

APPENDIX J

Shelter Liabilities

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We live in a litigious society, so it's important for animal services agencies to consider legal liabilities, but liability concerns should not hamper an agency's mission to create a safe and humane community for people and pets. Indeed, many governmental entities are actually immune from lawsuits under state statute and some volunteers have immunity under federal or state laws. The law differs from state to state and even from locality to locality within the same state.

Reducing liability in adoptions

When it comes to liability around pet adoptions¹, what should shelters do to protect themselves? Observe, document, disclose and, most important of all, transfer ownership. You'll want to record and disclose everything you know about an animal, including all medical and behavioral information. Don't make broad statements; just tell prospective adopters what you have observed. Liability could ensue if you make broad statements such as "good with kids." Even if that's usually the case for a particular pet, there might be a kid who is so rambunctious that the pet is uncomfortable around the child.

It's also important to understand the difference between facts (which you can and should disclose) and predictions or warranties (which you should not make). Here's an example of factual information: "This dog lived in a household with kids and the prior owner reported that the pet behaved very well around children." And here's an example of a prediction: "We believe this dog will be good with kids." Remember, shelters are stressful places and the behavior of an animal in a shelter does not determine how he or she will behave in a home.

When disclosing information about pets, try to tell the truth, the whole truth, and nothing but the truth. Here are some other key points:

- Consider stopping the use of breed labels for mixed-breed dogs, since misidentification of a dog's breed can lead to a variety of negative consequences. Some local ordinances ban ownership of various breeds, some insurance companies won't insure

them, and some landlords won't rent to people who own them. If a dog's breed has been misidentified on adoption paperwork and the owners have to give the animal up because of that misidentification, they might be able to sue the shelter for negligence, deceptive practices and maybe even fraud. In many shelters, staff no longer guess the breed mix of dogs, since DNA testing has revealed that it's difficult to determine accurately what the mix is by simply looking at dogs who aren't purebreds.

- Disclose all behavioral observations and medical conditions to adopters, and provide them with a written copy. Have adopters sign an acknowledgment that they have received it.
- Require adopters to waive all liability against the shelter and indemnify the shelter if it's sued for any conduct related to the adopted animal. (See the end of this appendix for an example.)
- Be sure to state in the adoption contract that animals are inherently unpredictable and may subject the adopter to health and safety risks.
- Adoption contracts should disclaim any promises, warranties or prior agreements and state that the written contract represents the entirety of the contractual relationship.
- Consider including an arbitration or mediation requirement in the adoption contract.
- Be sure to give adopters a copy of the adoption contract and keep a copy for your own records.

To illustrate some of these points, here are a few examples of relevant case law:

- *Frank v. Animal Haven, Inc.*, 2013 WL 3064648 (N.Y.A.D. 2013). A nonprofit adopted out a dog and the dog bit a third-party, who sued the animal shelter. The adoption contract contained a release of liability and final transfer of ownership, but reserved the right to take the dog back if contractual terms were violated. Under the New York dog bite statute, the shelter had no liability because it was not the dog's owner. The court was not convinced that the reservation of the right to take the dog back prevented transfer of ownership.
- *Galgano v. Town of North Hempstead*, 840 N.Y.S. 2d 794 (2007). The town shelter adopted out a dog, who then bit an individual. The individual sued the shelter for adopting out a dangerous dog. There was no liability under the dog bite statute because the individual did not prove that the shelter knew or should have known of the dog's dangerous propensity.
- *City of Elgin v. Reagan*, 2009 WL 483344 (Tex. App. Austin 2009). A dog was adopted after the adopter was told that the dog was good with kids. On the afternoon of the adoption, the dog bit the adopter's child. The owners sued the City of Elgin for adopting out a dangerous dog. The claim was barred by sovereign immunity, a legal principle that makes governmental bodies and their employees immune from lawsuits in certain circumstances, unless that immunity has been waived. (You may wish to discuss with a local attorney whether this principle applies to your shelter or employees in any circumstances.)

Waiver of liability and indemnity agreement

The following is an example of legal language for waiver of liability and indemnity that might be included in an adoption agreement. All jurisdictions are different, though, so please check with your attorney before using this language.

Release. The Adopter, and for his/her spouse, heirs, executors, personal representatives and assigns, agrees never to bring a claim or suit against ABC Animal Shelter. The Adopter releases ABC Animal Shelter and its directors, founders, employees, officers, agents, representatives, contractors, volunteers, successors and assigns from all liability arising from the adoption or behavior or actions of the cat.

The Adopter understands that this agreement discharges ABC Animal Shelter and its directors, founders, employees, officers, agents, representatives, contractors, volunteers, successors and assigns from any liability to the Adopter and his/her spouse, heirs, executors, and assigns, with respect to bodily injury, personal injury, illness, amputation, scarring, death, property damage or other loss that may result from the adoption or behavior or activities of the cat. The Adopter releases ABC Animal Shelter and discharges ABC Animal Shelter and its directors, founders, employees, officers, agents, representatives, contractors, volunteers, successors and assigns from any liability for ABC Animal Shelter's own negligence or liability that may result in bodily injury, personal injury, illness, amputation, scarring, death, property damage or other loss to the Adopter.

The Adopter has read this Release Agreement and fully understands that he/she will relinquish all claims or actions whether now known or discovered in the future against ABC Animal Shelter, its board members, directors, officers, employees, agents, contractors, and volunteers. Adopter is of legal age and legally competent to sign this agreement. Adopter is signing this agreement of his/her own free will without the influence of an ABC Animal Shelter staff member.

Indemnity Agreement. The Adopter, and for his/her spouse, heirs, executors, personal representatives, and assigns, agrees to indemnify and hold ABC Animal Shelter harmless for all bodily injury, personal injury, illness, amputation, scarring, death, property damage or other losses, including attorney's fees and costs of litigation, that result to anyone else or any other entity because of the Adopter's negligence or liability. This includes lone acts or omissions by the Adopter as well as the combined acts of the Adopter with others.

NOTE

1. This appendix contains some legal information, but it should not be considered legal advice. It is recommended that you discuss any legal issues with an attorney.