



Ohio Law and Common Law Address Dog Bites



Q: A dog bit me and I had to get stitches. Is there anything I can do about it?

A: If the hospital has not already done so, you should report the dog bite to the health commissioner for the district where the bite occurred. The commissioner will order the dog to be quarantined until it is determined that the dog does not have rabies. If the dog was particularly vicious, you may wish to file a police report.

You may speak with the dog owner about your medical expenses. Often, the dog owner's homeowner's insurance will consider a claim for economic (e.g., medical bills) and non-economic (e.g., scarring) damages. If pursuing a homeowner's insurance claim, consider hiring an attorney who is familiar with the applicable law and your rights.

If the dog owner does not have homeowner's insurance or you are unable to negotiate a satisfactory agreement, you may wish to bring a lawsuit against the dog's owner, keeper, or harbinger. If you decide to bring suit, you may do so under the "common law" or under Ohio's statute regarding dog bites.

Q: What's the difference between the common law and Ohio's statute?

A: According to common ("case") law, dogs are generally given "one free bite." If you bring a legal action under common law, you would have to prove that the owner knew the dog was vicious and that the owner was negligent in handling the dog.

Under Ohio's statutory (legislatively enacted), a dog owner is almost always responsible for any provable injuries the dog causes. In Ohio, a dog does not get one free bite, and the dog's owner is strictly liable for any harm the dog causes, as long as the injured person was not teasing or tormenting the dog, or trespassing or committing a criminal offense on the owner's property.

Q: How do I know which law—common or statutory—I should pursue?

A: The Supreme Court of Ohio has ruled that you can pursue your case under either or both laws, so you can choose.

Common law allows you to recover money for "punitive damages" (money awarded to "punish" the dog-owner and perhaps help insure that others are not bitten in the future) as well as compensation for your injuries. If you can prove that the dog owner acted with malice, then you may want to try to prove your case under the common law.

If you pursue your case under Ohio's statutory law, you cannot recover punitive damages. If the dog has no history of biting or being vicious, however, it will probably be impossible to prove a common law case. In such a circumstance, it would be wise to pursue your case under statutory law.

Q: Would I receive the same compensation for my injuries whether I use the common law or the statutory law in my dog bite case?

A: Generally, you are entitled to full compensation for your injuries whether you bring suit under common or statutory law. The compensation includes payment of your economic loss (medical bills, lost wages, related out-of-pocket expenses) and non-economic loss (scarring, pain, worry, physical impairment, permanent injury, etc.)

Q: Is the dog's owner the only person I can pursue for compensation?

A: No. You may seek compensation from any person who owned, harbored or kept the dog. While harborers and keepers may not necessarily own the dog, they are in a position to control the dog. Such a person might include, for example, a dog sitter, a landlord (in very limited circumstances), and a dog walker.

Q: The dog owner said she had her front door closed but somehow the dog got out without her knowledge. Is she still responsible?

A: Yes. Under the "strict liability" statutory law, it does not matter how the dog got out or whether the owner was aware of the fact. In a common law case, however, an inquiry into the degree of the owner's negligence would be necessary. If negligence could not be proved, the claim would not be successful.

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*This "Law You Can Use" column was provided by the Ohio State Bar Association (OSBA). It was prepared by attorney **Kyle Allison Cubbon** of the Toledo firm, Cubbon & Associates, Co., L.P.A.*



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