

Avoiding Adopter Roulette

Preventing adopters from rehoming pets into potentially unsuitable conditions



Recently, a shelter contacted me with concerns about an adopter who gave his new rabbit away to a neighbor, without the shelter's approval. The practice is known as "rehoming," and is unauthorized under most adoption agreements. The shelter is now wondering what options it has to make sure the animal is safe in his new home.

Sound familiar? The case is similar to the 2007 situation involving Ellen DeGeneres, her hairdresser, the puppy Iggy, and the California rescue group Mutts & Moms. DeGeneres adopted Iggy from Mutts & Moms, and then gave the dog away to her hairdresser. Two weeks later, a representative of the rescue group contacted DeGeneres to check on Iggy. At that

point, she revealed that she had given the dog away, in violation of the written adoption agreement. Two days later, a representative for Mutts & Moms visited the new owner's home to retrieve the dog. Police officers were summoned and determined that Mutts & Moms should retain possession of the dog because the implanted microchip still listed Mutts & Moms as the owner. Despite a televised tear-filled plea by DeGeneres, the animal was taken from the hairdresser, returned to the shelter and eventually found a new home. Shortly thereafter, Mutts & Moms had a full-fledged public relations debacle on its hands, as several animal lovers and Ellen supporters barraged the rescue group with criticism and threats.

This may be the most famous example of an unauthorized rehoming, but it's a common situation, and one every shelter can guard against. A shelter's predominant function is to connect pets with loving owners in safe, healthy, and stable environments. Most shelters go to extensive lengths to scrutinize potential adopters, including prescreening interviews, detailed applications, and comprehensive adoption contracts. But once the adopter is approved and the adoption finalized, you have limited control over the well-being of the animal. Even worse, if an adopter decides to give the pet away to a third party, your shelter has no opportunity to determine the fitness of this new individual as

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a pet parent. This explains why most adoption agreements limit the transfer-of-ownership rights of the adopter.

The question is, does a shelter have the right to reclaim an adopted animal if the adopter violates the adoption agreement by giving the animal away to a third party? And if it does, should it do so?

The Basics of an Adoption Contract

To understand a shelter's rights in the event of an unauthorized rehoming situation, we need to start with the basics of contract law. A contract is an agreement between two parties that creates an obligation to perform a specific duty. In order for a contract to be enforceable it must contain (1) an offer, (2) acceptance of that offer, and (3) consideration (the exchange of something of value by both parties). With regards to animal adoption contracts, these elements are met when (1) the shelter offers to provide the adopter with an animal, (2) the adopter agrees to accept the animal in exchange for an adoption fee, and (3) the shelter receives the fee in consideration for the adopter receiving the animal. If all of these elements are met, the adoption contract is valid and enforceable in court. While there are varying perspectives on the issue of freebie adoptions—some shelter folks feel they imply that the adopted animal has no “value,” while others believe that they can boost save rates—from a legal contract perspective, free adoptions create a potential complication. If the shelter does not charge a fee, some courts may find that there has been no value received by the adopter, and therefore no valid contract exists.

While these are the basics of contract law, the specifics vary from state to state and are highly influenced by previous similar cases in your jurisdiction or district. For this reason, it is wise to consult an experienced local contract attorney with an animal law background to draft the adoption agreement your shelter plans to use. As a general rule, a court will enforce the terms of a contract as long as they are clear, not illegal, and not grossly unfair. The best approach is to say in the contract that the transfer of ownership is prohibited, and clearly outline the consequences in the event an unauthorized rehoming occurs. The clearer the contractual language is, the more likely the court is

to enforce the adoption agreement. An example of a transfer-of-ownership clause is as follows: “Transfer of ownership of this animal is strictly prohibited without prior written authorization of adopting agent (your shelter/rescue group). If for any reason adopter is unable to keep this animal, adopter will notify the adopting agent immediately and cooperate with shelter in finding an appropriate home for this animal without refund of adoption fee. Appropriateness of a new home is to be determined exclusively by the adopting agent.”

This transfer-of-ownership clause creates what is legally referred to as a “condition subsequent,” meaning that if the adopter transfers ownership, then the shelter no longer has a legal obligation to provide the animal, and arguably, the shelter may reclaim the animal. Typically, these agreements do not place a time limit on transfer-of-ownership restrictions, meaning the shelter may attempt to reclaim the animal even five or 10 years after the original adoption.

So how does this all play out in the real world? Let's look at the case I was contacted about recently, where the original adopter let his bunny hop over to his neighbor's to live without approval from the shelter. If the shelter's adoption contract contained a comprehensive transfer-of-ownership clause, then the adopter breached the contract by giving the rabbit to a neighbor. When the adopter violates an agreed-upon term of the contract, you have the right to sue for breach of contract in civil court. The court will most likely determine that a valid agreement existed—one condition of which was that the ownership of the rabbit would not be transferred without the shelter's approval—and that the adopter has breached the contract.

If a breach of contract has occurred, then the court will determine what damages were suffered by the shelter and what legal remedies will best resolve the situation. Monetary damages are available—however, the goal of animal welfare groups is the well-being of the animal, so the primary objective is to reclaim the animal and find it a new home. Because the shelter is suing to force the adopter to perform a specific act stated in the contract (instead of just asking for money), the remedy sought is called “specific performance.”



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Generally, courts are reluctant to award specific performance when the aggrieved party can be satisfied with monetary damages, because money damages are easier to enforce. In order to obtain specific performance, you must show the court that (1) the contract is valid, (2) you performed your end of the bargain, (providing the adopter with an animal), and (3) that the item you want returned is so unique that it cannot be replaced by money. Any judge who understands the unique bond between humans and their pets will clearly agree that specific performance is imperative in pet adoption situation, because each animal is a unique individual. Unfortunately, in some states pets are still treated as non-unique goods. In these jurisdictions, a shelter will have a more difficult time convincing the judge that the specific performance of returning the animal is more appropriate than simply awarding money damages.

The Complication of a Third Party

Now you have a valid agreement, breached by the adopter, where an available legal remedy is the return of the animal. Case closed, right? Wrong! The biggest problem with this scenario is that the original adopter no longer has the animal—the neighbor does. Now your shelter is attempting to retrieve the

animal from a third party, one that did not agree to the terms of the original contract and may have no idea such a contract exists. This new owner may have even paid good money to purchase the rabbit, completely unaware of the preexisting adoption agreement.

To succeed in court, you will have to convince the judge to force the new owner to relinquish the dog, even though the new owner did not agree to the term of the original contract. One major hurdle: a major tenet of contract law which provides that a contract cannot give rights or impose obligations on any person except the parties that signed the original contract. The neighbor (or in the DeGeneres case, her hairdresser) did not sign the contract or agree to be bound by the transfer-of-ownership agreement. The law can get very complicated and jurisdiction-specific in this matter, but a brief rundown will give you an idea of the issues at play:

The best-case scenario is that the judge will determine the animal should be taken from the new owner and issues an official court order stating that the animal should be returned to your shelter. In practical terms, the court would deliver this order to the new owner (assuming she could be found), and, if the new owner did not voluntarily comply with the court order, a sheriff might be sent to recover the animal on the shelter's behalf.

Though the aforementioned scenario is entirely possible, you should be aware of the other, less-favorable outcomes you may be faced with. First, the judge could determine that the original adoption agreement was a contract for the sale of goods rather than an adoption. Under the Uniform Commercial Code, the purchase of an animal is treated like the purchase of any non-unique object. If the original transaction is deemed a sale instead of an adoption, then the title to the animal transferred to the "buyer" the minute the adopter received the animal. Because under most states' laws animals are still considered property, the court could view pets as mere "goods." Thus, there is a chance the transfer-of-ownership clause will be ruled an unenforceable part of the agreement, because your shelter is attempting to maintain an interest in a piece of property you no longer own. This is why it is best to always state clearly that the contract is an adoption agreement, not a sale, and that the adoption fee is a donation to cover the adoption costs.

An additional concern for your shelter is that even if the agreement is found to be an adoption not a sale, the court may look at the animal as a non-unique good and determine that specific performance (returning of the animal to the shelter) is unwarranted. In the event that the shelter is successful on the breach of contract claim, but reclamation of the animal is deemed unwarranted, the court will likely award monetary damages. Monetary damages are even more likely in situations where the contract specifically provides for them.

Because it is so difficult to enforce a contract against a third party (the new adopter), you should include in your adoption agreement contractual language that puts the original adopter on the hook for a "reclamation attempt fee," attorney's fees, and court costs. You may want to include a provision for "liquidated damages," which is a specified amount stated in the contract in the event of a breach. Liquidated damages are useful for situations like these, where a court may find it difficult to determine a dollar amount appropriate to the breach. Even if these fees are not granted in court, they may deter some adopters from breaching the contract in the first place.

Beyond the Law

All of the above deals with the legal issues involved in rehoming. Clearly this can be a complicated issue in the court of law, but it is fairly simple in the court of public opinion. Your shelter's mission should be about saving animals, not winning a court case. After the Ellen DeGeneres incident, Moms & Mutts received several threats and temporarily closed its shelter because of the bad publicity. Even though DeGeneres clearly breached the adoption agreement, Moms & Mutts came across to some as a vindictive shelter that lost sight of the ultimate goal here: to find great pets loving homes.

To avoid all the court costs and bad publicity associated with transfer-of-ownership disputes, you should work on maintaining an open dialogue with every new adopter. The critical time in an adoption is the first few weeks and months, when the fantasy of owning a cute pet turns into the reality of caring for a living being. In the early going, make sure to keep open lines of communication with your adopters to give

them any advice or guidance they may need. The more comfortable you can make them feel, the more honest they will be about the status of the animal.

Practically speaking, it will be hard for most shelters to determine whether an animal has been rehomed. Even with active post-adoption monitoring measures—usually one or two follow-up phone calls within a month of the adoption—the shelter is relying on the word of an adopter who has already been dishonest by breaching the adoption agreement. The best approach is to explain the policy against rehoming during the interview process and urge the adopter to contact the shelter if they can no longer take care of the animal, or want to give the animal to a third party.

If a rehoming does occur, work to achieve the best-case scenario: You can evaluate the new adopter, confirm that the animal will be safe with him, and have the new adopter sign a new contract with the shelter. If the adopter gives the animal away to someone very close to them (for example, a parent, spouse, or sibling), then the shelter may want to make an exception to this technical contract breach. Also, the longer it has been since the animal was originally adopted, the more likely it is that the original adopter will work to ensure their pet gets a loving new home. Be fair, realistic, and use common sense. If you have proof that the new home is truly inappropriate or unsafe, you'll have to deal with the worst case: Your shelter will have to initiate the legal remedies discussed above.

But if you find out an adopter has given away the animal, it is most likely because they were honest enough to tell you, as in the DeGeneres case. You should express appreciation for their honesty and work with the adopter and the new owner to make sure the new environment is safe for the pet. You should also ask the new owner to sign an adoption agreement. If at some later point you determine the new owner is unfit, then you can notify the authorities of animal cruelty, and turn to the courts with the original adoption contract. With a solid contract, a post-adoption monitoring program, and an alert yet compassionate staff, you will have fewer court battles and more animals in safe, loving homes. 