

PUBLICATION

Taking a Bite Out of Long Term Care Liability Exposure: Avoiding Liability for Injuries Caused by Facility Pets

Authors: Jill Menuskin Steinberg

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Many nursing homes and assisted living facilities have dogs or other pets who either live at the facility or accompany facility employees to work. Dogs can provide much needed enjoyment and companionship to residents and employees alike. It is important to recognize, however, the potential risks a facility may face if a dog bites or otherwise injures someone on facility premises. A dog owner may be civilly liable for injuries caused by his or her dog, especially where the dog has a history of biting or other aggressive behavior. In fact, some states, including Tennessee and Florida, have enacted statutes which provide that a dog owner may be strictly liable for injuries caused by a dog even if the dog has shown no dangerous propensities in the past. Although these statutes speak in terms of liability of a "dog owner," it is conceivable that a facility could be liable where a dog owned by an employee or resident causes injury. It is important to be aware of "dog bite" statutes in your state. Even if your state does not have a dog bite statute, liability can still exist under common law negligence principles. The relevant statutes in various states in Baker Donelson's footprint are summarized below.

Alabama:

The Alabama law provides that a dog owner shall be liable only if the person injured is on property owned or controlled by the dog's owner at the time the bite or injury occurs or when the person had been on such property immediately prior and had been pursued by the dog. The statute also provides that the dog must bite or injure the person without provocation for liability to attach. Ala. Code § 3-6-1.

Florida:

In Florida, a dog owner is liable for damages suffered by a person bitten by a dog, regardless of whether the dog has shown any viciousness in the past or knowledge by the owner of any viciousness, where the dog bites the person in a public place or when the person is lawfully in a private place, including the dog owner's private property. The statute provides that the owner will not be liable, except to children under the age of six, and except where the dog owner acted negligently, if the owner displays an easily readable sign in a prominent place on his property, including the words "Bad Dog." Fla. Stat. 767.04

Georgia:

A person who owns or keeps a "vicious or dangerous" animal and who carelessly manages the animal or allows the animal to "go at liberty" is liable to a person injured by the animal so long as the person does not provoke the injury by his own actions.

An animal is considered to have a "vicious propensity" if the animal was not at heel or on a leash when required to be so by ordinance. A dog owner may be liable for injuries inflicted by the dog under two circumstances: (1) the dog was dangerous and vicious, the owner had knowledge of this and the owner either carelessly managed the dog or allowed it to "go at liberty;" or (2) the animal was required by ordinance to be at heel or on a leash (a "leash law") and was not, and the owner carelessly managed the animal or allowed it to go at liberty. This second ground does not require any knowledge of dangerousness or viciousness by the owner. Ga. Code Ann. § 51-2-7.

Louisiana:

In Louisiana, a dog owner is liable if he knew or should have known that his animal's behavior would cause damage, that the damage could have been prevented by acting reasonably, and that he failed to act reasonably to prevent such damage. An owner is strictly liable for damages or injuries caused by the dog which could have been prevented by the owner and which did not result from provocation of the dog by the injured person. La. Civ. Code Ann. art. 2321. Courts have interpreted this statute to mean that the dog must pose an unreasonable risk of harm for strict liability to attach. *Pepper v. Triplet*, 864 So.2d 181 (La. 2004).

Tennessee:

A dog owner is liable for injuries caused by a dog that is not kept under reasonable control and is "running at large" if the injury occurs in a public place or while the injured person is lawfully on the property of another. The Tennessee statute does not require that the dog has shown any dangerous propensities in the past. The statute contains a number of exceptions including that:

- the injured person was trespassing upon the private, nonresidential property of the dog's owner;
- the injury occurred while the dog was protecting the dog's owner or other innocent party from attack by the injured person or a dog owned by the injured person;
- the injury occurred while the dog was securely confined in a kennel, crate or other enclosure; or
- the injury occurred as a result of the injured person enticing, disturbing, alarming, harassing or otherwise provoking the dog.

If the injury occurs while the person is on residential, farm or other noncommercial property, and the dog's owner is the owner of the property, or is on the property by permission of the owner or as a lawful tenant or lessee, the owner shall only be liable if the dog's owner knew or should have known of the dog's dangerous propensities. Tenn. Code Ann. § 44-8-413.

Although the laws in each state are different, there are certain precautions that facilities in every state can consider to reduce the chance of liability:

1. Be vigilant about the dog's disposition and behavior; if the dog displays aggression, consider replacing it with a more docile animal.
2. If the dog must be in a public area, keep the dog on a leash or in a kennel.
3. To the extent possible, keep dogs out of areas of the facility that are open and accessible to the general public.

By being aware of the reality of "dog bite" liability and taking certain precautions, facilities can minimize the risk of civil liability in this area without removing pets from the facility altogether.