



Shelter – Rescue Liability

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SAVE THEM ALL[®]



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Disclaimer

- Legal information, not legal advice.
- The law is different in every state, and can be different in jurisdictions within the same state.
- Always consult a local attorney before implementing legal strategies.
- Insurance is crucial.
- Lawyers are your friends -- have at least one on your board.





Liability????





Karma at fight bust bunker





Causes of Action

- Negligence: “[T]he failure to use such care as a reasonably prudent and careful person would use under similar circumstances.”
- Strict Liability: “Liability without fault.” Usually by statute, but can be by common law.
- Premises Liability: Negligence dealing with liability for physical surroundings (buildings, floors, etc.); failure to warn or remedy.
Categories: Negligent activity/
premises defect.
- Fraud/Deceit.





Factors

- Ownership of the dog (keepers/harborers)
- Previous knowledge of the dog
- Disclosure regarding knowledge





Defenses

- Trespass
- Provocation
- Assumption of the risk
- Not My Dog
- No Duty
- Police
- Military
- Dog preventing crime





Liability for Bites



- Strict Liability v. “one free bite.”
- Approximately 25 states have strict liability.



Strict Liability States

- Is defendant “owner,” keeper, harborer?
- Does defendant have knowledge of previous bite?
- Disclosure?





- When did bite occur?
 - In shelter?
 - After adoption?
 - While fostered?
 - While in rescue?
- Transfer responsibility when released to foster?





Liability

- Good with cats, kids, women, other dogs.
- He is a retriever -- should be able to swim.
- No kids under 10, men, people with glasses, baseball caps, other pets.





Liability Considerations

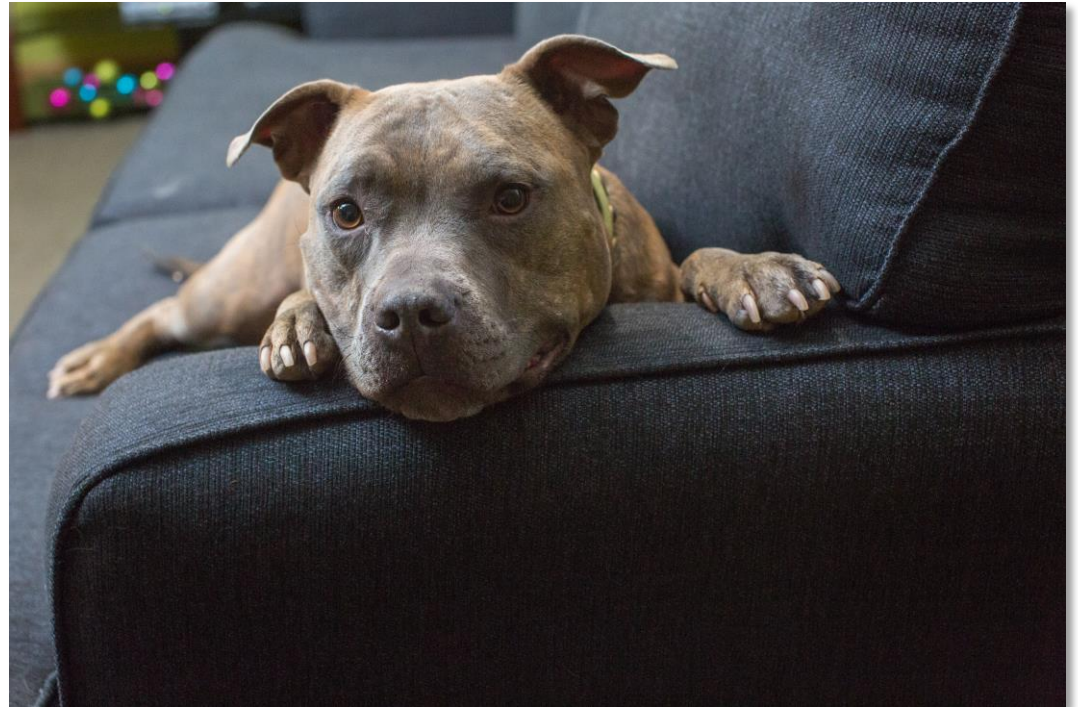
- Peanut Butter
- No fingers here
- Kitty/doggy cams





What Should You Do?

- Observe
- Document
- Disclose
- TRANSFER Ownership!





Frank v. Animal Haven, Inc., 2013

WL 3064648 (N.Y.A.D. 2013)

Facts:

- Non-profit shelter adopts out dog; dog bites third-party, who sues animal shelter.
- Adoption contract (1) contains release of liability; (2) final transfer of ownership; but (3) reserved right to take dog back if contractual terms violated.

Held:

- Under New York dog-bite statute, shelter has no liability because it was not the dog's owner.
- Note: Court not convinced that reservation of right to take back dog prevented transfer of ownership.



Dutka v. Cassady, 2012 WL 3641635 (Conn. Super. 2012) (unpublished)

Facts:

- Rescue group adopts out dog; dog bites third party, who sues rescue group.

Held:

- No Strict Liability: No liability under dog-bite statute because rescue group was not “owner” or “keeper” of dog.
- And no general negligence duty regarding dogs owned by third parties.



Galgano v. Town of North Hempstead, 840 N.Y.S.2d 794 (N.Y. App. 2007)

Facts:

- Town shelter adopts out dog, who bites individual; individual sues shelter for adopting out dangerous dog.

Held:

- No liability under dog-bite statute because plaintiff **did not prove that shelter knew or should have known of dog's dangerous propensity.**



Menches v. Inglewood Humane Society, 51 Cal.App.2d 415 (Cal. App. 1942)

Facts:

- Inglewood Humane Society adopts out dog, who bites adopter minutes after adoption; adopter sues Humane Society.

Held:

- No liability because Humane Society no longer owned the dog. (California – strict liability for the dog’s OWNER).
- ***But:*** Court wrote that plaintiff might have been able to sue for “breach of warranty or for fraud in inducing plaintiff to purchase the dog by making statements as to its qualities without having sufficient knowledge to warrant the declarations.”



Shelter Liability

Miles v. Rich v. Humane Society of Missouri

Facts:

- Rich adopted dog from humane society.
- Within weeks of adoption, dog bit someone, Rich reported to humane society.
- Dog bit Miles.
- Miles sued Rich, Rich sued humane society – negligence.



Allegations

- Humane society breached duty to evaluate dogs to prevent releasing dogs that were potential bite risks.
- Humane society breached duty to warn Rich after first bite that dog was likely to bite again.
- Humane society filed motion to dismiss.

Court of Appeals

- MO courts have refused to extend liability in negligence for harm caused by domestic animals beyond owners, possessors or harborers of animals.
- Humane society did not own, possess, harbor or control the dog.
- Not liable.



Brown v. Northwoods Animal Shelter, 2011 WL 5072600 (Mich. App. 2011)

Facts:

- Volunteer worker slips and falls at animal shelter; sues shelter for personal injuries.
- Note: Premises-liability case.

Held:

- No liability because volunteer had signed a waiver of liability.



Fire Ins. Exchange v. Cincinnati Ins. Co., 610 N.W.2d 98 (Wis. Ct. App. 2000)

Facts:

- Dog owned by third party bites 12-year-old child volunteering at Rock County Humane Society; parents sue dog's owners, whose insurance company settles.
- Insurance company then turns around and sues Humane Society.

Held:

- Humane Society could be sued as “keeper” of the dog even though it was not the dog's owner.
- And: Parent's signature on liability waiver may not defeat claim because shelter may be deemed to have violated child labor laws.



Claps v. Animal Haven, Inc.,
825 N.Y.S.2d 125 (N.Y. App. 2006)

Facts:

- Dog available for adoption outside Petco bites Petco customer walking by; customer sues animal shelter.

Held:

- No liability under New York dog-bite statute because shelter did not know or have reason to know of dog's dangerous propensities.



Offsite Adoptions





Lamare v. North Country Animal League, 743 A.2d 598 (VT 1999)

Facts:

- Dog impounded as stray held for 9-day hold period, then transferred to non-profit shelter, then adopted out.
- Prior owner (who had been looking for dog) finds out, is denied adoption of own dog by non-profit shelter, then sues non-profit shelter after dog was adopted out to someone else.

Held:

- No liability for public-policy reasons; non-profit shelter gained complete ownership of the dog after hold period.



Feger v. Warwick Animal Shelter, 814 N.Y.S.2d 700 (NY App. 2006)

Facts:

- Show cat allegedly stolen, surrendered to animal shelter and adopted out to new owner.
- Prior owner finds out, sues animal shelter.

Held:

- *Suit can go forward if plaintiff proves shelter knew that cat was hers and adopted it out anyway.*





Take Me Home Rescue v. Luri, 208 Cal.App.4th 1342 (Cal. App. 2012)

Facts:

- Dog foster (in foster-to-adopt situation) refuses to return dog or allow it to be spayed; animal shelter threatens to terminate rescue group's abilities to rescue.
- Written foster agreement makes clear rescue group owns animal, but does not require foster to return animal for spay/neuter.
- But foster agrees that there were oral agreements to spay/neuter dog.

Held:

- Foster ordered to return dog to rescue or have her spayed.
- **Notes: Foster contract should have included spay/neuter requirement.**



Reducing Risk:

- Incorporation, policies & protocols.
- Liability waivers and foster/adoption agreements -- written by an attorney licensed in your state.
- Insurance: Directors & Officers, General, Workers' Comp, Auto, Events.





Conduct: Adoptions

Observe/Document/Disclose

- Tell the truth, the whole truth, and nothing but the truth.
- Record and disclose everything you know and learn about an animal: Intake forms, employee/volunteer experiences, behavioral expert evaluations (where available).
- Disclose: Give adopters a copy of your recordings (and keep a copy for yourself).
- Note: Disclosure is not limited to behavioral information; also disclose all medical information (illnesses, injuries, vaccinations, symptoms, etc.).





Adoptions

Warranties/Promises/Predictions- Just the Facts!

- Don't make predictions, warranties, or promises regarding the health or temperament of an animal.
 - Fact: “Animal lived in household with kids and prior owner reported that pet behaved very well around children.”
- Understand the key difference between facts (which you can and should disclose) and predictions/warranties (which you should not make):
 - Prediction/warranty: Animal is “good with kids” or “dog is great with other dogs and cats.” – Do NOT do this.



Premises

- Warn or make safe
 - Provide warnings or cure defects in physical premises (wet spot in floor, tripping hazard, etc.)
 - Warn or prevent/limit contact with behaviorally or medically challenged animals (or both).
- Inspect your premises for defects: Check gates, locks, bathrooms, kennels, etc.
- Separate intake areas (where unknown animals may be) from customer-service and adoption areas.
- Keep animals separated if you have spay/neuter/vaccine/microchip clinic.
- Eliminate blind corners; opportunities for surprise interactions.
- Peanut warning?
- Webcam warning?





Policies & Protocols

- Written policy protocols for employees, volunteers, and board members.
- Provide manuals and require signatures.
- Mandatory safety training for all employees and volunteers.
- Mandatory employment-law training for all employees and volunteers (*e.g.*, sexual harassment).





Waivers / Agreements

- Disclose all behavioral and medical notes and observations; provide copies to adopter and have adopter sign acknowledgement.
- Require adopter to (1) waive all liability against rescue/shelter; and (2) indemnify the rescue/shelter if it is sued for any conduct related to the adopted animal.
- State that animals are inherently unpredictable and may subject adopter to health and safety risks.

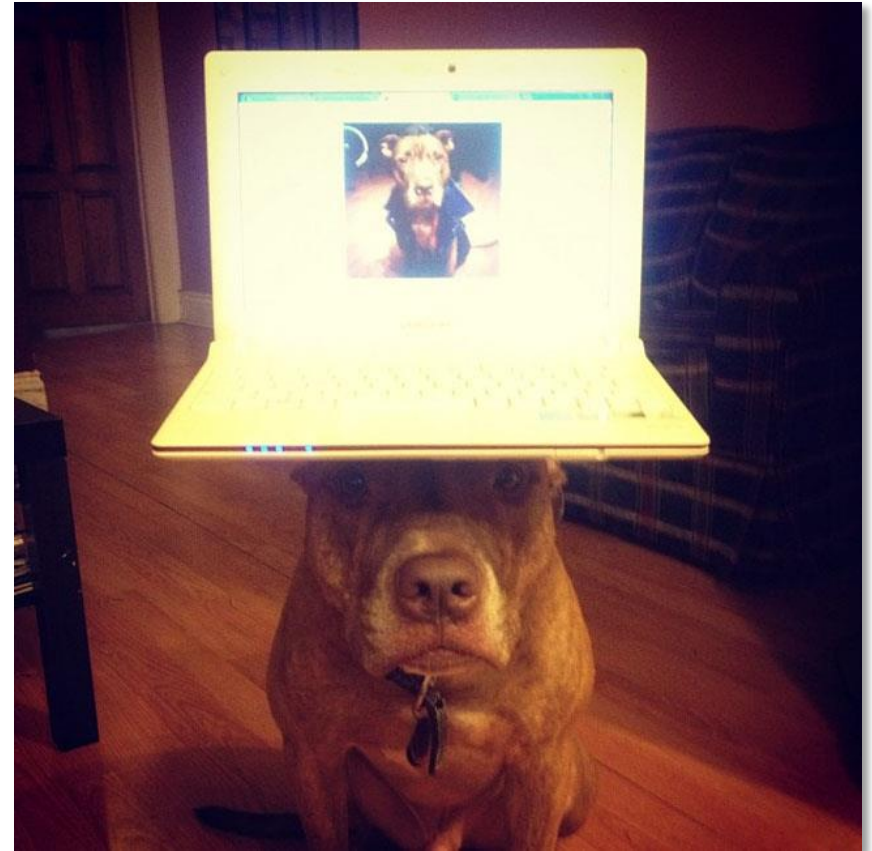




Adoption Agreements

Adoption Agreements

- Expressly disclaim any oral promises, warranties, or agreements; state that written contract represents entirety of contractual relationship. (Warning: Make sure everything you need is in the contract).
- Make clear that ownership of animal transfers to adopter.
- Consider arbitration/mediation requirement.





Foster Agreement

- Disclose all behavioral and medical notes and observations.
- Require foster to waive all liability against rescue/shelter.
- Make clear that animals are unpredictable and may subject foster to health or safety risk.
- State that foster agrees to be subject to any additional, unlisted rules required by rescue/shelter.





Foster Agreement

- Make clear that animal belongs solely to rescue/shelter, that rescue/shelter has sole authority to make decisions for animal, and that rescue/shelter has right to take back the animal at any time for any reason.
- Make clear who is responsible for costs associated with animal -- food, shelter, medical care, etc.
- Require animals to be on leash/contained/in home during fostering.
- Require fosters to systematically report on health or behavioral incidents or concerns.
- Recommend that fosters keep foster animals separated from household pets.





Volunteer Agreement

- Require volunteer to (1) waive all liability against rescue/shelter, and (2) indemnify rescue/shelter for any injury caused by volunteer.
- Make clear that animals are unpredictable and may subject volunteer to health or safety risk.
- State that volunteer agrees to be subject to any additional, unlisted rules required by rescue/shelter.
- Require volunteers to systematically report to rescue/shelter on health or behavioral incidents or concerns.
- Safest practices: Adults only.





Insurance

- Workers' compensation: Injury to employees.
- General: Operations, volunteers, premises, etc. Make sure off-site adoptions, fostering, etc., are also covered.
- D&O: Board of directors and officers.
- Auto: Make sure rescue/shelter autos are covered *and* employees' personal autos are covered when performing rescue/shelter business.
- Events: May need supplemental insurance for events.





Good Luck!



