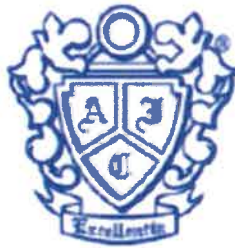


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ANIMAL LAW

November 30, 2021

Presented by Heidi Meinzer, Esquire

Presenter's bio:

Heidi Meinzer is an attorney in Alexandria, Virginia. In 2000, Heidi graduated from the Georgetown University Law Center and began her legal career as a public defender in Alexandria. After six years in the Office of the Public Defender, she practiced as a civil litigator with Bean, Kinney & Korman, PC in Arlington County. While at the firm, Heidi's practice naturally gravitated to animal law. In 2013, Heidi's animal law practice expanded sufficiently to enable her to establish her own law firm in Alexandria, the Law Office of Heidi Meinzer, PLLC.

As Heidi's animal law practice developed, she has focused her efforts to companion animal law issues and civic service. Heidi has served in numerous leadership roles, including as Chair of the Maryland State Bar Association's Animal Law Section and as the President of the Boards of Directors for the Virginia Federation of Humane Societies and Homeward Trails Animal Rescue, Inc. Various Virginia agencies have appointed Heidi to participate on legislative work groups dealing with issues involving companion animals. Heidi is also a certified dog trainer and serves on the Board of Directors for the Association of Professional Dog Trainers.

About Homeward Trails Animal Rescue, Inc.

Homeward Trails Animal Rescue is a non-profit 501(c)(3) organization that finds adoptive homes for cats and dogs in Virginia, Washington, DC and Maryland. Homeward Trails actively seeks to reduce the rate of euthanasia, support proactive spay/neuter practices, and educate the public about how to care for their animals in a humane way. Homeward Trails' Adoption Center is located in Fairfax Station, Virginia, and is supplemented by a large network of foster care providers throughout the Washington, DC Metro area.

Founded in 2001, Homeward Trails began by helping a rural animal shelter in West Virginia after a flood tragically killed more than 50 animals in the shelter. After 20 years, Homeward Trails has rescued approximately 30,000 animals. Through its newest program, Trails Up, Homeward Trails is leading the way by bringing support and resources to and mentoring under-resourced shelters and communities throughout the Commonwealth of Virginia.

You can learn more about Homeward Trails at www.homewardtrails.org.

COURSE OUTLINE

1. What Is Animal Law?

- a. Sources of animal law
 - (1) International law
 - (2) Federal law
 - (a) Statutes
 - (b) Common law
 - (3) State law
 - (a) Statutes
 - (b) Common law
 - (c) Definition of “animal” and categories of animals under Virginia Code Section 3.2-6500
 - i. Companion Animals
 - ii. Agricultural Animals
 - iii. Wildlife, laboratory animals and exotic animals
 - (4) Local laws
 - (a) Virginia Code Section 3.2-6543
 - (b) Alexandria Code of Ordinances, Title 5 (Transportation and Environmental Services), Chapter 7 (Animals and Fowl), and Article C: Dogs and Other Animals
- b. How dogs are perceived by the law
 - (1) As a weapon
 - (2) As mere property
 - (3) As an heirloom

(4) As a dependent/ward/etc.

(5) As a superhero

2. **Animals' Impact on other Areas of Practice**

a. Criminal

(1) Adequate care

(2) Cruelty

(3) Animal fighting

(4) Other

b. Civil

(1) Dangerous and vicious dog proceedings

(2) Seizure laws

(3) Other

c. Property

(1) Hurricane Katrina

(2) Doggie detinue

(3) Intellectual Property

d. Tort

(1) Dog bite liability

(2) Negligence

(3) Intentional torts

(4) Damages

e. Consumer Protection

- (1) Lemon laws
- (2) Groomers, kennels and boarding establishments
- f. Family law
 - (1) Who Gets the Dog
 - (2) Compare with Maryland
- g. Bankruptcy
 - (1) Liabilities
 - (2) Assets
- h. Tax
 - (1) charitable contribution deductions and *Van Dussen*
 - (2) New Jersey appellate decision in favor of Bernard and Jeanne Adler against SAVE/A Friend to Homeless Animals
 - (3) Humanity And Pets Partnered through the Years (HAPPY) Act (\$3,500 tax deduction)
- i. Trust & estates
 - (1) Pet trusts
 - (2) Other
- j. Local Government/Zoning
 - (1) Leash laws, tethering
 - (2) Kennel licenses and permitting
 - (3) No breed discriminatory legislation!

3. **Recent Developments in Virginia**

- a. How Does Virginia Fare? The Good and the Bad

- b. 2008
 - (1) 3.2-6500
 - (2) Dangerous dog statute
 - (3) Puppy mill statute

- b. Other areas in which Virginia is progressive
 - (1) Fur labeling
 - (2) Gas chamber
 - (3) Felony cruelty, dog fighting
 - (4) Reporting by and regulation of shelters and rescues

- c. What failed in 2021 legislative session

- d. What passed in 2022 legislative session

- e. What can we expect in 2022 and beyond?
 - (1) Envigo situation and potential 2022 legislation
 - (2) Free Roaming Cat Legislative Work Group and potential 2023 legislation
 - a. Trap Neuter Return as abandonment?
 - i. Va. Code Section 3.2-6504 – abandonment
 - ii. Va. Code Section 3.2-6500 definitions of “abandon,” “dump” and “owner”
 - iii. Va. Code Section 3.2-6551 “Finder” Statute
 - b. Return to Field and Dillon’s Rule
 - i. Can a public shelter “return” a cat as part of a TNR program?
 - ii. Va. Code Section 3.2-6546
 - iii. AG Opinions in 2013 and 2015




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My inspiration

What motivated me to start an animal law practice

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HOMeward TRAILS



- Homeward Trails Animal Rescue, Inc., is a 501c3 founded in 2001 and that has rescued approximately 30,000 cats and dogs in its 20 years
- The Adoption Center is located in Fairfax Station, with foster homes all throughout the Washington DC Metro area
- Homeward Trails is a leading private animal shelter, taking on a mentoring role with under-resourced shelters and communities through its newest program, Trails Up




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CLE Overview

- (1) What is "Animal Law"
- (2) Animal Law's Impact on other Practice Areas
- (3) Recent Developments in Virginia





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(1) What is "Animal Law"?

"Animal law" is not a discrete body of law. Instead, animal law cuts across all disciplines.

- International law
- Federal law
- State law
- Local law

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International Law

Currently, there is no worldwide treaty governing animal welfare.

In 1978, UNESCO was presented with the Universal Declaration of Animal Rights.

In 2003 and 2005, two animal welfare conferences produced two texts of the Universal Declaration for the Welfare of Animals. There is also proposed text for the "International Convention for the Protection of Animals."

The EU has regional treaties on animal welfare.

- At least 32 countries have formally recognized non-human animal sentience
 - USA is not one of them




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Federal Law

To find out more on federal animal welfare laws, consult the Congressional Animal Protection Caucus:

<https://blumenauer.house.gov/congressional-animal-protection-caucus>

- Statutes
 - Animal Welfare Act (regulates treatment of research animals, exhibition, transport and dealers)
 - Animal Crush Video Prohibition Act (*US v. Stephens*)
 - Animal Fighting Prohibition Enforcement Act
- Common law
 - Standing




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State Law

In 2008, Virginia overhauled its animal law statutes and passed the Comprehensive Animal Care Act, which is housed in Virginia Code Section 3.2-6500, *et seq.*



- State statutes:
 - Virginia Comprehensive Animal Care Act
 - Criminal neglect/abuse
 - Dangerous dog statute
- State regulations:
 - Shelters, rescues, and animal control
 - Veterinarians and other professionals
- Case law
 - NEID v. IED involving a companion animal (*Kondarov v. Kerdasha*, 271 Va. 646 (2006))



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Definition of "animal" under Virginia Code Section 3.2-6500


"Animal" means any nonhuman vertebrate species except fish. For the purposes of §3.2-6522 [rabid animals], animal means any species susceptible to rabies. For the purposes of §3.2-6570 [cruelty], animal means any nonhuman vertebrate species, including fish except those fish captured and killed or disposed of in a reasonable and customary manner.

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Categories of animals under Virginia Code Section 3.2-6500

<p>"Companion Animals"</p> <ul style="list-style-type: none"> Domestic or feral dog Cat Nonhuman primate Guinea pig, hamster Rabbit (not for food/fiber) Exotic or native animal Reptile Exotic or native bird Any animal under care, or bought/sold/traded/bartered NOT "Agricultural Animals," game, or animals regulated under firearms law as dangerous animals 	<p>"Agricultural Animals"</p> <ul style="list-style-type: none"> Livestock: bovine (cow); equine (horse); ovine (sheep); porcine (pig); cervidae (deer); caprae (goat); genus Lama; ratites (large flightless birds); fish or shellfish; rabbits, hares or other animals raised for food/fiber. Poultry: domestic fowl and game birds raised in captivity NOT "Companion Animals"
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Not all animals are created equally



<p>Protection from neglect</p> <ul style="list-style-type: none"> Companion animals → Virginia Code §3.2-6503 Agricultural animals → Virginia Code §3.2-6503.1 	<p>No protection even from cruelty</p> <ul style="list-style-type: none"> Exceptions from cruelty statute under Virginia Code §3.2-6570: <ul style="list-style-type: none"> Activities "connected with bona fide scientific or medical experimentation"
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2019 "Tommie's Law"

- Prior to 2019, state law required the animal to die from abuse for an act to be considered a felony
- As of July 1, 2019, it became a felony to commit cruelty if
 - The animal involved is a dog or cat and
 - Sustains serious bodily injury





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Local laws

These are the areas for which the General Assembly has given localities the ability to adopt ordinances and impose more stringent laws.

- Virginia Code Section 3.2-6543:
 - Rabies
 - Dog and cat licenses
 - Pet shop permits
 - Dogs running at large
 - Leash laws
 - Pounds, shelters and rescues
 - Animal control positions
 - Seizure and impoundment
 - Animal cruelty
 - Sterilization
 - Other penalties and enforcement laws



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(2) Animal Law's Impact on Other Areas of Law



- Animal law has traditionally focused on areas such as welfare, endangered species and equine law.
- But animal law is developing rapidly, and now touches almost all substantive areas of law.
- More and more focus has been placed on companion animals, and particularly dogs.




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1. Criminal Law

- Adequate care (our "neglect" statute)
 - §3.2-6503 (companion animals); §3.2-6503.1 (agricultural animals)
- Animal Cruelty
 - §3.2-6570 (felony if euthanasia results)
- Animal Fighting
 - §3.2-6571 and 7 U.S.C. §2156
- Other
 - §3.2-6587 (Class 1 and 4 misdemeanors)
 - Animal Crush Video Prohibition Act (18 U.S.C. 48)
- K9 cases in 2013: *Florida v. Jardines* and *Florida v. Harris*

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2. Civil law


- Dangerous and Vicious Dog Proceedings
 - §§3.2-6540 and 3.2-6540.1
 - 2013 change split out dangerous and vicious sections
- Seizure laws
 - §3.2-6562 (companion animals at large)
 - §3.2-6565 (direct & immediate threat to life, safety or health)
 - §3.2-6569 (procedures for seizure and impoundment)
- Other examples
 - §3.2-6551 (finding stray) & 3.2-6574 (sterilization requirement)
 - §3.2-6580 (civil penalties to defray ACO costs and sterilization)





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3. Property

- Hurricane Katrina disputes
 - Abandoned? Lost? Temporarily relinquished? "Best interests"?
 - Louisiana statute allowing 3 years to reclaim "property"
 - Movie "Mine" and Megan McNabb, *Pets in the Eye of the Storm: Hurricane Katrina Floods the Courts with Pet Custody Disputes*, 14 ANIMAL LAW 71 (2007)
- Bailment: *Lohre v. Posh Maids*



- Intellectual Property
 - "In re Paws4Peace, LLC, Serial No. 85215720 (May 29, 2013)
 - "Grumpy Cat," copyright & trademark, www.grumpycats.com



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4. Torts

"Alleged" Harm by animals

- Dog bite liability
 - "one free bite"
 - No free bites for dangerous dog cases!
- "Dogs behaving badly"
 - *Stout v. Bartholomew*, 544 S.E.2d 653 (2001)
 - *Town and Country A.H. v. Dearthoff*, Rec. No. 0047-08-4 (2008)

Harm to animals

- Negligence
 - *Kondaurov, et al. v. Kerdasha*, Record No. 042077 (2005)
 - Sushi & courthouse dogs
 - Footnote 4
- Intentional Torts
 - *Nanni v. Smith*

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5. Consumer Protection

- "Lemon Laws"
 - Criminal: §§3.2-6509 through 3.2-6511
 - Civil/CPA violation: §§3.2-6512 through 3.2-6516
- Breeders
 - Virginia's "puppy mill" statute in §§ 3.2-6507.1, et seq.
- Groomers, Kennels and Boarding Establishments
 - §§3.2-6518 through 3.2-6519
 - §3.2-6520: unclaimed animals left with vets or boarding establishments



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6. Family Law

- Who Gets the Dog?
 - *Whitmore v. Whitmore*, Court of Appeals Record No. 1644-10-4 (2011)
 - *Conahan-Baltzelle v. Baltzelle*, Court of Appeals Record No. 0830-04-3 (2004)
 - Virginia Code §20-107.3 governs – equitable distribution of property
- Compare with Maryland: Calvert County Judge Graydon McKee considered "best interests" of Lucky and granted joint custody to husband and wife



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7. Bankruptcy

<p>Liabilities</p> <ul style="list-style-type: none"> • <i>In re Boben</i> (Bankr. D. Md. 2010): \$35.42/mo for care of cat reasonable • <i>Floyd v. Ed. Credit Mngt. Corp.</i>, 54 Fed. Appx. 124 (4th Cir. 2002): pet care expenses reasonable • <i>In re Cohen</i>, 246 B.R. 658 (Bankr. Colo. 2000): \$100/mo for 2 dogs reasonable • <i>In re Gray</i>, 2009 WL 2475017 (Bankr. N.D. W.Va. 2009): \$750/mo for dogs "providing no necessary service" to debtor unreasonable 	<p>Assets</p> <ul style="list-style-type: none"> • Companion animals should be listed on Schedule B of debtor's schedules • Certain animals such as service animals, purebreds, breeding stock and highly trained animals can have considerable value • Creditors can have liens on animals: example – Va. Code §3.2-6520 (vets and boarding establishments with unclaimed animals)
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8. Tax

- *Adler v. SAVE*, 2013 WL 4017286 (N.J. App. 2013): Non-profit must honor donor's intent and express purposes
- *Van Dusen v. IRS*, U.S. Tax Court Docket No. 20767-08 (2011): Charitable contribution deductions
- *Garwood v. Indiana Dept. of State Revenue*, Indiana Tax Court Cause No. 82T10-0906-TA-29 (2011): State exceeded authority when it seized puppy mill's dogs as "jeopardy assessment" (tax evasion charges did stick)
- Humanity And Pets Partnered through the Years (HAPPY) Act: HR 3501 (2009 bill): \$3500 deductible proposed for "qualified pet care expenses"



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9. Trust & Estates

- Va. Code §64.2-726: Pet trusts
- Va. Code §57-39.21: Pet cemeteries
- *Leona Helmsley in 2007*: \$12 million trust for "Trouble" the Maltese. When family members challenged the trust, the court shaved Trouble's trust down to \$2 million.
- Hagerstown, Maryland case carrying on Friday night spaghetti dinners for his three rescue dogs



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10. Local Government/Zoning

- Va. Code §3.2-6543 and Dillon's Rule
- **Kennel licenses, shelters, and overnight pet boarding**
 - Animal shelters & kennels permitted in "I zone" (Industrial): Alexandria Zoning Code §4-1202
 - Overnight pet boarding must comply with VDACS, etc.: Alexandria Zoning Code §11-513(X)(1)
- Pet shops: Locality can require permits [Va. Code §3.2-6537]. Alexandria does require pet shop permits under Alexandria City Code §5-7-71, et seq.
- Breed Discriminatory Laws barred by dangerous dog statute (Va. Code §3.2-6540)



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How are dogs perceived by the law

- As a weapon 
- As mere property 
- As an heirloom 
- As a person/dependent 
- As a superhero 

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As a weapon

- Dangerous Dog cases
- Dog bite cases
- Breed discriminatory laws
- Maryland and *Tracey v. Solesky*


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As mere property

- Virginia Code §3.2-6585 (Dogs and cats deemed personal property)
- Negligence cases (*Kondaurav v. Kardashia*)
- Family law and who gets the dog (*Whitmore v. Whitmore*)
- "Doggy detainee" cases

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As an heirloom (or something more than mere personal property)

- Damages for intentional torts? (*Nanni v. Smith*)
- Felony larceny designation for dogs and other (primarily agricultural) animals (but not cats!) – Virginia Code §18.2-97
- Animal "lemon laws" like Virginia Code §§3.2-6509-3.2-6517


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As a person or dependent

- Pet Trusts
- Bankruptcy
- Pet custody agreements (Judge McKee's case with Lucky in Calvert County, Maryland)
- Adequate care in Va. Code §3.2-6503 and Abandonment in §3.2-6504

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As a superhero

- K-9s
- Search and rescue dogs
- Service animals under the ADA (and other assistance animals under similar laws)

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(3) Recent Animal Law Developments in Virginia

Virginia has been on the cutting edge of companion animal law in many ways




The Virginia General Assembly routinely takes up dozens of animal law related bills each year



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How does Virginia fare?

<p>THE GOOD</p> <ul style="list-style-type: none"> • In 2008, Virginia was the first state to enact a "puppy mill" statute • Virginia is stricter than federal law and other states in areas such as fur labeling and use of gas chambers • Due to Dillon's Rule, Virginia's laws are more uniform across the Commonwealth (no BDL!) 	<p>THE BAD</p> <ul style="list-style-type: none"> • Virginia courts will not "make law" (e.g., damages in tort cases, pet "custody" cases) • Things are dismal for wildlife and hunting animals • The Virginia General Assembly has blocked good bills lately and passed some not so good ones
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Areas in which Virginia is progressive



- Dangerous and vicious dog statutes (plus no BDL!)
 - §§3.2-6540 - 3.2-6540.1
- Felony cruelty and animal fighting laws
 - §§3.2-6570 and 3.2-6571
- Reporting and regulation of shelters & rescues
 - §§3.2-6546, 3.2-6548, and 3.2-6549
- Garments with dog or cat fur
 - §3.2-6589
- Decompression and gas chamber prohibition
 - §3.2-6505



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What failed in 2021

- HB1744 (Campbell): This bill would have changed standards and procedures for search warrants and seizures related to cruelty allegations at zoos or petting zoos. The bill was left in committee.
- HB2077 (Marshall): This bill would have prohibited operating a motor vehicle while holding a companion animal. This bill was left in the Transportation Committee.
- HB1390 (Lewis): This was our third bill, which passed in the Senate with a strong bipartisan 26-13 vote. The House Agriculture Subcommittee voted 5-3 to lay the bill on the table and be sent to a study committee.




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What passed in 2021

- HB2250 (Kory)/SB1379 (Boysko): This is the Humane Cosmetics Act, prohibiting testing cosmetics on animals and the sale of cosmetics manufactured using animal testing.
- SB1135 (Marsden): This bill revises the dangerous dog statute.
- SB1412 (Stanley): This bill prohibits a person convicted of cruelty from being an owner or working as an employee for a pet shops, dealer or commercial dog breeder.
- SB1437 (Stanley): This bill requires animal testing facilities to offer animals for adoption after the facilities no longer have a need for them.




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What to Expect in 2022



- Envigo is a corporation that owns a breeding facility for laboratory animals in Cumberland, Virginia
- 2021 investigations by PETA and the USDA uncovered multiple serious violations

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Envigo Situation



- Envigo and others were already under the microscope with the passage of SB1417
- Violations:
 - Crowded, stressful conditions
 - Dead animals (especially puppies)
 - Lack of proper vet care and improper euthanasia

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Envigo Violations: Federal

- July 2021 Inspection and Animal Welfare Act violations
 - Inadequate vet care – including over 300 puppy deaths attributed to “unknown causes”
 - Improper handling
 - Improper housing and enclosures
 - Improper feeding – and withholding of food from nursing mothers
 - Improper cleaning and sterilization
- November 2021 Inspection – findings not yet available
- Enforcement may lead to revocation of license and/or civil penalties

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Envigo Violations: State

- Compliance with SB1417 and VCS 3.2-6593.1 – 400 beagles in need of adoption in the immediate future
- “Commercial breeder”? “Animal Testing Facility”?
- Criminal charges?
 - Misdemeanor cruelty
 - “any animal” under 3.2-6570
 - “Connected with bona fide scientific or medical experimentation”?
 - Felony
 - If cat or dog -- “serious bodily injury” and not just resulting in death or euthanasia



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Potential legislation in 2022



- Requiring an on-site inspector
- Strengthening SB1417 and potentially removing immunity provision
- Will Envigo be defined as “Commercial Breeder” or “Animal Testing Facility”? Or both?

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What to Expect in 2023

- After SB1390 failed in 2021, the Department of Wildlife Resources convened the “Free Roaming Cat Legislative Work Group”



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Trap Neuter Return (TNR) Issues

Abandonment?

- TNR is the most humane and successful way to control the population of community cats
- When someone captures a cat as part of a TNR program and returns the cat, is that "abandonment"?

RTF and Dillon's Rule

- Virginia Code Section 3.2-6546 dispositions for public shelters: (1) adopt; (2) return to owner; (3) transfer for adoption; or (4) euthanasia
- Does Dillon's Rule mean that a public shelter cannot return to field as part of a TNR program?




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TNR and Abandonment

- Va. Code Section 3.2-6504: "No person shall abandon or dump any animal."
- Va. Code Section 3.2-6500 Definitions:
 - "Abandon"
 - "Dump"
 - "Owner"
- Va. Code Section 3.2-6551 "Finder" Statute


2013 Attorney General Opinion: Those who do TNR are not "de facto" or "de jure" owners, but rather "finders" under 3.2-6551



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TNR and Dillon's Rule



- Virginia Code Section 3.2-6546 states the following as dispositions of animals by public shelters:
 - Return to Owner
 - Adoption
 - Transfer to another releasing agency for adoption
 - Euthanasia
- 2013 Attorney General Opinion:
 - Localities may capture and sterilize feral cats – but Dillon's Rule dictates that public shelters are not authorized to release
- 2015 Attorney General Opinion: Limits the 2013 Attorney General Opinion to public shelters, not private shelters or other private entities

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Thank you!

For more information on animal law in Virginia, start with the Comprehensive Animal Law Handbook, available from the Virginia Federation of Humane Societies at <http://www.vfhs.org/legislation/vacanimal-lawbook>

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