

Dog Bites: When Is an Owner Liable?

by Mary Randolph

Learn when a dog owner is -- and isn't -- liable for injuries caused by a dog.

What happens when a dog bites and injures someone? In most -- but not all -- instances, dog owners are financially liable for any injury or property damage their pets cause.

Here's what you need to know about dog-induced injury and liability, no matter which side of the leash you're on.

When Owners Are Liable

In general, there are three ways that dog owners can be legally liable for injuries caused when their dog bites someone.

Dog-Bite Statutes

More than half of U.S. states have laws that make dog owners liable almost any time their dogs injure someone. Although commonly called dog-bite statutes, many of these laws cover all kinds of dog-inflicted injuries, not just bites.

Dog-bite statutes are "strict liability" statutes because they impose liability without fault. That is, an injured person does not have to prove that the dog owner did anything wrong, just that the dog caused the injury. Typically, dog owners are liable under a dog-bite statute only if the dog directly caused the injury.

The One-Bite Rule

This misleadingly named rule (dogs don't necessarily get one "free" bite before the owner becomes liable, as discussed below) makes an owner legally responsible for an injury caused by a dog only if the owner knew the dog was likely to cause that type of injury -- for example, that the dog would be likely to bite. The victim must prove that the owner knew the dog was dangerous.

This rule, developed in court cases over many years, comes into play only if the state has no dog-bite statute or if the statute doesn't apply -- for example, if the statute covers only bites, and the dog caused the injury by knocking someone down.

How does an owner know a dog is dangerous? The dog doesn't have to have already bitten someone. Other indications that might lead a court to believe the owner knew the dog was dangerous include:

- **The dog threatens people.** The owner of a dog that often growls and snaps at people in public but hasn't ever actually bitten someone is on notice that the dog might bite someone. If the dog does bite, the owner will be liable.
- **The dog jumps on people.** The owner of a friendly, playful, large dog which is in the habit of jumping on house guests will be liable if the exuberant dog injures someone. Keep in mind that the motivation of the dog is unimportant for legal purposes -- it doesn't matter that the dog who knocked you down a flight of stairs was just trying to be friendly. An owner who knew that the dog behaved this way and might injure someone because of its size will be liable.
- **The dog frightens people.** If a dog habitually runs along the fence between the yard and the sidewalk while barking furiously or chases pedestrians or bicyclists, the owner may be liable if the dog causes an injury.
- **The dog has been trained to fight.** If a dog has been trained to fight, a court will almost certainly conclude that the owner should have known that the dog was dangerous. (Not all fighting dogs are aggressive toward people. However, a dog that has been agitated and abused by someone who wants the dog to fight may well be dangerous.)
- **There have been complaints about the dog.** If neighbors or others complain to the owner that a dog has threatened or bitten someone, the owner would certainly be on notice that the dog is dangerous.
- **The dog's breed is considered to be dangerous.** Generally, courts don't consider dogs of certain breeds to be inherently dangerous, but in some places, pit bulls, rottweilers, and a few other breeds have been defined by law as dangerous dogs.

Negligence Laws

Negligence is the third legal doctrine under which a dog owner may be found liable for injuries caused by a dog. A dog owner who is negligent (unreasonably careless) in handling a dog may be legally responsible if somebody is hurt and a reasonable owner would have foreseen the possibility of injury.

When it comes to defining negligence, broad rules are of little help. Whether or not someone acted negligently is a question that must be answered based on the facts of the situation. It's possible that an owner of a certain breed of dog can be found negligent for not taking special precautions to prevent the dog from causing injury.

A Dog Owner's Legal Defenses

If you are a dog owner whose dog has bitten someone, you may be able to defend yourself against the victim's assertion that you are liable for the injuries. However, not all defenses can be used in all states and all situations. For example, some defenses may be available if the dog owner's liability is based on a case law ("common law") theory, but not under a dog-bite statute.

When defending against a dog bite claim, a dog owner should pay attention to who has the burden of proof: that is, which party is required to prove that its version of events is true. For example, some dog-bite statutes require the victim to prove that he or she *wasn't* at fault; the dog owner doesn't have to prove the victim was at fault.

A dog owner may be able to avoid liability in the following situations:

The injured person provoked the dog. Some acts -- for example, hitting or teasing a dog -- can almost always get the dog and its owner off the hook. However, innocent and unintentional provocation of a dog (for example, accidentally stepping on a dog's tail) can also count as provocation that may let the dog owner off the hook. The motivation of the injured person is irrelevant to whether the dog was provoked.

The injured person knowingly took the risk of being injured by the dog. If you warn a visitor that your dog, which is in the back yard, might bite a stranger, or if you post a warning sign, you have a good argument that anyone who gets injured took on the risk of injury, knowingly.

In addition, people who make a living working with dogs -- groomers, pet sitters, veterinarians, or kennel operators, for example -- are generally presumed to voluntarily take the risk of a dog bite. However, in some states with dog-bite statutes, the owner is still liable even if the injured party knowingly took the risk.

The injured person was trespassing. In most states, dog owners aren't liable to trespassers who are injured by a dog. However, unless you warn people off your property with signs or locked gates, you are considered to have given an "implied invitation" to members of the public to approach your door on common errands -- for example, to speak with you, to try to sell you something, or to ask directions.

A general rule is that a dog owner who could reasonably expect someone to be on the property is probably going to be liable for any injury that person suffers. This rule is particularly important when it comes to children: There is a legal responsibility either to prevent the child from coming on the property or to keep the dog from injuring the child.

The injured person was unreasonably careless, and that carelessness contributed to the injury. The owner may not be liable if, for example, the injured person ignored a "Beware of Dog" sign.

Prevention: The Best Remedy

Probably the most important piece of advice when it comes to legal liability for dog bites is this: Do all you can to prevent your dog from injuring others and do all you can to prevent yourself from becoming a dog bite victim. Take appropriate precautions and teach children how to behave around dogs.

To learn more about legal liability and defenses when your dog injures another person, get *Every Dog's Legal Guide: A Must-Have Book for Your Owner*, by Mary Randolph (Nolo).

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