

## After the Adoption

Are you liable for what happens once an animal leaves your shelter?

BY CHERIE TRAVIS



**Animals come into shelters** for all sorts of reasons. Sometimes they are found stray or abandoned with no known owner. Sometimes the owner can no longer handle the financial or physical challenge of caring for the animal. And sometimes, the animal has behavioral problems that force the owner to give her up.

The previous owner may warn you about a dog's temperament. You may see it for yourself while the animal is at the shelter. Or you may find out the hard way when a new owner complains that you gave him a dangerous pet!

In my last article ("Avoiding Adopter Roulette," March-April 2011), I discussed the duty of an animal shelter to ensure each pet is placed in a safe home with a responsible and caring owner. This column examines

the flip side: What responsibilities do animal placement groups have to make sure that the adopter is receiving an animal who will not harm him, his family, or anyone else?

This issue came up recently when a shelter president contacted me with great concern after an adopter threatened to sue the organization when her newly adopted dog bit her daughter. The shelter president was frantic that the adopter was threatening "a \$2 million lawsuit." So, this raises an important legal question: What liability does a shelter have after it has adopted an animal into a new home?

Though every adoption is unique, the determination of post-adoption liability can usually be broken down into three simple issues, listed in order of descending importance: (1) whether the shelter knew the animal was

dangerous; (2) whether the adopter knew of those behavioral problems before he agreed to accept his new pet; and (3) whether the shelter gave up actual control of the animal at the point of adoption.

The most important issue in this area of the law is whether the shelter knew that the animal had behavioral issues prior to placing the animal. You may learn that a behavioral problem exists if the past owner tells you about it at surrender. But you may often receive strays at the shelter, and in those cases there is no opportunity to speak with a past owner. You may also, during the animal's shelter stay, observe worrisome behaviors that could indicate a dangerous temperament. However, even the best shelter employee can miss subtle signs of behavioral abnormalities—so let's equip you with the knowledge to handle both situations.



### Adoption No. 1: No Known Behavioral Concerns

Your shelter receives a cute, fluffy, little Pekingese who comes in as a stray. You follow all state laws and organizational policies, and the pup never shows any signs of bad tendencies. You find him a loving home with a responsible owner. You think everything is fine, until one day you get a call from the enraged adopter saying that this cute little dog bit the neighbor without provocation!

You feel bad about it, but is your shelter legally responsible? If your shelter finds a home for an animal who has never exhibited any behavioral problems before adoption, then it would seem unfair to hold you responsible for the actions of that animal after the adoption has occurred. Most courts would agree that a shelter is not responsible for the post-adoption behavior of an animal where there were no pre-adoption indicators of danger. Courts traditionally only hold a human responsible for the actions of an animal where that person has both (1) *control* over the animal, and (2) *knowledge* of the danger the animal poses. In most states, both requirements are necessary to find a party liable for the actions of a pet.

First, let's look at the control requirement. Since animals are considered property under the eyes of the law, it makes sense to use basic property law guidelines to determine these cases. In *Murphy v. Eddinger*, the Connecticut Superior Court explained that "courts are reluctant to extend liability when an individual does not exercise control over the property." Once you place an animal with a new owner, your shelter no longer has control over that animal. Even if you have procedures in place to monitor the post-adoption status of each animal, the post-adoption interaction will usually not be substantial enough to qualify as legal control or possession. Therefore, if you get sued for the post-adoption behavior of the animal, your strongest argument to the court is that you had no control over that animal. You can bolster this argument by adding language to your adoption agreement to make sure the adopter knows that the animal is now solely under his control and responsibility.

Now let's examine the knowledge requirement. As I said before, courts may impose liability where a party has knowledge of an animal's behavioral problems (but re-

member, this is usually only if that party also has control over the animal). In *Donchin v. Guerrero*, the California Court of Appeals discussed the knowledge and control elements in determining whether a landlord is responsible for the actions of one of his tenant's pets. In that case, the court said "a landlord who does not have actual knowledge of the vicious nature of a tenant's dog cannot be held liable when the dog attacks a third person." The court went on to say that if an attack is not reasonably foreseeable, then the landlord has no duty to prevent the attack.

The facts of that case provide some guidance as to how a court would determine the post-adoption liability of an animal shelter. The landlord in *Donchin v. Guerrero* was held responsible because he *knew* about the danger of the dog and *controlled* the premises where the dog and his owner lived. Both the knowledge and control elements were present, and the landlord did nothing to protect the other tenants. (He also lied and tried to cover up the fact that he knew the animal was dangerous—never a good idea to lie to a judge!)

Unlike a landlord, an animal shelter has absolutely no control over an adopter or his property. Thus, if your shelter has absolutely no knowledge of the animal's behavioral problems, then the court is unlikely to hold you responsible for post-adoption incidents. Practically speaking, it may be difficult to prove an absence of knowledge on your part. The best way to protect yourself is to include a daily log or report of each animal's temperament so that there is some documented evidence of the absence of any problem.

### Adoption No. 2: Placing a Potentially Dangerous Animal

When you receive an animal into your shelter who exhibits any sort of aggression, your first duty is to fully evaluate the animal to determine whether it is suitable for adoption. Every shelter should already have safeguards in place to ensure that truly dangerous animals are not adopted out.

But what about animals who are not clearly dangerous, just potentially dangerous?

First, you should perform an internal audit of your evaluation procedures and make

sure that your staff is trained to identify and document both overt and subtle signs of behavioral issues.

Documenting all potential signs of danger before the adoption is one important way to avoid liability after the adoption, because when you know an animal is dangerous, disclosing that information to the new owner will likely shield you from any liability. In *DeLeon v. Commercial Manufacturing & Supply Co.*, the California Appellate Court stated "a duty to warn or disclose danger arises when an article is or should be known to be dangerous for its intended use, either inherently or because of defects."



Even though that case was referring to product liability (like exploding toasters or faulty chainsaws), the same rule can be applied to animal adoption. Normally, domestic pets—like toasters!—are not dangerous. If you know a specific animal has behavioral issues, it is just like a manufacturer realizing its toaster is dangerous. Once you disclose to the consumer (in this case the adopter) that the "product" (pet) has a malfunction (behavioral issue), then you are no longer responsible for their decision to accept that animal in its current condition. This is known under the law as "assumption of risk."

When a prospective adopter shows an interest in an animal with documented

behavioral concerns, that adoption counselor should go through the animal's file with the prospective adopter, including descriptions of all questionable past behavior. The adopter should be given an opportunity to fully discuss the animal's behavioral issues with the shelter's veterinarian and behaviorist. If the adopter still wants the animal, and the shelter feels it is a safe environment for both the animal and the owner, then it is acceptable to proceed with the adoption, and the adopter is "assuming the risk" of any future behavioral problems. The shelter may want to direct the adopter to behaviorists and trainers so that the adopter will continue to work on behavioral issues.

Disclosure is always a good practice, even to document an easily explained incident with the animal. For example, in my experience running a humane society, sometimes a cat may nip at or bite a volunteer who is trying to get the cat back into a cage. Most often, the volunteer will admit that the cat was growling and the volunteer failed to realize that she should wait for the animal to calm down before handling him. Regardless, my organization's policy is to disclose such incidents to the prospective adopter so there could never be a claim that we withheld information.

To ensure minimization of liability, your shelter should include two key components in the adoption agreement: (1) an acknowledgment on the adopter's part that he has fully read and understands the animal's history, and (2) that the adopter accepts all liability for any post-adoption behavior of the animal and "indemnifies" the shelter from any claims raised by third parties in relation to the animal's post-adoption behavior. Indemnification is a legal term that essentially means one party (in this case, the new owner) agrees to pay for or insure against any losses incurred by another party (the shelter). In situations where the animal is known to have bitten, following the aforementioned guidelines will provide the maximum safeguard against post-adoption liability.

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To summarize, the law will protect a shelter from post-adoption liability as long as the shelter is no longer in actual control of the animal at the time of the incident, and the shelter had no knowledge or fully disclosed the knowledge of a dangerous temperament before the adopter took the animal. So follow these steps to keep your shelter out of the doghouse: Make sure to keep a close eye on animals who exhibit minor aggression while they are in the shelter. Document any concerns and pass that information along to the new adopter. There's no harm in providing the adopter with everything you've observed so that they can make an informed decision.

Now, before any of you conclude that the safest path to eliminating liability would be to avoid any type of behavioral assessment, with the theory that "ignorance is bliss," know that that would be very unwise. Any good plaintiff's lawyer will make a compelling argument that shelters have a duty to evaluate animals placed for adoption. Since it is arguably now an industry practice to perform such assessments, a court could find that not doing so would constitute a breach of that duty.

If you are sued, hire experienced local counsel. You have heard this advice in my previous articles, but I can't emphasize how valuable an attorney with knowledge of local animal laws can be. [AS](#)



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