

When Man's Best Friend Becomes Man's Biggest Liability

By: Laura Martinez

"A dog is the only thing on earth that loves you more than he loves himself"

-Josh Billings (a.k.a. Henry Wheeler Shaw)

Whether it's Fido, Lassie, or Luna and Petals (in my case), most of us understand the meaning behind the adage "man's best friend." But what happens when you get sued because your "wouldn't hurt a fly" dog bites someone?

Colorado's Legislature enacted a statute governing civil actions against dog owners, commonly known as the "dog bite statute." C.R.S. §13-21-124. This statute provides that a person who suffers serious bodily injury from being bitten by a dog can bring an action against the owner of the dog for economic damages – regardless of the viciousness or dangerous propensities of the dog or the dog owner's knowledge or lack of knowledge of the dog's viciousness or dangerous propensities. Stated another way, if your dog seriously injures someone you are liable for the injured party's economic damages, regardless of whether your dog has ever bit someone before. The widespread "one bite rule," meaning you are not liable if this is the first time your dog has ever bit someone, is not the law in Colorado. Rather, this statute applies strict liability; if the statute applies you are almost always liable.

However, there are a few exceptions to the statute. First, the dog bite has to occur while the injured party is lawfully on land. Of no surprise, if your dog bites a trespasser, you do not have to pay for his medical expenses. Secondly, the statute only applies to "serious bodily injuries." Third, it is a complete defense to the statute if the dog bite occurred on the dog owner's property and the dog owner had posted a sign stating "no trespassing" or "beware of dog." The last, less common exception is for working dogs; the statute does not apply to hunting dogs, herding dogs, farm dogs, or predator control dogs (when the dog bite occurs on the property of the dog's owner).

Even if you are able to avoid application of this statute (perhaps by arguing the dog bite did not result in serious bodily injury) there are other legal theories under which you can (and are likely to be) found liable, such as negligence. In fact, avoiding liability for the injured party's medical expenses is difficult in many cases and can be an expensive gamble. In addition to the state statute, local ordinances allow you to be criminally cited for dog bites, which often require payment of restitution.

Further, as all of us Denver locals know, in Denver (and many of the surrounding communities) pit bulls are prohibited. Despite the popular argument that it's the dog owner, not the dog that creates a vicious dog, pit bulls are still thought to be high risk animals. In fact, many insurance policies exclude pit bulls (and other high risk breeds) from coverage. As a result, if your pit bull bites someone and you are sued, you may not be able to look to your insurer to pay for an attorney to defend you or to pay a judgment entered against you.

Further, juries tend to view pit bulls and pit bull owners negatively (particularly in cities where they are prohibited).

So what can you do to prevent this? First, if you live in a city where pit bulls are prohibited, find someone in another city to adopt your pit. Secondly, place a "beware of dog" sign in a conspicuous location on your property. Third, if your dog gets anxious or aggressive, talk to a dog trainer (or at a minimum isolate your dog in triggering situations).

What to do if your dog bites someone and the injured party asks you to pay for the medical expenses? First, notify your insurance carrier. They are likely to handle the claim for you, pay the settlement amount (subject to any deductible), and ensure a full release is signed by the injured party.

Should you decide not to notify your insurer initially¹ (perhaps the money sought is small and you do not want to risk your premium being raised for such a small claim), if the injured party is seeking a small amount and provides documentation for their expenses - pay it. Don't get caught up on how the bite wasn't very deep, or how the infection wouldn't have occurred had the person cleaned the wound correctly, etc. If you take this case to a jury (after paying an attorney) in the majority of cases the jury will find you liable and make you pay the expenses. I've handled dog bite cases that started off with a demand of \$300.00, after the dog owner refused to pay he was sued, which resulted in him filing a claim with his insurer, retaining an attorney, having his deposition taken; and after all of this headache and stress had to pay a \$500.00 deductible to the insurer. Importantly, if you pay expenses related to a dog bite, have the injured party sign a release (that you have drafted by an attorney). As a worst case scenario, writing "full and final settlement" in the memo of your check may be effective.

If your dog has bit someone or you are the victim of a dog bite, contact FGMC. FGMC attorneys have handled numerous dog bite cases on both the defense and the plaintiff's side. Now walk Fido to the nearest store and buy your new "beware of dog" sign.

¹ Be aware, your insurer may deny a claim if they are not timely notified of it. Therefore, if you decide to try and settle the claim on your own initially – ensure that you only spend a small amount of time trying to settle the claim yourself. If your efforts fail promptly notify your insurance carrier.