

Animal Control, Zoning & Your Rights

A major threat to all rabbit breeders is the Animal Control Officer (ACO). The problem is there are no hiring requirements for ACOs, there is little to no training, and worst of all no written guidelines pertaining to rabbitry inspections. If an ACO is inspecting your rabbitry what do they use to evaluate your husbandry practices and the condition of the animals? Another problematic area is the nationwide trend of animal rights activists taking control of animal shelters. In most areas the local animal shelter (humane society, SPCAs included) are in charge of conducting investigations. How can a breeder expect an ACO hired by ARAs to conduct an objective investigation when they don't even condone companion animal breeding? Compounding the problem is a lack of any system of checks and balances to protect against abuse. ACOs only answer to the shelter's board of directors, in many cases made up of animal rightists.

Most investigations of animal owners occur after the local animal control organization receives a complaint about neglect or cruelty. There have been cases of complaints being made by rabbit rescuers opposed to breeding, dissatisfied pet customers (often those turned down because they aren't responsible enough), fellow breeders with a grudge, or neighbors (with a grudge). ACOs are required to conduct an investigation after receiving a complaint call. Many times these are anonymous tips. One should always oppose any legislation that allows for anonymous reporting, we have the right to face our accusers. Besides that right anonymous reporting is inviting abuse of the system and is often used as a weapon to hurt others if someone has a personal problem.

You may also be investigated because AC has learned of your existence and decides to check up on your breeding operation. Animal rightists do keep track of advertisements for animals for sale in newspapers etc. Do not think you are hidden away, with publication of ARBA yearbooks, RBA publications, your business card, pedigrees, etc we all have a good paper trail.

If AC shows up and tells you they have a complaint about you but no warrant it is possible they are on a "fishing trip". If someone files a legitimate complaint the ACO can go before a judge and receive a search warrant. They do not need to come to your house first and ask to see animals. In publications for ACOs it is often recommended that they build a case by getting complaints and then going to a judge for a search and seizure warrant, and then arrive, arrest you and conduct a search, seize animals. If they have no search warrant it is likely they really have no evidence that there is any violation. So when they arrive telling you there is, and they may even threaten that they could go get a search warrant so you should cooperate, they probably have not much more than an anonymous complaint and certainly not enough to obtain a search warrant. But it is the right of every

American to be free from unreasonable searches so please always politely demand a search warrant before allowing anyone on your property.

Many owners have made a critical mistake by allowing authorities onto their property when there is no search warrant. Of course the natural feeling is I have nothing to hide so what's the problem. The problem is you may have been targeted and while they do not have any evidence of any animal violation by being allowed onto your property and conducting a search they can "find" evidence. Not every ACO or police officer is anti-breeder and out to get you but until it happens you don't have a clue what their agenda is. They may see empty feed dishes or water bottles, manure piled up, cage trays with even a small amount of waste in them, old animals, sick animals, etc. And even though there is no neglect or abuse going on they can easily go before a judge and say they saw no food or water, unsanitary conditions, sick animals, and then obtain a seizure warrant and take your animals and charge you with animal cruelty. Yes this has happened numerous times all over the US.

ACOs also send people to you pretending to be pet buyers. They may ask or you may normally allow people into your rabbitry. Now that they have been in your facility they can lie or exaggerate the conditions and a search and seizure warrant can easily be obtained. This is why we should no longer allow people into our rabbitries. Customers should be shown animals in a neutral area away from the animals and be sure they cannot see the facilities from where they are. Also do not answer prying questions such as how many animals do you have, how often do you breed, etc. While many pro-AR sites suggest these types of questions be asked by pet buyers there is no reason they should and less reason for you to give them information.

ACOs also will spy on you and your animals via a neighbor's yard or the road. One report said ACOs pulled a pick-up truck next to a high wooden fence so they could stand in the bed and look into the animal owner's property. "Plain sight" Doctrine says if an officer sees a violation they can go onto your property, at the least they can gather evidence for a search warrant. So be sure your facilities are hidden away from any view.

Suggestions to minimize problems include:

- limiting access to your rabbitry by potential pet buyers
- don't let your neighbors know about your rabbitry
- monitor local rabbit rescue groups and individuals, and be wary of letting them onto your property
- notify other breeders of any complaints, it could be a rabbit rights activist campaign and other breeders would also be targeted.
- discuss the problems you are having with any neighbors or rabbit rights activists with the ACO if you are investigated, this helps establish that the complaint might be false
- do not allow photographs of your rabbits or rabbitry
- Know your rights and keep a legislation book in the rabbitry

Legislation Book

It is very important that we prepare ahead of time for problems, they may never occur but if they do you will know what your rights are. A great idea is to keep a notebook in your rabbitry with information about laws and your rights as a reference source. You will likely not remember everything you've ever read about legislation and if you are investigated the natural anxiety associated with it will further hamper your memory skills. Your legislation book should include:

- a copy of this pamphlet so you will know what your rights are and what you should do
- a copy of the Animal Welfare Act regulations pertaining to rabbits
- a copy of the AWA licensing exemptions, assuming you are not required to be licensed by USDA
- a copy of the Rabbit Education Society Show Rabbit Breeder Guidelines
- a copy of your state laws regarding rabbits, animal cruelty & neglect, and powers of the ACO
- a copy of your local laws (county, town, and city/village) pertaining to rabbits and AC
- blank pages for notes

What Are My Rights?

It is important that you take any animal control investigation seriously. You have no idea what agenda the ACO has, they may be anti-breeding, pro-breeding, or neutral, don't take the chance that the ACO will interpret what you do as acceptable. Remember there are usually no written guidelines on rabbit care available to the ACO so they may apply standards used for dog or other animal owners which do not reflect accepted rabbit husbandry standards. In order to assist breeders the RES has developed a listing of industry accepted standards for show breeders, it available on the RES site.

Important Information Concerning Investigations:

"YOU DO NOT HAVE TO ALLOW ANYONE INTO YOUR HOUSE WITHOUT A PROPER SEARCH WARRANT"

American Dog Owners Assoc.

-If an ACO wants to inspect your rabbitry request to see the search warrant. If they do not have one tell them they will need to get one first.

-IMMEDIATELY SEEK LEGAL COUNSEL

This can never be stressed enough, you need a lawyer if you are being investigated, they will better know your rights and the local and state laws and can advise you about what to do. Yes a lawyer costs money but do you want to risk the confiscation of your animals and a felony charge?

If an official arrives asking to inspect your property the following steps should be taken:

-Ask to see the person's badge and write down: name, phone number, supervisors full name and phone number, agency he represents, badge number, why he is there, was

there a complaint involved, who made the complaint (you may not get an answer), whether or not he has a search warrant, a copy of the search warrant.

-Request all questions be delivered in writing, do not answer questions unless they are written down.

-You should write down in a notebook all your answers to these questions. Best case scenario would be to request all questions in writing and then respond to them in writing via your lawyer.

-If you feel a search of your home may lead to confiscation of your animals or a criminal complaint, request that a sheriff or police be present with a search warrant.

-If seizure of your animals is threatened without a court order or hearing call the police immediately

"Please understand that seizure of property, without due process of law, is unconstitutional, and due process of law should include a court hearing in every action relating to such seizure. If the animal control officials or police seize a dog, they may not destroy the animal or harm it in any way until a judge has ruled that you are in violation and this can only occur after a full hearing." ADOA Pet Owners Rights

-Also write down the names of all persons involved including police officers

-Call your attorney and request assistance if faced with seizure

-Do not answer any questions from police without legal advice and do not offer explanations in case it gets misinterpreted

-As is written in the Miranda warning anything you say can be used against you.

-Do not volunteer any animals or other property

-Avoid anger or violence at all costs, be polite

-Take down notes as things happen so you can use it to aid your defense. One may consider using video tape, photographs, and a tape recorder to document the investigation. Remember everyone remembers events and statements differently, officials may misinterpret comments or conditions, if you have tangible evidence as to what really occurred it could help you win your case. Often people forget things that happened or were said this is why note taking or other forms of documentation are so critical to your defense

-If the authorities show up with an arrest warrant for you or threaten arrest and then search your property be sure to get someone down there to watch and record their activities.

The advice given to ACOs is to get the owners off the property and then search, this of course makes it easier for them to stage photos, take your property (especially cash), or do other things to make you look guilty.

If You Receive a Telephone Inquiry or Threat:

-You may be asked the number of rabbits you own and if you sell any, you do not have to answer these questions. Be aware that the official may pretend to be someone interested in a rabbit to get these answers. You may wish to ask if the person is interested in a rabbit and take down their full name, address, and phone and offer to call them back at a more convenient time. Trust your gut, if a call is suspicious be careful

-If you ascertain that a caller is representing an official organization ask for:

Full name, title, phone

Supervisors full name and phone

Nature of the inquiry and why it's being made

How your name and phone were obtained

Request any future questions from this agency be submitted in writing.

-If you feel harassed you are not required to give your name or address

-Keep a written record of the call, date, time, and information requested

-do not volunteer information or admit to a violation of current ordinances

-Do not lie or try and mislead the caller but you also are under no obligation to incriminate yourself

Zoning Violations

As a rabbit breeder we not only may face an investigation by animal control but also of possible zoning violations. The official responsible for upholding the town's zoning code is called the Zoning Code enforcement officer (CEO). Many of the above techniques may also be used when dealing with a CEO. If you are in violation of the zoning code you will receive a letter from the CEO informing you of a violation and giving you a time period in which to cease and desist or file for the proper permits. You do have the right to go before your town's zoning board of appeals but be aware that if you are violating the zoning law there isn't anything the zoning board can do for you. In order to fix a bad law you must go before your town board and lobby for change.

Do not allow CEOs to bully you. Your local laws which you should have a copy of should provide a time period to rectify a violation or appeal one. Do not allow them to threaten you that your animals will be seized immediately. Be aware often they will call in animal control, see previous section regarding how to handle them. As always get a lawyer, those who end up losing often make their first mistake by not hiring an attorney to represent them.

Possible Zoning Violations:

-rabbits defined as livestock and restricted to certain lot sizes

-number limit

-dumping rabbit manure on your property may be prohibited

-if you file a DBA or claim your rabbits on taxes it is considered a business and you may need special permits for a home business

-breeder licensing laws

Variances

Sometimes an option available is to get a zoning variance. A variance allows you to do or have something that is in violation of zoning. Remember however that zoning boards are not very open to granting variances and you will be required to present your case and answer questions demonstrating why you need a variance (consult your attorney or your town's zoning code for the specific criteria).

Grandfather Clause

Many breeders falsely believe a grandfather clause will protect them from losing their right to raise rabbits. A grandfather clause basically allows a continued land use that due to creation of a zoning code or adoption of a law now designates that use as prohibited (non-conforming use). In order to be able to continue a non-conforming use you must continually be doing it from before adoption of zoning laws to present, any break makes that special use null and void. The problem is years after creating a zoning code officials may not recall or have a record that your use is protected by a grandfather clause. You may be cited for zoning code violation and then have to prove to the zoning board that the non-conforming use has been continuous since prior to zoning. It sounds easy but it isn't, the board may demand proof in the form of receipts, tax returns, etc and you may ultimately have difficulty proving continuous use. Even if you are successful the town may slap exacting definitions of what you are doing on you, and you cannot increase or if there is a decrease you cannot return to previous levels of the non-conforming use. In other words if you have 50 rabbits the town may tell you that you cannot have more than 50 and if any die or are sold you cannot replace those. The goal is to return your property to a conforming use. When dealing with zoning it is best to hire an attorney to represent you.

Final Note:

While there are legitimate cases of animal neglect and abuse in our society there is a growing problem with innocent owners being targeted and taken out by animal control. One way to minimize problems is by getting current laws changed and preventing bad bills from becoming law. We need to have a system of checks and balances on the powers of anyone conducting animal cruelty investigations. Watch for news stories of cases which don't seem legit, contact your legislators with these and lobby to have laws fixed. Nobody condones animal cruelty, but nobody should be allowed to wreck the lives of people who are taking proper care of their animals either. Absolute power corrupts absolutely and that's the road we're going down right now with animal control.

The following pamphlet was prepared using information from the American Dog Owners Assoc www.adoa.org and the experiences of other rabbit breeders.

Rabbit Education Society website:
<http://rabbited.0catch.com>

Online ACO training manual can be accessed at:
http://www.nyshumane.org/Manual/toc_manual.htm
While the above is NYS specific it is being distributed nationwide and may assist you with combating the tactics of AR ACOs.