

## **NEW JERSEY DOG BITE CASES**

**(N.J.S.A. 4:19-16)**

**<https://www.judiciary.state.nj.us/civil/charges/5.60A.pdf>**

### **WHAT IS A NEW JERSEY DOG BITE CASE?**

The usual New Jersey dog bite case involves a dog bite victim claiming that he/she was injured as a result of a dog bite from a dog owned by an NJ resident.

### **WHAT IS THE NEW JERSEY DOG BITE LAW (NEW JERSEY DOG BITE STATUTE)?**

The liability of a dog owner is one imposed by New Jersey law, which is also called the New Jersey dog bite "statute". Under the New Jersey dog bite law, the dog owner of any dog which shall bite a person while such person is on or in a public place, or lawfully on or in a private place, including the property of the dog owner, shall be liable for such damages as may be suffered by the dog bite victim bitten, regardless of the former viciousness of such dog or the dog owner's knowledge of such viciousness.

### **WHAT DOES "LAWFULLY UPON A DOG OWNER'S PRIVATE PROPERTY" MEAN UNDER THE NEW JERSEY DOG BITE LAW?**

Under the New Jersey dog bite law, a dog bite victim is lawfully upon the private property of the dog owner when the dog bite victim is on the property in the performance of any duty imposed upon the dog bite victim by the laws of this state or the laws or postal regulations of the United States (such as a postman) or when the bite victim is on the dog owner's property upon the invitation, express or implied, of the dog owner.

### **HOW DOES A DOG BITE VICTIM PROVE THAT A DOG OWNER IS RESPONSIBLE FOR THE DOG BITE VICTIM BEING BITTEN?**

To prove that a dog owner is responsible or liable for the dog bite victim being bitten, the dog bite victim must establish by a preponderance of the evidence the following elements:

1. That the defendant accused of being responsible for the dog bite victim was the dog owner of the dog that supposedly bit the dog bite victim;
2. That the dog bite victim was on or in a public place or lawfully on or in a private place, including the property of the dog owner; and
3. That the dog did bite the dog bite victim while in that place.

### **WHAT IS CONSIDERED "ON OR IN A PUBLIC PLACE OR LAWFULLY ON OR IN A PRIVATE PLACE" UNDER THE NEW JERSEY DOG BITE LAW?**

When the New Jersey court decides whether the dog bite victim was on or in a public place or lawfully on or in a private place, including the property of the dog bite owner, anyone whose presence is expressly or impliedly permitted on the property is entitled to the protection of the New Jersey dog bite law. The permission extends to all areas which the dog bite victim may reasonably believe to be included within its scope.

### **NO REQUIREMENT THAT THE DOG BITE RESULTS IN BROKEN SKIN**

Under the New Jersey dog bite law, there is no explicit requirement that the injury result in the dog bite owner's skin being broken from the dog's bite.

### **TO PROVE A NEW JERSEY DOG BITE CASE, DOES THE NEW JERSEY DOG BITE VICTIM HAVE TO PROVE THAT THE NEW JERSEY DOG OWNER KNEW THE DOG WAS**

## **VICIOUS?**

Under the New Jersey dog bite law, a dog bite owner is responsible for a dog bite victim's injuries regardless of the former viciousness of the dog or the dog owner's knowledge of such viciousness.

## **HOW DOES A NEW JERSEY DOG BITE VICTIM FAIL TO PROVE THAT THE NEW JERSEY DOG BITE OWNER IS RESPONSIBLE FOR THE NEW JERSEY DOG BITE VICTIM'S INJURIES?**

If the New Jersey court deciding the dog bite case finds that a dog bite victim fails to establish any of the elements listed above, the dog bite owner shall not be responsible (liable) for the dog bite victim's injuries. Because New Jersey laws are often very complex and their interpretation requires knowledge of New Jersey court case decisions interpreting the New Jersey laws, before reaching any conclusions about if they have a dog bite case, a dog bite victim should consult with an attorney familiar with the New Jersey dog bite law, such as at The Law Office of Kevin T. Flood, Esq., LLC.

## **WHAT HAPPENS IF THE NEW JERSEY DOG OWNER DENIES THAT THEY OWN THE DOG OR THAT THE NEW JERSEY DOG BITE VICTIM WAS LAWFULLY ON THE PREMISES WHERE THE BITE OCCURRED?**

Where an issue of fact exists as to whether defendant is the dog owner of the dog involved or as to whether the dog bite victim was unlawfully on or in a private place when the biting occurred, it may be necessary for the New Jersey court to consider additional factors as to the absolute liability of dog owners and the New Jersey keepers of vicious animals and/or the duty, under ordinary negligence theories, of the dog owner of premises to invitees, licensees, infant trespassers, and other trespassers who come upon the premises where the dog is kept.

## **WHAT IF THE NEW JERSEY DOG OWNER CLAIMS THAT THE NEW JERSEY DOG BITE VICTIM WAS SOMEHOW RESPONSIBLE OR AT FAULT FOR BEING BITTEN?**

In some dog bite cases, the dog owner raises the negligence of the the dog bite victim as a defense to responsibility for the dog bite victim's injuries. In that type of situation, the dog bite owner has the burden to prove the dog bite victim's "unreasonable and voluntary exposure to a known risk." This means that the dog bite victim "knew" the dog had a propensity to bite either because of the dog's known viciousness or because of the dog bite victim's deliberate acts intended to incite the animal. For example, one who beats or torments a dog cannot hold responsible the dog owner if in self-defense the dog bites back.

## **WHAT IF THE PERSON IN CONTROL OF THE DOG BITING THE DOG BITE VICTIM IS NOT THE DOG'S OWNER BUT INSTEAD ONLY THE DOG'S TEMPORARY KEEPER?**

In some situations, the dog that bites the dog bite victim is not the dog's owner but instead, only the dog's temporary keeper. The New Jersey court deciding a dog bite case may consider such a situation to be different from the situation when a dog owner's dog bites the dog victim. If the dog that bites the dog bite victim is not the dog's owner but instead, only the dog's temporary keeper, the dog bite victim must usually prove the following:

1. That the dog had a vicious or dangerous trait or propensity;
2. That the dog keeper knew or, in the exercise of reasonable care, should have known of the particular vicious or dangerous trait or propensity in the dog which caused the dog bite victim's injuries.

The dog bite victim has the burden of establishing by the preponderance of the evidence that the injuries he/she suffered proximately resulted from such vicious or dangerous trait or propensity.

#### **WHAT DOES “VICIOUS OR DANGEROUS TRAIT OR PROPENSITY” MEAN IN NEW JERSEY DOG BITE CASES?**

Vicious or dangerous trait or propensity means a natural inclination or habitual tendency to do and act endangering a person or property. When deciding this issue, the New Jersey court may consider the following:

1. The attack on the dog bite victim;
2. The results of that attack;
3. The dog's disposition when people approached it;
4. Its mischievousness, playfulness or over-demonstrated affection; and
5. Whether it had attacked any other person/ property.

To find a vicious or dangerous trait or propensity, it is not necessary for the New Jersey court to find that the dog had previously bitten/attacked/did the same act to someone or something. On the other hand, the mere barking of a dog or other articulations of the dog or an isolated straining of a leash, would not necessarily demonstrate vicious or dangerous trait or propensity of the dog. The court may find that the dog had vicious or dangerous propensities only if the nature and frequency of its acts furnished reasonable ground to believe that it might cause an injury by biting/overzealousness/mischievousness/playfulness/ over-demonstrated affection. The New Jersey court must find that the dog keeper knew or had reason to know of the vicious or dangerous trait or propensity of the dog.