

BACE LAW REPORT

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Dog Bite Liability in Massachusetts is No Laughing Matter

Personal injury lawsuits involving a dog bite invariably give rise to typical lawyer jokes. The common image is of an “ambulance chasing” attorney, aggressively pursuing the rights of her client who has been scratched by a neighbor’s small cat.

However, what most of these punch lines do not take into consideration is the seriousness of dog bite incidents. Some general statistics paint a more realistic and grim picture.

According to the Centers for Disease Control and Prevention, there are approximately 4.7 million *reported* dog bites in the United States each and every year. Over 800,000 of these individuals require medical treatment, half of which are young children. The American Medical Association reports that dog bites are the second leading cause of childhood injury, surpassing playground accidents. The majority of bites in children result in injury to the head or neck. If one’s friend, son, or daughter sustained a bite

to the head or neck, it is unlikely the lawyer jokes would continue to be so freely distributed.

Regardless of your perspective, whether you have been injured by a dog bite, or own a dog that has the potential to nip or bite, dog bite liability is no laughing matter. This brief newsletter attempts to outline the basic issues for both dog owner, or injured victim.

Victim’s Perspective

If you have been bitten by a dog, you must seek both medical and legal attention as soon as possible. You may be entitled to compensation for your damages, including medical costs, pain and suffering, and any future complications arising out of the incident.

In the Commonwealth, dog owners are strictly liable for the injuries caused by their animal. The statute is extremely strict, and relieves the plaintiff from any burden of proving negligence or unreasonable behavior on the part of the defendant dog owner. Massachusetts General Laws Chapter 140 §155, states in relevant part that, “If any dog shall do any damage to either the body or property of any person, the owner or

keeper,...shall be liable for such damage...” Generally speaking, this statute makes all dog owners strictly liable for the injuries, regardless of whether or not the owner was acting in a reasonable manner, and regardless of whether or not the dog was dangerous. Whether the dog is a miniature Chihuahua or large breed, is irrelevant.

Generally, a dog owner can defeat liability only by proving that the victim was either trespassing or committing another tort, teasing, or abusing the dog. If the dog bites a minor under 7 years of age at the time of the attack, it is presumed that the child was not trespassing or bothering the dog, and the dog owner has the burden of proving affirmatively that the child was doing so. Therefore, a victim need only to prove that (1) the dog was owned or controlled by the defendant, (2) the plaintiff was not trespassing or tormenting, (3) and damages resulted from the incident. Dog attacks can also result in long-term psychological trauma and damages, which may be calculated as damages. One can see how serious a dog bite can be, and how damages and liability can mount quickly when the victim is a small child with long lasting emotional and physical injuries.

Dog Owner’s Perspective

Given the strict liability statute, dog

owners must be extremely diligent in their efforts to prevent their dog from causing injury to another. First and foremost, owners should be responsible and must comply with town bylaws which usually require dogs to be restrained or leashed at all times in order to prevent incident. Most towns also require dog licenses, in order to determine the animal’s owner. For example, the city of Boston requires dog licensing, and has additional requirements for Pit Bull owners including: photo of the dog no older than 30 days; photo of the owner no older than 30 days old; and proof of rabies vaccination and proof of spay/neuter.

Dog owners should ensure that their homeowner’s insurance policy covers dog bite liability, and has a sufficient coverage amount. If the coverage limit is only \$100,000, the owner will be personally responsible for any damages in excess. Dog owners should contact their insurance professional and attorney to consider strategies to limit liability, including but not limited to the purchase of an umbrella policy for added surety. Seek professional advice or contact this office for further information.

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