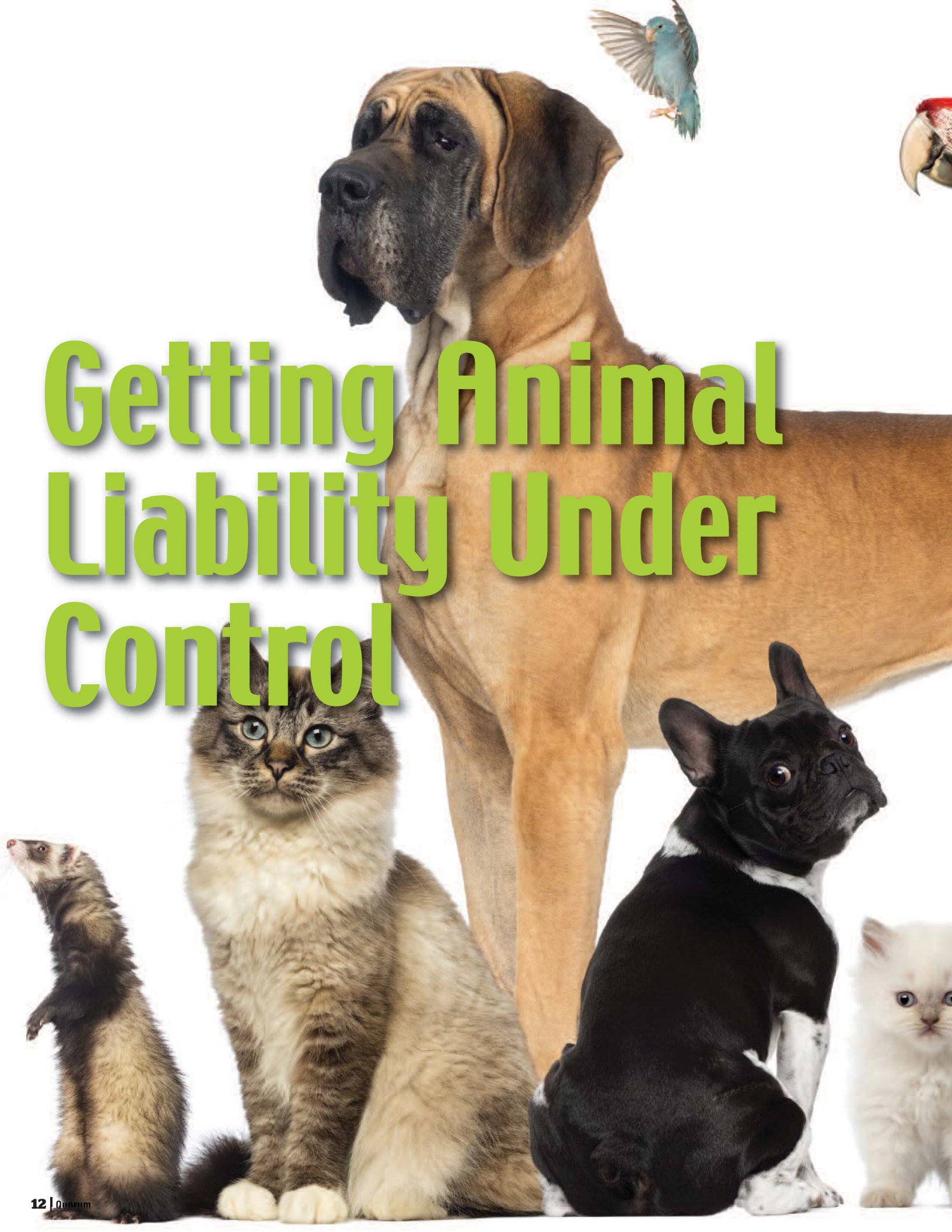

Getting Animal Liability Under Control

Under certain circumstances, an association can be held liable for harm caused by a dangerous animal under its control.

By Ronald Bolt, ESQ.

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In the litigious society in which we live, community associations may find themselves named in lawsuits after a resident is attacked by another's pet. Under certain circumstances, an association can be held liable for harm caused by a dangerous animal under its control. This article discusses the pet liability that can exist in Maryland, Virginia and the District of Columbia.

Domestic animals, including dogs, cats and horses, are regarded as not inherently dangerous under common law. Owners, and associations in control of the animals, are therefore generally not liable for injuries caused by the animals, absent knowledge of vicious tendencies. Once such knowledge is obtained, however, strict liability can exist. In this regard, many states apply the so-called "one-bite" rule to animal attacks.

Under this rule, a person is liable for injuries caused by an animal if the person had prior knowledge of any past vicious behavior that should have put the person on notice that subsequent harm was foreseeable. One is on notice that an animal is dangerous if a reasonable inference can be drawn from the facts (e.g., that the animal has bitten a person before).

In the groundbreaking Maryland case of Tracey v. Solesky, Maryland's highest court adopted a new legal standard for pit bulls and pit bull mixes, by a narrow 4-3 decision. This case effectively overturned the one-bite rule applied by earlier courts.

Under the ruling, dog owners and others who have "the right to control the pit bull's presence" and know, or should know, that the dog is a pit bull or mix, will be held strictly liable for injuries caused by the dog, without regard to the dog's prior behavior. The court based its decision on a finding that pit bulls are inherently dangerous; no prior indication of viciousness is necessary to determine whether these particular dogs present a risk.

In the Tracey case, a pit bull escaped twice from what the court described as "an obviously inadequate small pen" and attacked two young boys at different times on one day. The second was 10-year-old Dominic

Solesky. Dominic sustained life-threatening injuries and underwent five hours of surgery, including a repair of his femoral artery. He spent 17 days in the hospital and a year in rehabilitation.

This new liability standard presents significant concern for Maryland community associations. The court specifically noted that the standard applies broadly to any person in control, such as a "landlord who has the right and/or opportunity to prohibit such dogs on leased premises." An injured party may argue that, like a landlord, a community association may have the "right and/or opportunity," according to its governing documents, to control dangerous animals. Liability for attacks by such dogs could therefore exist merely by allowing pit bull breeds, and mixes, to be kept in the community.

The Maryland Senate and House of Delegates subsequently passed different versions of bills that would codify the strict liability for owners, but impose only limited liability on landlords and others who have the right to control the dogs, thereby restoring the one-bite rule for associations. However, such corrective legislation has yet to pass.

For other dog breeds and animals, the common law remains unchanged in Maryland. Generally, it is still necessary to show knowledge of prior vicious behavior in order to establish liability.

The one-bite rule applies in the commonwealth of Virginia, as well. The Virginia Supreme Court has declared that the owner of a domestic animal "must exercise reasonable care" or can be held liable based on negligence theories. In Stout v. Bartholomew, the defendants were found not liable for injuries caused by their dog to a motorcyclist. The dog escaped an "invisible fence" and ran out into the street. It leaped up against the front tire of the motorcycle, throwing the operator forward over the handlebars. The dog owners were found to be under no special duty to warn passing motorists; there was no reason to foresee that the invisible fence would not confine the dog to the yard. The defendants had successfully used the fence with another dog. Had the dog escaped before, another result would likely have been reached.

In Page v. Arnold, the Virginia Supreme Court upheld a trial court's decision that the defendants were not liable for injuries caused by a horse. Wanda Page was a passenger in an automobile operated by her husband. The vehicle struck a Chincoteague pony that had been confined in a fenced pasture adjacent to a highway. The property was leased by Gilbert Arnold and he allowed his daughter, Jennifer Arnold, to keep the pony on the property.

After suffering injuries in the resulting crash, Page sued her husband and the Arnolds. Among other assertions, Page argued that Jennifer Arnold was negligent because the fence was too low for her pony, and Gilbert Arnold was liable because he was in control of the property. Liability was not imposed, however, because there was no prior indication that the horse could jump the fence. The court stated, "there was no reason for the defendants to have anticipated that confining this pony in this fenced enclosure was liable to result in injury to others." Other animals, including horses, had not escaped the pasture.

Similarly, in the case of Campbell v. Noble, the District of Columbia Court of Appeals applied the one-bite rule but found insufficient control existed to impose liability on a landlord. In that case, the court explained, "[t]hirteen-year-old Elijah Campbell was viciously mauled by pit bulls that belonged to Aaron Harris. A default judgment in the amount of $1,115,111.25 was entered against Harris, but it is doubtful that anything approaching this amount can be collected, so Elijah and his mother sought to hold the landlord, Raymon Noble, liable for his injuries.

Harris was keeping pit bulls in a fenced enclosure outside his tattoo parlor. Elijah went to the unit to ask Harris for a job and was hired on the spot to clean up the dogs' waste. Harris took Elijah into the dog pen. Harris told him that the dogs did not bite. The phone then rang and Harris left Elijah in the pen. The wind slammed the door shut, trapping Elijah. The dogs attacked the boy, severely injuring him. The court explained that, since the attack, "Elijah has had physical and psychological difficulties. He had to relearn how to balance and walk, and he has had terrible nightmares about the attack; he also no longer has a right ear. His left ear was surgically reattached." Several months before the attack, the dogs had escaped from their pen and chased the employee of another tenant. The landlord was made aware of this incident, and others, and wrote Harris a letter emphasizing the need to maintain good relations with his neighbors. Plaintiffs argued that, because the landlord was "on notice" of the dogs' viciousness, the landlord was liable for failing to compel Harris to get rid of the dogs.

The court noted that an "owner of property has a duty to exercise reasonable care to cure a dangerous condition if (1) he has actual or constructive notice of the condition and (2) he has the right to exercise control over the condition." Liability was not imposed, however, because the lease did not contain a "no pets" clause. The court noted that the lack of such a clause distinguished the case from a Maryland case where the landlord was held liable for a dog attack because "[b]y the terms of the lease, the landlord had retained a large measure of control over the presence of such an animal in the leased premises."

As a result of such case decisions in Maryland, Virginia and the District of Columbia, associations that have the right and opportunity to control a dangerous animal's presence may be held liable for injuries caused by the animal. To limit liability, there are a variety of restrictions to consider. Such restrictions can be imposed with a pet policy or appropriate amendment to the governing documents, as the circumstances require, and could include the following, among others:

- Owners and tenants with pets must maintain pet liability insurance, naming the association as an additional insured;
- Owners, tenants and visitors must comply with local animal control laws, which may preclude certain pet ownership;
- Pets, where appropriate, must be licensed, sterilized and vaccinated;
- Pets must be caged, muzzled and leashed or held, where appropriate, when on common property;
- Pets must be limited to appropriate quantities based on the circumstances;
- Pets found to be vicious, based on prior incidents, must be removed, regardless of breed; and
- In Maryland, pit bulls and pit bull mixes are prohibited.

Bred-specific regulations present many practical difficulties. It may not be readily possible to determine whether a particular dog is a pit bull mix. Also, a particular pit bull may be less dangerous than a Doberman pinscher, Rottweiler or German shepherd, to name a few. Thus, associations may wish to consider regulations aimed at any animal exhibiting dangerous propensities. Association leaders are encouraged to discuss their potential liability with their legal counsel and insurance providers.