

N.C.P.I.-Civil. 812.07  
ANIMALS - STATUTORY (STRICT) LIABILITY OF OWNER OF A DANGEROUS  
DOG.  
GENERAL CIVIL VOLUME  
MAY 1996  
N.C. Gen. Stat. § 67-4.4  
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812.07 ANIMALS - STATUTORY (STRICT)<sup>1</sup> LIABILITY OF OWNER OF A  
DANGEROUS DOG.

The (*state number*) issue reads:

"Was the plaintiff [injured] [damaged] by a dangerous dog owned  
by the defendant?"

On this issue the burden of proof is on the plaintiff. This means  
that the plaintiff must prove, by the greater weight of the evidence, three  
things:

First, that the defendant was the owner of (*identify dog*).<sup>2</sup> (An  
owner is a [person] [legal entity] that has a possessory property right in  
a dog.<sup>3</sup>)

Second, that (*identify dog*) was a dangerous dog.<sup>4</sup> A "dangerous  
dog" is one that

[without provocation has killed or inflicted severe injury on a  
person.<sup>5</sup> ("Severe injury" means any physical injury that results in broken  
bones or disfiguring lacerations or requires cosmetic surgery or  
hospitalization.)<sup>6</sup>]

[has been determined by the animal control authority<sup>7</sup> to have  
inflicted a bite on a person that resulted in broken bones or disfiguring  
lacerations or required cosmetic surgery or hospitalization]<sup>8</sup>

[has been determined by the animal control authority to have killed  
or inflicted severe injury upon a domestic animal when not on the (then)<sup>9</sup>  
owner's real property<sup>10</sup>]<sup>11</sup>

[has been determined by the animal control authority to have approached a person when not on the (then)<sup>12</sup> owner's property in a vicious or terrorizing manner in an apparent attitude of attack]<sup>13</sup>

[is owned or harbored primarily or in part for the purpose of dog fighting, or is trained for dog fighting].<sup>14</sup>

Third, that (*identify dog*) [injured the plaintiff] [damaged the plaintiff's property] [damaged one of the plaintiff's animals].<sup>15</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff was [injured] [damaged] by a dangerous dog owned by the defendant, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. N.C. Gen. Stat. § 67-4.4 (1994) provides that "[t]he owner of a dangerous dog shall be strictly liable in civil damages for any injuries or property damage the dog inflicts upon a person, his property, or another animal."

2. *Id.*

3. N.C. Gen. Stat. § 67-4.1(a)(3).

4. N.C. Gen. Stat. § 67-4.4 requires the dog to be "dangerous" within the meaning of N.C. Gen. Stat. § 67-4.1(a)(1). Even if the dog is "dangerous," it nonetheless may be excluded from the strict liability rule if it is (1) a dog used by a law enforcement officer to carry out his official duties, (2) a dog being used in a lawful hunt, (3) a dog that inflicts injury or damage on a domestic animal while working as a hunting, herding or predator control dog on the property or under the control of its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog, or (4) a dog that inflicts injury on a person who, at the time of the injury, was committing a willful trespass or other tort, was tormenting, abusing or assaulting the dog, had tormented,

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abused or assaulted the dog, or was committing or attempting to commit a crime. See N.C. Gen. Stat. § 67-4.1(b). Each of the foregoing would constitute affirmative defenses to strict liability.

5. N.C. Gen. Stat. § 67-4.1(a)(1)a1.

6. N.C. Gen. Stat. § 67-4.1(a)(5).

7. The county or municipal authority responsible for animal control appoints a person or a board to be responsible for determining when a dog is a "potentially dangerous dog." N.C. Gen. Stat. § 67-4.1(c). Before the dog can be considered "potentially dangerous," the animal control authority must notify the owner in writing and give the reasons for the determination. *Id.* A determination that a dog is a "potentially dangerous dog" qualifies the animal as a "dangerous dog" under N.C. Gen. Stat. § 67-4.1(a)(1)a2.

8. N.C. Gen. Stat. § 67-4.1(a)(1)a2 and (2)a.

9. Use the word "then" only where the determination by the animal control authority that the dog was a "potentially dangerous dog" was based on conduct which occurred when the dog was owned by a prior owner.

10. The "owner's real property" means any real property owned or leased by the owner of the dog. N.C. Gen. Stat. § 67-4.1(a)(4). It does not include any public right-of-way or a common area of a condominium, apartment complex or a townhouse development.

11. N.C. Gen. Stat. § 67-4.1(a)(1)a2-(2)b.

12. *See supra* note 9.

13. N.C. Gen. Stat. § 67-4.1(a)(1)a2-2(c).

14. N.C. Gen. Stat. § 67-4.1(a)(1)b.

15. N.C. Gen. Stat. § 67-4.4.