²⁸ The plaintiffs did so, but were told that NCAL would need to contact their references.²²⁹ The plaintiffs contacted NCAL two days later to follow up on their application, but were told that the application was denied because "it was not in the dog's best interests to be returned to them."²³⁰ The plaintiffs discovered later that their application had been denied because NCAL had already adopted out the dog to another couple.²³¹

The plaintiffs sued NCAL, seeking both return of the dog from the adopting couple and damages from NCAL.²³² The lower court granted summary judgment to NCAL, finding that the plaintiffs' property rights

222. 743 A.2d 598, 599 (Vt. 1999).

223. *Id.* at 599.

224. *Id.*

225. *Id.*

226. *Id.* at 600–01. The ordinance stated that "unless the owner or person entitled to possession of the dog shall claim the same and pay all charges set forth below within seven (7) days after posting of such notice, the dog office shall sell the dog, give the dog away or dispose of it in a humane way." *Lamare*, 743 A.2d at 600–01.

227. *Id.* at 599.

228. *Id.*

229. *Id.*

230. *Id.* at 600.

231. *Lamare*, 743 A.2d at 600.

232. *Id.*

were terminated at the time that the dog was transferred to NCAL and NCAL was therefore the “rightful owner.”²³³

The Vermont Supreme Court upheld the lower court ruling.²³⁴ With regard to the plaintiffs’ argument that the town could regulate at-large animals, but could not sell, transfer, or dispose of them, the court pointed out that the same statute that authorized the town to regulate at-large animals also authorized their sale, transfer, and disposal.²³⁵ To fail to recognize that authority, the court explained, would mean that the town could collect the animal, but could not transfer it to another for its upkeep.²³⁶ Instead, “the statute would effectively compel the town to care for impounded domestic animals in perpetuity if the rightful owner never came forward, a result plainly at odds with reason and sound policy.”²³⁷ Further, remaining impounded indefinitely would be harmful to the dog:

[We have] recognized that a dog is an inherently social creature whose “value derives from the animal’s *relationship* with its human companions.” Thus, while municipal shelters or pounds may provide temporary safety for the public and security for the animal, longterm residence in such facilities is decidedly not in the public’s or the animal’s interest. We note in this regard the several studies cited in the amicus curiae brief of The United States Humane Society which demonstrate that longterm confinement is severely detrimental to the health of dogs and a considerable expense to the impounding agency.²³⁸

Although noting that NCAL was “insensitive in its dealings with [the] plaintiffs,”²³⁹ the court nevertheless concluded that, the provisions of the ordinance were within the town’s authority.²⁴⁰

(3) Ohio

In *Green v. Animal Protection League of Mercer County*,²⁴¹ an Ohio appellate court reviewed claims for replevin and conversion brought by a former owner, Green, against both Animal Protection League of Mercer

233. *Id.*

234. *Id.* at 599.

235. *Id.* at 602 (citing *Robes v. Town of Hartford*, 636 A.2d 342, 345 (Vt. 1993)).

236. *See Lamare*, 743 A.2d at 602 (citing *Roddy v. Roddy*, 721 A.2d 124, 128 (Vt. 1998)).

237. *Id.* (citing *Roddy*, 721 A.2d at 128).

238. *Id.* at 603 (quoting *Morgan v. Kroupa*, 702 A.2d 630, 633 (Vt. 1997)).

239. *Id.* at 604.

240. *Id.* at 605. The court did state, however, that a future plaintiff might be able to make a claim for negligent infliction of emotional distress based on handling of an animal, but did not review the issue in this case. *Lamare*, 743 A.2d at 605.

241. 51 N.E.3d 718 (Ohio Ct. App. 2016).

County (“APL”),²⁴² a no-kill shelter,²⁴³ and Winner, the adopter from APL.²⁴⁴ The facts of the case are familiar and were undisputed. The plaintiff’s dog, untagged, was found running at large and impounded at the county animal shelter, which was required to post a notice and hold the dog for a three-day redemption period.²⁴⁵ When the owner did not redeem the dog during that period, the county shelter sold the animal to APL, which then adopted out the dog to Winner.²⁴⁶ Despite the county’s compliance with the statute,²⁴⁷ the trial court awarded the plaintiff possession of the dog based on equity “under the belief ‘[t]here was no good and legal reason not to return and/or let [Green] adopt it over others’ and ‘it [was] in the best interest of the dog.’”²⁴⁸

The appellate court reversed the trial court, finding that the Ohio statute did not provide for an equitable remedy.²⁴⁹ Reviewing the law, the court first noted that Ohio law recognized that “[d]ogs are personal property, and the inability or failure to redeem them, once impounded, results in the loss or forfeiture of the property,” but it stated that the notice and redemption provisions “clearly provide a remedy to prevent [the] loss or forfeiture.”²⁵⁰ Because the county shelter complied with the statute, it was authorized to sell the dog to APL, which became the legal owner.²⁵¹ And, according to the court, APL’s rights included the discretion to choose an adopter:

[T]he APL was free to dispose of the dog by selecting a candidate to

242. *Id.* at 719–20.

243. According to its website, APL is a nonprofit no-kill shelter that contracts with Mercer County “to provide care for the ill/injured dogs at the [county] pound.” *About Us*, ANIMAL PROTECTION LEAGUE MERCER COUNTY, <http://www.aplmercer.com/aboutus.html> (last visited Oct. 26, 2016). It receives no compensation from the county for this service. *See id.*

244. *Green*, 51 N.E.3d at 719. The adopter intervened as a defendant. *See id.*

245. *Id.* at 723.

246. *Id.*

247. *Id.* at 721. The plaintiff did not challenge the dog warden’s compliance with the statute. *Green*, 51 N.E.3d at 723.

248. *Id.* at 723 (first and second alterations in original) (discussing the findings and procedural history of the trial court).

249. *Id.* (citing OHIO REV. CODE ANN. § 2737.14 (West 2006)).

250. *Id.* at 722 (alterations in original) (quoting *State ex rel. Lewis v. Bd. of Cty. Comm’rs*, No. 98CA830, 2002 Ohio App. LEXIS 7310, at *7 (Ohio Ct. App. Mar. 26, 2002)).

251. *Id.* at 723.

[B]ecause Green did not redeem the dog within the three-day redemption period, the Mercer County Dog Warden was statutorily authorized to sell the dog to the APL. Therefore, the APL legally owned the dog on November 25, 2015—that is, the APL’s right to possess the dog was superior to Green’s right to possess the dog because it legally purchased the dog from the Mercer County Dog Warden. *Green*, 51 N.E.3d at 723.

adopt the dog in accordance with its adoption policies and procedures, and Winner applied to adopt the dog. Green could have applied to adopt the dog from the APL, but chose not to. Nonetheless, even if Green applied to adopt the dog, the APL was not required to permit Green to adopt the dog.²⁵²

Finding no equitable remedy provided for in a replevin action and that “the best interest of the dog” standard was inapplicable, the court reversed the trial court.²⁵³

The Tenth District Court of Appeals for the State of Ohio was also asked to consider the ownership right of a rescue to an unclaimed animal after expiration of a hold period in *Covatch v. Central Ohio Sheltie Rescue, Inc.*²⁵⁴ That case, which started before the *Green* case mentioned above and is still pending, has facts tending to show less culpability of the owners in failing to reclaim their dog prior to the expiration of the hold period.²⁵⁵ In that case, the appellate court only reviewed the issue of whether a trial court’s order to a rescue to return a dog to the owners could be appealed.²⁵⁶ The dog was an AKC-registered Shetland sheepdog, valued by plaintiffs at five thousand dollars and allegedly used for breeding.²⁵⁷ The plaintiffs arranged for the dog to stay with a third party while they were away from December to April of the following year.²⁵⁸ On April 17, the dog was impounded in the Franklin County Animal Shelter after escaping from the third-party’s yard.²⁵⁹ Although the dog was allegedly microchipped, the plaintiffs did not learn of the dog’s location until April 22, at which time they contacted the shelter and were told that the dog had been transferred to Central Ohio Sheltie Rescue, Inc.²⁶⁰ The plaintiffs contacted the rescue by telephone and e-mail, provided proof of ownership along with the dog’s microchip identification number, and sought return of the dog.²⁶¹ The rescue refused.²⁶²

The plaintiffs sued the rescue on a number of claims and sought an

252. *Id.*

253. *Id.* at 723–24 (first citing *Lewis*, 2002 Ohio App. LEXIS 7310, at *7; and then citing *Angrave v. Oates*, 876 A.2d 1287, 1290 n.3 (Conn. App. Ct. 2005)).

254. 2016 Ohio App. LEXIS 1132, at *2 (Ohio Ct. App. Mar. 24, 2016).

255. *See id.* at *2.

256. *Id.* at *7–11.

257. *Id.* at *1–2.

258. *Id.* at *2.

259. *Covatch*, 2016 Ohio App. LEXIS 1132, at *3.

260. *Id.*

261. *Id.*

262. *Id.*

immediate order of possession for return of the dog, which the trial court granted.²⁶³ The rescue posted bond rather than comply with the order, denying that the plaintiffs were the legal owners of the dog since they had not reclaimed the dog from the county shelter during the redemption period as required by law.²⁶⁴ At a preliminary hearing on the action, the trial court issued an order of possession for immediate transfer of the dog to the plaintiffs.²⁶⁵ The shelter complied, but appealed the order, seeking only clarification on whether a rescue took title to a dog that was received by transfer from a public shelter.²⁶⁶ The court determined that the order of possession could not be appealed, but noted that a trial date on the plaintiffs' other claims had been set and the rescue could argue the ownership issue in a later appeal.²⁶⁷ In reviewing the order, the court noted that, although dogs are personal property, the court was "mindful of the less tangible benefits of animal ownership, including companionship, that are difficult to quantify."²⁶⁸ Although recognizing that loss of possession may have a negative impact on a case, the court determined that it did not have that impact here because the rescue had not sought to keep the dog.²⁶⁹

The court's sensitivity to the emotional impact of the loss of the dog in *Covatch* is in contrast to the court's decision in *Green*, which resulted in a strict passage of title regardless of the impact on the dog or the owners.²⁷⁰ With the *Green* decision now issued, the court in *Covatch* may ultimately rule that a rescue takes valid title from a public shelter; however, the *Covatch* court's initial consideration of the impact on the owners reflects considerations seen below in the next set of cases.²⁷¹

263. *Id.* (discussing the findings and procedural history of the trial court). The *Covatch* case is a good example of the rancor that can develop between parties in a custody case over companion animals. The case not only involved numerous claims and counterclaims between the parties, which included county commissioners and animal control employees as defendants, but also claims of "harassing telephone calls[] and threatening posts on social media" about the rescue and burglary of the home of the person in charge of the rescue. *Covatch*, 2016 Ohio App. LEXIS 1132, at *4.

264. *Id.* at *3.

265. *See id.* at *5 (discussing the findings and procedural history of the trial court).

266. *Id.* at *9.

267. *Id.* at *10.

268. *Covatch*, 2016 Ohio App. LEXIS 1132, at *9.

269. *Id.* at *9.

270. *Compare id.* ("[W]e are mindful of the less tangible benefits of animal ownership, including companionship, that are difficult to quantify."), with *Green v. Animal Prot. League of Mercer Cty.*, 51 N.E.3d 718, 723 (Ohio Ct. App. 2016) (rejecting a "best interest of the dog" standard).

271. *See cases cited supra* Section II.C.2.B and accompanying text.

B. Ruling for Owner

In the following three cases—from Alabama, Washington, and Texas—the courts recognized continuing ownership rights in the owners, despite their failure to comply with the law, while at the same time acknowledging that a local government has the power to divest an owner’s title for failure to comply.²⁷² As discussed below, however, each of the decisions has a weak rationale, and a ruling against the owner would have been well-supported by the law.²⁷³

(1) Alabama

In *Birmingham Humane Society v. Dickson*, an Alabama appellate court reviewed the issue of whether an owner of an impounded dog retained any property interest if the owner attempted to reclaim the animal after the hold period.²⁷⁴ In the case, Dickson owned a Rottweiler that he purchased for nine hundred dollars and was alleged to be of champion German stock, which he bred for profit and trained for use as a guard and attack dog.²⁷⁵ The dog escaped his yard after the gate was left open.²⁷⁶ The dog was picked up by the county Rabies Control Unit (the “Unit”) and, according to the Unit, had no identifying tags.²⁷⁷ The dog stayed at the Unit for seven days until transferred to the Birmingham Humane Society (BHS).²⁷⁸ The dog was held at BHS for another month before being claimed by the owner.²⁷⁹ The owner testified that the dog had been wearing a collar and tag at the time of escape and that the owner had contacted the Unit several times, but was told that the Unit had not impounded a Rottweiler.²⁸⁰

When Dickson went to BHS, he was told that he would have to adopt the dog and have him neutered per BHS policy.²⁸¹ Dickson indicated that the dog “was used for breeding purposes” and requested that the dog not be neutered until Dickson contacted a lawyer.²⁸² Despite Dickson’s

272. *Birmingham Humane Soc’y v. Dickson*, 661 So. 2d 759, 761 (Ala. Civ. App. 1994); *Graham v. Notti*, 196 P.3d 1070, 1073–74 (Wash. Ct. App. 2008); *Lira II*, 488 S.W.3d 300, 303 (Tex. 2016) (per curiam).

273. See discussion *supra* Sections II.C.2.B(1)–(3).

274. 661 So. 2d at 760–61.

275. *Id.* at 760.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Birmingham Humane Soc’y*, 661 So. 2d at 760.

280. *Id.*

281. See *id.*

282. *Id.*

request, the dog was neutered.²⁸³ Dickson nevertheless paid the adoption fee and took possession.²⁸⁴

Dickson claimed that the BHS was negligent in neutering his dog when it knew of Dickson's ownership claim and that the action "constituted conversion."²⁸⁵ BHS argued that Dickson had no claim because the organization took title to the dog once the Unit transferred the dog to BHS.²⁸⁶ In analyzing the issue, the court noted that BHS could have neutered, adopted out, or even euthanized the dog prior to Dickson's return, but it emphasized that none of those actions had occurred.²⁸⁷ The court also reviewed testimony from a former director of BHS indicating that BHS would not spay or neuter an animal "if a dog owner had proof of ownership of a dog in [BHS's] possession."²⁸⁸ The court stated, "This exception to [BHS's] policy evidences [BHS's] recognition that any title or ownership rights of animals it acquires are subject to the rights of the *true owner*."²⁸⁹ Finding that the jury had a basis for concluding negligence, the court found no error in the verdict.²⁹⁰

In this case, although the court suggests that an owner retains rights to an animal after a hold period if the animal remains within the shelter's custody, the owner's rights are properly more circumscribed than that. The court's decision in this case was incorrectly reasoned in three respects. First, the court completely ignored the city ordinance allowing transfers of title after the hold period.²⁹¹ Under the relevant provision, once a three-day hold period has passed, "the supervisor of the [Unit] may *transfer the title to and give ownership* of any dog held in the [Unit]" to either an adopter or a humane society designated in the ordinance.²⁹² BHS was one of those organizations.²⁹³ Therefore, once transferred to BHS, the dog became the property of BHS.²⁹⁴ The court's reference to

283. *Id.*

284. *Birmingham Humane Soc'y*, 661 So. 2d at 760.

285. *Id.*

286. *Id.* at 761.

287. *Id.*

288. *Id.*

289. *Birmingham Humane Soc'y*, 661 So. 2d at 761.

290. *Id.*

291. *Compare id.* (alluding to, but not analyzing, BIRMINGHAM, ALA., HEALTH & ENVTL. CODE § 6-1-18), with BIRMINGHAM, ALA., HEALTH & ENVTL. CODE § 6-1-18 (allowing transfer of ownership after hold period).

292. *Birmingham Humane Soc'y*, 661 So.2d at 761 (alterations in original) (emphasis added) (quoting BIRMINGHAM, ALA., HEALTH & ENVTL. CODE § 6-1-18(b)).

293. BIRMINGHAM, ALA., HEALTH & ENVTL. CODE § 6-1-18(b).

294. *Id.*

Dickson as the “true owner”²⁹⁵ is, therefore, incorrect. At that time, Dickson was a *prior* owner, and certainly not the *true* owner, as the true owner was now BHS. If Dickson were the true owner of the dog, there would have been no need for Dickson to adopt the dog, a fact that the court fails to point out.

Moreover, if one looks to the City of Birmingham’s animal control ordinance, the hold period and disposition provisions apply solely to the Rabies Control Unit, not to BHS or an adopter,²⁹⁶ so BHS had no obligation to return the dog to Dickson at all, much less return the dog to Dickson intact. Indeed, the court acknowledges this fact outright, stating, “We agree with Dickson’s assertion that, had the dog already been adopted by someone else, neutered, or euthanized prior to Dickson’s first claiming ownership, Dickson would not have had a cause of action against [BHS].”²⁹⁷ How the court finds that a mere claim of ownership by a prior owner prohibits BHS from neutering the animal is without reason or any support of law. As noted above, Dickson lost title to the dog when he failed to redeem him during the redemption period;²⁹⁸ therefore, Dickson had no legal right to prohibit BHS from neutering the dog because the dog was owned at that time by BHS. BHS had the choice to adopt out the dog to whomever it wished.²⁹⁹ If BHS chose to adopt the dog out to Dickson, as it did under the facts of the case, Dickson would be taking a *new* title from BHS, and that title would be based on whatever conditions BHS chose to impose on Dickson (i.e., adoption of a neutered dog).³⁰⁰ Dickson had no rights under his prior title, because his rights were extinguished by the terms of the ordinance when title was placed in BHS.³⁰¹

Second, the court’s reliance on BHS policy to return animals intact upon proof of ownership³⁰² is not recognition of ownership rights in

295. *Birmingham Humane Soc’y*, 661 So.2d at 761.

296. BIRMINGHAM, ALA., HEALTH & ENVTL. CODE § 6-1-18(a) (establishing a three-day hold period for dogs impounded in the “rabies control center”); *id.* § 6-1-18(b) (“After the legal detention period has expired and an impounded dog has not been claimed by its owner, the supervisor of the *rabies control center* may transfer the title to and give ownership of any dog held in the *rabies control center*” (emphasis added)); *id.* § 6-1-19(b)(7) (providing that the rabies control center may destroy or transfer title to dogs not reclaimed from the rabies control center within three days).

297. *Birmingham Humane Soc’y*, 661 So. 2d at 761.

298. *See supra* text accompanying notes 274–80.

299. *See* BIRMINGHAM, ALA., HEALTH & ENVTL. CODE § 6-1-18(b).

300. *See Birmingham Humane Soc’y*, 661 So. 2d at 761.

301. *See* BIRMINGHAM, ALA., HEALTH & ENVTL. CODE § 6-1-18(a).

302. *See Birmingham Humane Soc’y*, 661 So. 2d at 760, 761.

Dickson, but proof—at most—that BHS sometimes allowed adoptions of intact animals. The policy certainly did not create an ownership interest in Dickson, nor did it revive any interest he might have had in the past. Further, the court’s focus on the former director’s testimony using the language “owner” and “ownership” when describing the policy provides little support because the director may have been using those words in the context of the person’s *prior* ownership.³⁰³ Even more to the point, regardless of the policy, BHS specifically told Dickson that the Rottweiler he claimed was his would be neutered prior to adoption,³⁰⁴ indicating to Dickson that not only did Dickson *not* own the dog, but that the policy would not be applied to him. Perhaps Dickson might have an action against BHS for violating its own policy, but the policy itself does not lend credence to the existence of a continuing ownership right in a prior owner.

Third, the court’s suggestion that since BHS had not neutered the dog during the previous month meant that BHS should not have neutered the dog once the prior owner claimed ownership³⁰⁵ is illogical. BHS indicated that its policy was not to adopt out unaltered dogs.³⁰⁶ However, that policy does not suggest any timeframe during which the neutering must occur.³⁰⁷ BHS was within its rights to make the decision to refrain from spending money on neutering until an adoption was pending. Had BHS chosen not to adopt out the animal, but to euthanize the dog instead, the money spent on alteration would merely be a waste of limited funds. In addition, BHS’s policy is no different than other policies—and even laws—of other jurisdictions that require alteration prior to adoption,³⁰⁸ and it makes eminent sense, too. An intact dog running loose on the streets merely adds to pet overpopulation, a situation with which shelters already struggle.³⁰⁹

303. *Id.* at 761. Indeed, the court paraphrases the director’s testimony rather than quoting it, so whether those words were actually used or whether the director’s statement was in the context of prior owners is unknown. *See id.*

304. *Id.* at 760.

305. *Id.* at 761.

306. *Birmingham Humane Soc’y*, 661 So. 2d at 760.

307. *See generally id.* at 760–61 (discussing policy generally but not specifically).

308. *Cf.* Cynthia F. Hodges, *Detailed Discussion of State Spay and Neuter Laws*, ANIMAL LEGAL & HIST. CTR. (2010), <https://www.animallaw.info/article/detailed-discussion-state-spay-and-neuter-laws> (noting that a majority of states have laws mandating spay or neuter prior to release from a shelter and discussing the provisions thereof).

309. *See Fact Sheet: Spaying/Neutering*, AM. HUMANE, <http://www.americanhumane.org/animals/adoption-pet-care/caring-for-your-pet/spaying-neutering.html> (last updated Aug. 25, 2016) (“Shelters do their best to place animals in loving homes, but the number of homeless animals far exceeds the number of willing adopters. This leaves many

Although finding for Dickson in the case, the court did indicate that the shelter had the right to adopt out or euthanize the dog, at least until Dickson asserted a claim, which suggests the court recognized that BHS held title.³¹⁰ However, by holding BHS liable for neutering the dog merely because it was requested not to do so by the prior owner, the court has limited BHS's ownership rights,³¹¹ which was likely not contemplated by the city council when it drafted the language of the ordinance allowing passage of ownership to BHS.

(2) *Washington*

Graham v. Notti involved a dispute between an owner and adopter of the same Pomeranian in Spokane, Washington.³¹² Spokane has both a city animal shelter and a county animal shelter.³¹³ SpokAnimal C.A.R.E. ("SpokAnimal"), the city shelter, has a contract with the City of Spokane to "[f]urnish and maintain a shelter for the handling of all animals from the City, whether they are stray, impounded, or otherwise turned over to SpokAnimal by City residents or City employees acting in their official capacity."³¹⁴ Spokane County Regional Animal Protection Services (SCRAPS) handles animals in the unincorporated areas of Spokane County.³¹⁵

The plaintiff-owner lived in Spokane County.³¹⁶ She accidentally let her dog out of her home, and the dog wandered off of her property.³¹⁷ Twelve days later, the dog was found by another county resident who took the dog to SpokAnimal.³¹⁸ A SpokAnimal staffer indicated that SpokAnimal usually only takes dogs from the city, but that she "would contact SCRAPS to determine whether someone had" lost a Pomeranian.³¹⁹ The staffer testified that the person who turned in the dog

loving and healthy animals in our community that must be euthanized as the only humane solution to this tragic dilemma. Only spaying and neutering can end the overpopulation problem.").

310. See *Birmingham Humane Soc'y*, 661 So. 2d at 761.

311. See *id.*

312. *Graham v. Notti* 196 P.3d 1070, 1071 (Wash. Ct. App. 2008).

313. *Id.*

314. *Id.* at 1073 (alteration in original).

315. See *Spokane County Regional Animal Protection Service (SCRAPS)*, ADOPTAPET.COM, http://www.adoptapet.com/adoption_rescue/80829.html (last visited Oct. 26, 2016).

316. *Graham*, 196 P.3d at 1071.

317. *Id.*

318. *Id.*

319. *Id.*

said that she found the dog near her home on the city side of a street on the border between the city and the county.³²⁰ Evidence also suggested, though, that the dog had been found on another resident's property outside the city but within the county.³²¹

SpokAnimal generally transfers any county animals arriving at SpokAnimal to SCRAPS.³²² However, the defendant saw the Pomeranian that day and wanted to adopt the dog.³²³ After the mandatory seventy-two-hour hold period, SpokAnimal adopted out the dog to the defendant, a full two weeks since the dog first went missing.³²⁴ Slightly over a month later, the plaintiff learned that the dog had been taken to SpokAnimal.³²⁵ The plaintiff contacted SpokAnimal and learned of the adopted status.³²⁶ SpokAnimal then contacted the defendant to indicate the plaintiff's interest in the return of the dog, but the defendant refused to return the dog.³²⁷ The plaintiff visited the defendant to personally ask for the dog,³²⁸ but the defendant again refused, and the defendant refused a third time when the plaintiff sent a written request.³²⁹ At the defendant's silence to an additional letter from the plaintiff's lawyer offering to buy the dog, the plaintiff sued for replevin.³³⁰ The trial court dismissed the suit, finding for the defendant on summary judgment.³³¹

The plaintiff appealed, arguing that SpokAnimal could not convey good title to the dog because SpokAnimal acted outside its authority by adopting out a dog found in the county.³³² Both parties agreed, however, that the police power allowed both the city and the county to limit an owner's interest in a pet if it has been delegated authority to do so.³³³ "[I]f SpokAnimal was acting within the scope of its delegated police powers,"

320. *Id.*

321. *See Graham*, 196 P.3d at 1071, 1074.

322. *Id.* at 1071.

323. *Id.*

324. *Id.*

325. *Id.*

326. *Graham*, 196 P.3d at 1071.

327. *Id.* at 1071.

328. *Id.* The plaintiff learned of the adopter's name when her husband looked at the shelter's computer screen. *Id.*

329. *Id.*

330. *Graham*, 196 P.3d at 1071.

331. *Id.* (discussing the findings and procedural history of the trial court).

332. *Id.* at 1071–72 (citing WASH. CONST. art. XI, § 11). The defendant also made an argument that he was protected as a subsequent bona fide purchaser under the Washington version of the Uniform Commercial Code and common law. *Id.* at 1074–75. The court found neither argument viable. *See id.* at 1075.

333. *Graham*, 196 P.3d at 1073.

the court of appeals explained, the plaintiff's ownership of the dog would have "been properly extinguished when the shelter adhered to its procedures and adopted the dog out to [the defendant]."334 Whether SpokAnimal was outside of the scope of its authority, however, depended on whether the dog was found inside or outside the city limits, as the contract authorizing SpokAnimal referenced dogs "from the city" and animals turned in by "City residents or City employees."335 The court found further support for this boundary distinction in the state's lost property statute, which contained a similar distinction in the disposition of unclaimed lost property.336 Finding the location of find to be a fact question, the court reversed the order for summary judgment.337

In this case, it was conceded that, had the correct shelter taken the dog, the owner's title would have been terminated.338 However, a better analysis of the law would have been that the owner's title would be terminated as long as the dog had been taken into a public shelter—regardless whether the dog was found in that jurisdiction. The basis for the court's decision finding otherwise in *Graham* is weak because of its focus on the contractually designated jurisdictional boundaries as a means of determining title.339 Although making such a distinction might be important for purposes of determining agency responsibilities, it serves little purpose in determining whether an owner's property right in an animal is terminated because the loss of ownership rights is based on an owner's actions, not a shelter's. For example, assuming the hold periods for both shelters are the same, by failing to claim the animal during the hold period, the owner has failed to meet the statutory requirements for either jurisdiction, and either shelter would then have the right to euthanize, adopt out or transfer the dog if it wished. Further, if the owner meets the obligation of licensing and tagging the animal, the owner should be contacted directly by the shelter holding the animal, regardless which jurisdiction the shelter serves.

334. *Id.*

335. *Id.*

336. *Id.* at 1073–74.

337. *Id.* at 1074–75. The plaintiff also sought application of the state's lost property statute for the loss of her dog, but acknowledged that the statute was not directly on point because it would be unreasonable to apply the statute's sixty-day waiting period to found animals. *Graham*, 196 P.3d at 1073–74. Noting that the "statute serves at most to indicate this state's general preference for returning lost property to its original owner where reasonable," the court chose not to use it as a basis to reverse summary judgment. *Id.* at 1074 (citing WASH. REV. CODE § 63.21.060 (2014)).

338. *Id.* at 1073.

339. *See id.* at 1073–74 (discussing contractual jurisdiction).

Moreover, the jurisdictional distinction should make no difference to an owner searching for a pet because the owner has no idea where the pet wandered.³⁴⁰ It is not unreasonable to expect an owner to search all shelters in a given area, which in this case would have included both city and county shelters. Under the facts of the case, the owner contacted both SCRAPS and SpokAnimal the day after the dog went missing and posted a lost animal notice on the SpokAnimal website,³⁴¹ but the dog was not found and taken to the shelter until twelve days later.³⁴² SpokAnimal kept the dog for the mandatory seventy-two hours before adopting him out to the defendant.³⁴³ The facts do not suggest that the owner continued her search at the shelters after that first contact. Had the owner continued to contact SCRAPS and SpokAnimal after that first day, the owner may have actually found the animal during the hold period and retaken possession in accordance with the law. There is nothing else that SCRAPS or SpokAnimal could have done to facilitate the dog's return to the owner,³⁴⁴ so whether the dog was impounded at SCRAPS or at SpokAnimal is irrelevant to whether ownership is terminated. Therefore, jurisdictional boundaries should have no impact on an owner's loss of title after a hold period.

(3) Texas

In *Lira v. Greater Houston German Shepherd Dog Rescue, Inc.*, the Texas Supreme Court took a different look at termination of ownership by focusing on the specific language—or the lack thereof—in the relevant ordinance.³⁴⁵ As background, animal control ordinances fall into two categories: those that, by their terms, specify that a local government takes title to an unredeemed animal after the hold period and those that do not use specific terms, but whose language can be construed as

340. The pets are also oblivious to the jurisdictional divide. *Cf.* *Holland Livestock Ranch v. United States*, 714 F.2d 90, 92 (9th Cir. 1983) (“[C]ows do not read plat books and are, accordingly, wholly indifferent to the law of trespass.”).

341. *Graham*, 196 P.3d at 1071.

342. *Id.* The plaintiff's dog went missing on July 17, but was not taken to SpokAnimal until July 29. *Id.*

343. *See id.*

344. SpokAnimal may have been able to do more than SCRAPS in finding the owner as the plaintiff had posted notice of her lost dog on the SpokAnimal website. *See id.* Indeed, plaintiff might have been able to make a case against SpokAnimal's handling of the dog in this case based on that posting because SpokAnimal was also the shelter that held the dog and, presumably, SpokAnimal staff could have looked at the lost animal postings to determine whether any incoming strays—including plaintiff's dog—had been reported missing.

345. *Lira II*, 488 S.W.3d 300, 303–05 (Tex. 2016) (per curiam).

meaning the city takes title.³⁴⁶ The ordinance at issue in the *Lira* case was an example of the latter.³⁴⁷ In addition, the ordinance also had a secondary redemption period under which a prior owner could redeem an animal from a person who “purchased” (i.e., adopted) the animal from city animal control for up to thirty days after the sale, after which the animal would become the “absolute property of the purchaser.”³⁴⁸

Lira involved facts that are strikingly similar to those in Vermont’s *Lamare* case, discussed above.³⁴⁹ In *Lira*, the Liras’ German shepherd escaped from their home and was impounded by the city shelter.³⁵⁰ The dog had no tags, microchip, or other identifying information.³⁵¹ Under the animal control ordinance for the City of Houston, untagged dogs had to be held for three days.³⁵² The city animal shelter posted notice of the dog along with a picture on the animal shelter’s website, but mistakenly described the dog as a Belgian Malinois (Belgian shepherd) and indicated the dog was an “owner surrender.”³⁵³ Although the Liras searched for the dog, they did not redeem him during the initial hold period.³⁵⁴

The dog was ineligible for direct adoption from the shelter because

346. See Amici Curiae Brief of Texas Animal Rescues & Shelters & National Animal Organizations at 31–34, *Lira II*, 488 S.W.3d 300 (No. 14-13-00240-CV) (discussing examples of Texas ordinances in the two categories).

347. See *Lira II*, 488 S.W.3d at 305 (referencing HOUS., TEX., CODE OF ORDINANCES §§ 6-137(b), 6-138(1)–(3) (Supp. 74.2 2013)). The language of the ordinance has since been changed to indicate specifically that the city takes title to unclaimed animals after the hold period. See HOUS., TEX., CODE OF ORDINANCES § 6-102(c) (2016) (creating a seventy-two hour holding period for untagged animals); see also *id.* (“[After holding period] title and sole ownership of the dog transfers to [the Bureau of Animal Regulation and Care], the dog becomes the sole property of [the Bureau of Animal Regulation and Care], and becomes subject to disposition as [it] deems appropriate.”).

348. HOUS., TEX., CODE OF ORDINANCES § 6-137(b) (Supp. 74.2 2013) (“It shall be the duty of the officer in charge of the animal control center to offer for sale any and all healthy animals impounded under the terms of section 6-102 and not redeemed within three days, and to sell the same for cash for the amount of the accrued fees against such animal. The person entitled to the possession of any animal shall be entitled to redeem the same upon paying the purchaser double the amount paid by him for such animal and his reasonable expenses for keeping the same. Any animal not so redeemed within 30 days from the date of the sale shall become the absolute property of the purchaser.”). The secondary redemption period has since been removed. See HOUS., TEX., CODE OF ORDINANCES § 6-137(b) (2016).

349. See *Lira II*, 488 S.W.3d at 301–02; *Lamare v. N. Cty. Animal League*, 743 A.2d 598, 599–600 (Vt. 1999); Amici Curiae Brief of Texas Animal Rescues & Shelters & National Animal Organizations, *supra* note 346, at 23.

350. *Lira II*, 488 S.W.3d at 302.

351. *Id.*

352. *Id.* at 303 (quoting HOUS., TEX., CODE OF ORDINANCES § 6-137(b) (Supp. 74.2 2013)).

353. *Id.* at 302.

354. *Id.* at 302–03; *Greater Hous. German Shepherd Dog Rescue, Inc. v. Lira (Lira I)*, 447 S.W.3d 365, 368 (Tex. App. 2014).

he was unneutered and had heartworms; however, the shelter sent out a plea seeking a transfer to a rescue, which was permissible under the ordinance.³⁵⁵ Greater Houston German Shepherd Dog Rescue, Inc. (GHGSDR) responded and took the dog from the shelter on the fifth day after the dog arrived at the shelter.³⁵⁶ GHGSDR had the dog treated for heartworms and neutered to comply with state law.³⁵⁷ The Liras later learned from the city animal shelter that the dog was in GHGSDR's custody and contacted the rescue, seeking return of the dog.³⁵⁸ The rescue refused.³⁵⁹ The Liras filed suit, alleging a claim for conversion, which the Liras won at the trial level.³⁶⁰ In finding for the Liras, the trial court stated that "no state or local laws operated to divest [the Liras] of their ownership rights in the subject dog."³⁶¹

GHGSDR appealed and won.³⁶² Although the parties and various amici argued that whether the rescue gained title to the dog depended on whether the city took title after the hold period expired, the court of appeals looked instead to whether the Liras had complied or had planned to comply with the redemption requirements.³⁶³ The court of appeals found that the Liras had not met the requirements and, therefore, were not legally entitled to return of the dog.³⁶⁴

On appeal to the Texas Supreme Court, the court analyzed whether the Liras' rights were terminated at either common law or by legislation.³⁶⁵ First looking at common law, the court found that the Liras' title was not terminated because the Liras had not abandoned their interest.³⁶⁶ Turning to the question of legislative termination of title, the court did not review the law relating to police power, but merely assumed that the police power allows cities "to enact ordinances that sometimes

355. *Lira II*, 488 S.W.3d at 302, 305.

356. *Id.* at 302.

357. *Lira I*, 447 S.W.3d at 369.

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.* (alteration in original) (discussing the findings and procedural history of the trial court).

362. *See Lira I*, 447 S.W.3d at 375–76.

363. *Id.* at 372–73 (citing *Augillard v. Madura*, 257 S.W.3d 494, 500 (Tex. App. 2008)) (discussing conversion claim and ordinance's effect on conversion claim).

364. *Id.* at 375–76.

365. *See Lira II*, 488 S.W.3d 300, 303 (Tex. 2016) (per curiam) (citing *State v. \$281,420.00 in U.S. Currency*, 312 S.W.3d 547, 553 (Tex. 2010)) ("Under the common law, one who finds lost property cannot retain it against a claim by the property's true owner.").

366. *Id.* at 302–03.

divest an owner of property rights in his dog.”³⁶⁷ Examining the language of animal control provisions in the relevant Texas statute and Houston ordinance, the court determined that no provision specifically stated that the city would take title to an animal after the hold period ended.³⁶⁸ Finding no words of divestment, the court referred to the rules of statutory construction to determine the intent of the city council in enacting the ordinance.³⁶⁹

The court premised its discussion on the plain meaning of the ordinance, a holistic view of the provisions, and the theory that “the law abhors a forfeiture of property.”³⁷⁰ Ignoring the language of the United States Supreme Court’s decision in *Sentell* that a dog is merely qualified property,³⁷¹ the court accorded full ownership rights of a dog to the owner, stating that “[p]rivate property rights are ‘a foundational liberty, not a contingent privilege.’”³⁷² Having recently recognized the property status of dogs, the court noted that they were “a special form of personal property,” and the laws should be construed to prevent forfeiture of such because “a beloved companion dog is not a fungible, inanimate object like, say, a toaster.”³⁷³

Based on the plain meaning of the three-day hold provision, the court determined that “impound” and “redeem” as used in the ordinance “does not suggest that the City intends to transfer ownership while the pet is held at a city facility,”³⁷⁴ even though an owner’s rights would have impliedly been terminated had the city destroyed the dog.³⁷⁵ Because the dog at issue in *Lira* had not been destroyed, the owner’s rights were not terminated.³⁷⁶ As the court explained,

There is no time limit under this provision on the right to redeem a pet that, for whatever reason, is still in the possession of [animal control]. This provision again compels the conclusion that a live pet being held at the city pound belongs to the owner and may therefore be redeemed

367. *Id.* at 303.

368. *Id.* at 305.

369. *Id.* at 304 (citing *Bd. of Adjustment v. Wende*, 92 S.W.3d 424, 430 (Tex. 2002)).

370. *See Lira II*, 488 S.W.3d at 304 (citing *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003)).

371. *See Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 701 (1897).

372. *See Lira II*, 488 S.W.3d at 304 (quoting *Tex. Rice Land Partners v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 204 n.34 (Tex. 2012)).

373. *Id.* (quoting *Strickland v. Medlen*, 397 S.W.3d 184, 185–86, 192 (Tex. 2013)).

374. *Id.* at 304–05.

375. *Id.* at 305.

376. *See id.*

by the owner.³⁷⁷

In addition, the existence of the secondary redemption period, according to the court, is further evidence that an owner does not lose title to an animal for the thirty days after an adoption by a third party from the public shelter.³⁷⁸ Although acknowledging that the secondary redemption period did not apply in this case since the public shelter had transferred, not adopted out, the Liras' dog, the court noted that the provision still stood for the proposition that the city "can, when it wishes, draft an ordinance that expressly divests an owner of property rights to his dog."³⁷⁹ Concluding its opinion with a look at the provision for transferring unclaimed animals to rescues or private shelters, the court found no clear statement relating to title: "[N]othing in [the transfer provisions] states or implies that a dog merely held by a private shelter, awaiting adoption, has been divested of the ownership rights of the original owner."³⁸⁰

The impact of the court's decision is costly because the court basically states that if an animal control ordinance does not specifically state that an owner's rights terminate after the hold period, such rights will continue except in the event of destruction of the animal under the ordinance.³⁸¹ Therefore, any rescue or private shelter that receives transfers from public shelters in Texas under ordinances without a specific termination clause bears the risk that a late-redeeming owner can make a conversion claim against the transferee or an adopter from the transferee.³⁸² To prevent this possibility, a transferee would need to either limit transfers it receives to animals that have been surrendered by their owners, or the local government would have to amend the applicable legislation to clarify that an owner's title is terminated after the initial hold period.³⁸³

The result of the case is especially troublesome in light of the unsatisfactory reasoning the court used in making its holding. In its brief opinion, the court fails to explain why it would imply a termination of title in the context of destruction, but not in the context of transfer to a

377. See *Lira II*, 488 S.W.3d at 305.

378. *Id.* (citing HOUS., TEX., CODE OF ORDINANCES § 6-137(b) (Supp. 74.2 2013)).

379. *Id.*

380. *Id.*

381. See *id.* at 303.

382. Cf. *Lira II*, 488 S.W.3d at 305 ("[Nothing] . . . indicates that transferring a dog from [the Bureau of Animal Regulation and Care] to a private rescue organization, without more, severs the ownership rights of the original owner.").

383. See *id.* at 305.

different entity over which the public shelter has no control. Instead, it places transfer, which had no reference to a continuing ownership right, in the category of adoption, for which the ordinance specified a continuing thirty-day right.³⁸⁴ This classification is strange because there is good reason for distinguishing a transfer from an adoption.

First, in the case of adoption directly from the public shelter, the public shelter has placed limited funds into veterinary treatment because the shelter can only adopt out healthy animals. By contrast, a rescue or private shelter may have expended funds to make an animal adoptable, as was the case in *Lira*.³⁸⁵ Unless the ordinance contains a provision allowing the transferee-rescue or shelter to be reimbursed for those expenses by a late-redeeming owner, the transferee suffers a monetary loss. In the *Lira* case, a late-redeeming owner who reclaims an animal from a purchaser from the shelter was entitled to “double the amount paid by [the purchaser] for such animal and his reasonable expenses for keeping the same.”³⁸⁶ The ordinance contained no similar language reimbursing a transferee for its potentially higher costs resulting from the transfer.³⁸⁷ Therefore, should a late-redeeming owner return for the animal, the owner would not have to pay the transferee under the ordinance, nor would the owner have paid the public shelter for the initial impoundment.³⁸⁸ The transferee, then, would be required to sue the late-redeeming owner for payment under an equitable doctrine such as unjust enrichment in order to have its costs covered. Thus, not only would the transferee have paid the transfer fee to the shelter and the costs of veterinary expenses, it would then have to pay the cost of a lawsuit and representation for reimbursement of its costs, while the owner—who had violated the law by allowing the animal to run at large and failed to comply with redemption procedures—is not legally obliged by the ordinance to pay a thing.

Second, when a public shelter adopts out an animal directly to the public, the adopter signs a contract provided by the shelter, and the shelter retains contact information and records regarding the adoption.³⁸⁹ Should

384. See *Lira II*, 488 S.W.2d at 305 (citing HOUS., TEX., CODE OF ORDINANCES § 6-137(b) (Supp. 74.2 2013)).

385. *Lira I*, 447 S.W.3d at 373 (discussing rescue’s treatment of dog for heartworms).

386. *Lira II*, 488 S.W.2d at 303 (quoting HOUS., TEX., CODE OF ORDINANCES § 6-137(b)).

387. See HOUS., TEX., CODE OF ORDINANCES § 6-137(b).

388. Indeed, the fact that the court allowed the Liras to reclaim the animal from GHGSDR without paying costs to either the rescue or to the public shelter seems to do an end run around of the spirit of the ordinance, which prohibits owners from adopting an animal in lieu of redemption. See HOUS., TEX., CODE OF ORDINANCES § 6-137(d).

389. See, e.g., *Frank v. Animal Haven, Inc.*, 967 N.Y.S.2d 370, 371 (App. Div. 2013); 1

a late-redeeming owner seek return of an animal from an adopter, the public shelter can either provide the adopter's information to the owner or, to avoid unwanted harassment of the adopter and maintain confidentiality, deal directly with the adopter to facilitate return of the animal to the owner. Further, because the shelter has control over the contract, the shelter can include provisions that limit the ownership rights of the adopter for the length of the secondary redemption period, if applicable.³⁹⁰

In the context of transferees, by contrast, the public shelter keeps only its contact with the rescue or private shelter and has no information regarding subsequent adoptions from the transferee, nor does it have control over the adoption contracts that a transferee might have with its adopters. When the rescue or private shelter has already adopted out the animal to a third party, the scenario becomes more complicated. Should a late-redeeming owner return under those circumstances, there is now a third person in the chain of possession who is impacted by the failure of the owner to reclaim an animal under the terms of the ordinance. Not only would the adopter lose possession of the dog, but the loss may also serve as the basis for a lawsuit by the adopter against the rescue.

It is a strain in reasoning to suggest that the intent of the city council, especially one governing a city the size of Houston,³⁹¹ was to create these types of complications. A more common sense approach is to assume that disposing of an animal by transfer is, like destruction, an act "so inconsistent with the rights of the owner as to imply divestment of ownership"³⁹² because it eliminates the public shelter's involvement with the animal.³⁹³ From the moment of transfer, the disposition of the animal is under the control of the transferee unless the ordinance specifically limits the transferee's rights (which the Houston ordinance did not) or unless the public shelter limits the rights of the transferee in the transfer agreement (which the shelter did not do in *Lira*).³⁹⁴ Under that interpretation, the disposition provision makes more sense. Direct adoption from the shelter, by contrast, is subject to a secondary

NICHOLS CYCLOPEDIA OF LEGAL FORMS ANNOTATED, *supra* note 103, at § 16:87.15.

390. See *Frank*, 967 N.Y.S.2d at 371.

391. See *supra* note 7 (discussing the size of Houston and estimating its stray animal population as approaching or exceeding one million).

392. *Lira II*, 488 S.W.3d 300, 305 (Tex. 2016) (per curiam). The court found this phrase so important, it stated it twice. See *id.*

393. *Id.*

394. See HOUS., TEX., CODE OF ORDINANCES § 6-138 (Supp. 74.2 2013); *Lira II*, 488 S.W.3d at 301.

redemption period, meaning that in those cases the owner retains an ownership right for that extra thirty-day period.³⁹⁵ Since no extended period of ownership is specified for rescue or private shelter transferees, they should take good title to an animal immediately upon transfer from the shelter.³⁹⁶

III. BENEFITS OF TITLE TRANSFER

In the cases above, there was general agreement that a local government has the power to terminate an owner's title under the police power; however, three of the cases differed on whether it happened in those specific cases.³⁹⁷ In light of the efforts at several different levels to find permanent homes for strays (public shelters, private shelters, and rescues), it is worthwhile to clearly demarcate the point at which the owner loses a right to an animal and avoid the case-by-case variations. Reasons for doing so include promoting efficiency and limiting costs, improving animal lives, and providing security of title to adopters and transferees.

As noted above, as the focus of management of stray animals has moved from control to care, greater emphasis is placed on a public shelter's live release of animals.³⁹⁸ Live release can take three forms: direct adoption of animals from the public shelter, transfer of animals to rescues and private shelters for adoption through those organizations, and return of animals to original owners.³⁹⁹ Many jurisdictions see their highest rate of live release in the form of direct adoption from the public shelter or by transfers to rescues and private shelters, and a much lower release rate through owner-returns.⁴⁰⁰ With a significant percentage of live releases occurring by transfer, cooperation with local rescues and private shelters is a necessity. One way to encourage cooperation is to

395. *Lira II*, 488 S.W.3d at 305.

396. *See* McBride, *supra* note 58, at 63–64.

397. *See* Birmingham Humane Soc'y v. Dickson, 661 So.2d 759, 761 (Ala. Civ. App. 1994); *Lira II*, 488 S.W.3d at 303; Graham v. Notti, 196 P.3d 1070, 1073 (Wash. Ct. App. 2008).

398. *See* Bryant, *supra* note 78.

399. *Live Release Rate and Animals at Risk*, *supra* note 121.

400. For example, from July 1, 2015 to July 30, 2016, the public shelter for the City of Houston impounded (including owner surrenders) 26,702 dogs and cats. Of that amount, 7575 were adopted out directly by the shelter, 11,236 were transferred to rescues and private shelters, and 974 were returned to their owners, for a live release rate of 78.6%. CITY OF HOUS., TEX., BUREAU OF ANIMAL REGULATION & CARE, ASILOMAR/MADDIE'S FUND REPORT (07/01/2015 to 06/30/2016) (2016), <http://houstontx.gov/barc/asilomar/asilomar%20long%20fy2016.pdf>.

assure transferees that the animals they obtain from the shelter carry good title, meaning that the transferee stands on firm legal ground if a prior owner seeks to reclaim an animal after the hold period.⁴⁰¹ Failure to provide this assurance—such as with the situations that arose in *Graham* and *Lira*—could chill future transfers⁴⁰² if transferees refuse to work with the public shelters or seek to take only owner-surrendered animals to limit potential liability.⁴⁰³

Should a chilling effect occur, public shelters might not only see a reduction in live releases, but they might also suffer a financial impact.⁴⁰⁴ Both adoptions and transfers are provided at a cost, which results in a small revenue stream.⁴⁰⁵ Although the revenue might not be that great in comparison to a shelter's overall budget, the adoption and transfer fees do add to the money available to cover operating costs.⁴⁰⁶

In addition, ensuring passage of clear title to adopters and transferees should improve animal lives by moving animals out of shelters more quickly and placing them in less stressful and more permanent environments.⁴⁰⁷ Although there is benefit to an animal being returned to a good owner, the longer the time that passes between impoundment and return to the owner, the more disruptive such a return would be to the animal, especially if possession has already passed to an

401. See *supra* Section II.B.

402. See *Lira II*, 488 S.W.3d at 305; *Graham v. Notti*, 196 P.3d 1070, 1071 (Wash. Ct. App. 2008). A similar impact might occur should direct adopters begin to fear a potential loss of title.

403. See Amici Curiae Brief of Texas Animal Rescues & Shelters & National Animal Organizations at 38, *Lira I*, 447 S.W.3d 365 (Tex. App. 2014) (No. 14-13-00240). This is not to say that owner-surrendered animals are not subject to litigation. It is not uncommon for an owner to claim that his or her animal was turned into the shelter without the owner's authority. See Karen Karlitz, *Pets Turned In by Owners Deserve Same Protection as Those Off the Streets*, L.A. TIMES (May 11, 2002), <http://articles.latimes.com/2002/may/11/news/vodogs11> (noting how Los Angeles shelters often receive calls from owners whose pets were trapped by known acquaintances).

404. See Bryant, *supra* note 78.

405. See ARONSON, *supra* note 5, at 101.

406. Compare Emilie Raguso, *Berkeley Animal Shelter Budget Raises Questions*, BERKELEYSIDE (June 16, 2014, 11:12 AM), <http://www.berkeleyside.com/2014/06/16/berkeleyans-question-murky-animal-shelter-budget/> (estimating the annual budget of a new shelter for the city of Berkeley, California, as \$1.69 million), with Cara Spoto, *Animal Shelter Would Cost \$2 Million to Get Running, \$554K Annually to Operate*, J. TIMES (May 2, 2012), http://journaltimes.com/news/local/animal-shelter-would-cost-million-to-get-running-k-annually/article_cf928334-944b-11e1-9d34-0019bb2963f4.html (estimating an annual operating cost of \$554,000 for an animal shelter for Racine, Wisconsin).

407. See McMillan, *Quality of Life, Stress, and Emotional Pain in Shelter Animals*, in SHELTER MEDICINE, *supra* note 58, at 83, 88–89.

adopter or transferee or, even worse, an adopter from a transferee.⁴⁰⁸ By allowing the discretion over return of the animal to rest with the rescue or private shelter, the owner will still have an opportunity for return of the animal,⁴⁰⁹ but the transferee can make the judgment call on whether the prior owner can still provide care and a suitable home for the animal and whether return to the prior owner will be too disruptive for the animal.⁴¹⁰

In addition, by setting out a clear point at which the owner loses title, there is no ambiguity as to how long a public shelter or a transferee must hold an animal on the off-chance that an owner might show up. A clear date marks for the public shelter and transferee the date on which title can be legally conveyed to an adopter.⁴¹¹ It also adds assurance to a transferee by specifying the date on which it can feel secure in expending money on veterinary care or behavioral training for the animal without the threat of losing that investment to a late-redeeming owner.⁴¹² Having that clear date for loss of title, of course, should not come as a surprise to the prior owner because, assuming that the prior owner did not take all precautions by licensing and tagging the animal, the prior owner should be aware that he or she risks not getting the animal back at all, as would be the case if the animal had been destroyed by the public shelter. Indeed, the owner is his or her own best protection against loss of an animal and the cheapest cost avoider in comparison to the shelter, adopter, or transferee, because the owner can license and tag the animal to facilitate receiving notice or avoid situations where the animal might escape from the owner's possession.⁴¹³

Recognizing a definitive point at which title transfers from a shelter to an adopter or transferee, however, does not mean that an owner loses the right to due process before a transfer of title occurs.⁴¹⁴ Despite the precautions that an owner might take to protect against loss of a pet, an owner cannot protect against every contingency, and an owner who has done everything required under the law may still be racing against the

408. See *id.* (discussing how to recognize good quality of life for a shelter animal).

409. For example, each of the transferees at issue in *Lamare*, *Green*, and *Birmingham Humane Society*, were willing to accept applications from prior owners for adoption of the respective animals. *Lamare v. N. Country Animal League*, 743 A.2d 598, 599 (Vt. 1999); *Green v. Animal Prot. League of Mercer Cty.*, 51 N.E.3d 718, 723 (Ohio Ct. App. 2016); *Birmingham Humane Soc'y v. Dickson*, 661 So. 2d 759, 760 (Ala. Civ. App. 1994).

410. See *Green*, 51 N.E.3d at 723; *Lamare*, 743 A.2d at 599–600.

411. See *supra* text accompanying notes 63–65, 67, 70–71.

412. See *e.g. supra* note 125 and accompanying text; *supra* Section II.C.2.A.

413. See *supra* text accompanying notes 47, 56.

414. See *supra* Section II.B.

clock to find a pet before a redemption period expires.⁴¹⁵ The next part of this Article suggests ways to improve the current impoundment process as a way to give owners a better chance at recovering their animals.

IV. BALANCING INTERESTS

In his dissent in *Simpson v. City of Los Angeles*, Justice Carter of the California Supreme Court recognized the problems that owners face when losing their animals, especially in large cities.⁴¹⁶ He stated,

This [five-day] period of time is unreasonable. It does not take into consideration the fact that duly licensed dogs may lose their tags after straying; that they may, and do, break their collars thereby losing their tags; that strangers may remove either collar or tag; that dogs may escape from enclosed pens, or get out of the houses of their owners (where they are not required to wear tags) and wander far afield. It does not take into consideration the not-unusual cases of theft of valuable, registered dogs. It does not take into consideration the size of the city of Los Angeles with its five pounds, and four private shelters, and nineteen pounds and animal shelters in Los Angeles County, or the fact that the owner of the dog might be out of the city when his dog escapes from his home and the person caring for it, or from a kennel where he has left it to be cared for.⁴¹⁷

In Justice Carter's opinion, the average five-day hold period is simply unworkable in a large city and does not provide an owner due process of law before he or she loses title to an animal.⁴¹⁸

Justice Carter's argument is a familiar one and one often argued in support of recognizing a continued interest in a prior owner.⁴¹⁹ However appealing this argument might be from the perspective of innocent owners who lose their animals, it remains largely unsupported by the law as long as the shelter has complied with the impoundment and disposition procedures set out in a statute or ordinance.⁴²⁰ In those cases where a

415. See *Simpson v. City of Los Angeles*, 253 P.2d 464, 474 (Cal. 1953) (Carter, J., dissenting).

416. *Id.* at 471.

417. *Id.* at 474.

418. *Id.*

419. See *supra* Section II.B.

420. See, e.g., *Thiele v. City and County of Denver*, 312 P.2d 786, 792 (Colo. 1957) (rejecting due process challenge to ordinance providing for disposal of impounded dogs after three days); *Johnston v. Atlanta Humane Soc'y*, 326 S.E.2d 585, 587 (Ga. Ct. App. 1985) (stating in view of "overriding public policy," ordinance providing for disposal of impounded dog after three days did not constitute unconstitutional taking of property); *Prof'l Houndsmen v. County of Boone*, 836 S.W.2d 18, 21-22 (Mo. Ct. App. 1992) (rejecting due process

shelter has not complied, an as-applied challenge against the public shelter or local government based on due process might be an appropriate challenge for relief based on the loss of the animal.⁴²¹ A conversion claim against the adopter or transferee is a less satisfactory option because the public shelter was the cause of the problem.⁴²² Further, a conversion claim would be unavailable in those situations where the public shelter refuses to disclose the name of the adopter or transferee and is not compelled to do so by a court.⁴²³ In those situations, the owner would be required to sue the public shelter for relief, which might be return of the animal if the animal is still within its custody or reclamation from the adopter or transferee or, more likely, damages.⁴²⁴

Recognizing the emotional impact and pecuniary loss suffered by prior owners who lose their pets, legislative or shelter policy changes could be implemented that would give owners greater opportunity to find them. One thing that might be considered is the length of the hold period. Although longer hold periods might increase costs considerably, especially in larger jurisdictions, adding a day or two to the shortest hold periods might not be cost-prohibitive and could create great benefit to pet owners.⁴²⁵ Indeed, many jurisdictions already have five- to seven-day hold periods,⁴²⁶ and federal law provides for a minimum five-day hold period for animals to be used for research under the Animal Welfare Act.⁴²⁷ Since public shelters often keep animals longer than the designated hold period—as demonstrated in the cases discussed—adding a few days to shorter hold periods may not be too much of an added burden and would increase the possibility of timely owner redemption.⁴²⁸

challenge to ordinance authorizing disposition of impounded dog after five days); *Lamare v. N. Country Animal League*, 743 A.2d 598, 599 (Vt. 1999).

421. See Patricia A. Bolen, *Lost and Found: Humane Societies' Rights and Obligations Regarding Companion Animal Ownership*, ANIMAL LEGAL & HIST. CTR. (2005), <https://www.animallaw.info/article/lost-and-found-humane-societies-rights-and-obligations-regarding-companion-animal-ownership>; see also *Richardson v. Fairbanks North Star Borough*, 705 P.2d 454, 455–57 (Alaska 1985) (holding the owner was able to recover market value damages where an animal shelter killed his dog before the minimum holding period had expired).

422. See Christopher A. Berry, *Detailed Discussion of Legal Rights and Duties in Lost Pet Disputes*, ANIMAL LEGAL & HIST. CTR. (2010) (citing *Alvarez v. Clasen*, 946 So. 2d 181, 184 (La. Ct. App. 2006)), <https://www.animallaw.info/article/detailed-discussion-legal-rights-and-duties-lost-pet-disputes>.

423. See, e.g., *Johnston*, 326 S.E.2d at 587–88.

424. *Id.*

425. *Position Statement on Responsibilities of Animal Shelters*, *supra* note 88.

426. See *Wisch*, *supra* note 54.

427. *Bryant*, *supra* note 78.

428. See *Johnston*, 326 S.E.2d at 586 (discussing how AHS had a mandatory three-day

States or local governments might also give thought to adding a well-drafted secondary redemption period that applies to both adopters and/or transferees and requires reimbursement (or even double reimbursement) to the adopter or transferee of all reasonable costs of maintaining, treating, or training the animal after adoption or transfer as well as costs and fees incurred by the public shelter prior to the adoption or transfer. Imposing the costs is a valid way to balance the interest of an owner seeking to reclaim a pet while at the same time assuring an adopter or transferee that no monetary loss will occur during the conditional ownership period. Imposing a double reimbursement requirement would also compensate the adopter or transferee for the inconvenience and loss of the animal should a late-redeeming owner return. Although such costs might deter an owner from attempting to reclaim an animal from an adopter or transferee, especially where costs have built up over time, the result may be less disruptive for the animal who would not suffer an additional relocation.

Extension of shelter hours might also be appropriate, especially in smaller jurisdictions where limited staff may result in limited or weekday-only operational hours. Having limited hours makes it difficult for owners to search for their pets, especially where the owners are employed full-time or have limited access to transportation to reach the shelter.⁴²⁹ Extending hours past regular working hours on at least one workday and opening at least one day on a weekend will give working owners greater opportunity to find their pets. Those owners with limited access to transport might also be benefitted if the extended hours enable a working relative or friend to give the owner a ride to the shelter.⁴³⁰

Increased and prompt posting of impounded animals on pet-finder websites will also make daily searching of local and regional shelters easier for owners, which may in turn lead to more owner-pet reunions.⁴³¹ Advertisement of the search engines on shelter websites and provision of the information to owners who call in or drop by to search for missing pets would also be important to make owners aware of the technology.

hold period, but held the dog for nine); *Lira II*, 488 S.W.3d 300, 302–03 (Tex. 2016) (per curiam) (discussing how the city ordinance provided for a three-day hold period, but the dog was held for five days); *Lamare v. N. Country Animal League*, 743 A.2d 598, 599–601 (Vt. 1999) (discussing how the City required a seven-day hold period, but the dog was held for nine).

429. See generally *Simpson v. City of Los Angeles*, 253 P.2d 464, 474 (Cal. 1953) (Carter, J., dissenting) (discussing the unreasonableness of five day holding period).

430. *Id.*

431. See *supra* note 87 and accompanying text.

Local governments could also place more emphasis on licensing requirements so that a greater number of owners would be entitled to actual notice should their pets become impounded.⁴³² Aside from advertising the importance of licensing through veterinarians or through public service announcements on radio or television, local governments might encourage licensing by having low-cost licensing drives or by allowing owners to license their pets through their veterinarians at the time of vaccination.⁴³³ Similarly, imposing mandatory microchipping requirements—or at least providing for low-cost microchipping—can serve a similar purpose.⁴³⁴ Since license and rabies tags are unavailable if an animal arrives at a shelter without a collar, a microchip planted under the skin of a dog or cat would still enable a shelter to contact an owner should the animal become impounded.⁴³⁵

Although a rule that terminates ownership after a hold period can be a harsh rule for an otherwise caring and diligent owner, taking steps such as those described above may create conditions that better allow an owner to find a lost pet. For those owners who are unable to timely redeem their animals from a pound and who are able to find their animals at a rescue or private shelter, return might be accomplished by seeking an adoption.⁴³⁶

CONCLUSION

Animal impoundment provisions create a fast-moving system to handle the numerous strays that come through the doors of public shelters. Limited space and the interest in quickly placing animals in less stressful environments require efficient administration to ensure constant movement of animals through the system. Animal rescues and private shelters assist in local government efforts to manage stray animal populations by receiving transfers of public shelter animals after the relevant hold period has expired and providing them veterinary treatment and behavioral training before finding them permanent placements. Generally, the transfers remain unchallenged and the animals are found

432. See ARONSON, *supra* note 5, at 272.

433. See *id.*

434. Cf. Sue Manning, *Mandatory Microchips for Pet-Shelter Animals? Maybe*, TODAY (July 26, 2011, 6:18:59 PM), http://www.today.com/id/43902100/ns/today-today_pets/t/mandatory-microchips-pet-shelter-animals-maybe/#.V7Hkso4mhQ0 (discussing proposed legislation in California that would require microchipping of animals adopted or claimed from shelters).

435. See *id.*

436. See, e.g., *Lamare v. N. Country Animal League*, 743 A.2d 598, 599 (Vt. 1999).

new homes. In some cases, however, after the end of the hold period, prior owners find out that their animals were adopted out or transferred, and they may attempt to reclaim their animals from the adopters or transferees.⁴³⁷

Although few cases are on point, those courts that have reviewed the issue of whether an owner loses title to the animal after the hold period expires all recognize that the police power authorizes a municipality to take title or pass it to another if it desires.⁴³⁸ Those few cases that have recognized a continuing ownership right have done so based on weak rationales that are easily distinguishable and do no harm to the ultimate authority held by the government to extinguish title.⁴³⁹ To encourage continued cooperation with rescues and private shelters and minimize claims from late-redeeming owners, courts and local regulators should ensure passage of good title by recognizing that an owner's interest in an animal terminates after the hold period. Recognizing such would allow adopters and transferees to take good title, which can be passed to another if needed. Although automatic termination may seem a harsh rule, it provides certainty of ownership and should eliminate lawsuits for properly adopted and transferred animals. The rule may be further tempered by amending current laws, ordinances, and shelter policies to allow more time for an owner to find a pet before title transfer occurs. Although not a perfect solution, such changes should at least help some owners find lost pets while at the same time allowing other pets—through the public shelter itself or through rescues and private shelters—to be settled into permanent homes.

437. *Id.*

438. *See Lira II*, 488 S.W.3d 300, 303 (Tex. 2016) (per curiam); *Graham v. Notti*, 196 P.3d 1070, 1073 (Wash. Ct. App. 2008).

439. *See supra* Section II.C.2.B.