

ANIMALS--STATUTORY (STRICT)¹ LIABILITY OF OWNER OF A DANGEROUS
DOG. N.C.G.S. § 67-4.4.

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*).²
(An owner is a [person] [legal entity] that has a possessory
property right in a dog.³)

¹N.C.G.S. § 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.*

³N.C.G.S. § 67-4.1(a)(3).

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

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

⁴N.C.G.S. § 67-4.4 requires the dog to be "dangerous" within the meaning of N.C.G.S. § 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, abused or assaulted the dog, or was committing or attempting to commit a crime. See N.C.G.S. § 67-4.1(b). Each of the foregoing would constitute affirmative defenses to strict liability.

⁵N.C.G.S. § 67-4.1(a)(1)a1.

⁶N.C.G.S. § 67-4.1(a)(5).

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[has been determined by the animal control authority⁷ to have inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization]⁸

[has been determined by the animal control authority to have killed or inflicted severe injury upon a domestic animal when not on the (then)⁹ owner's real property¹⁰]¹¹

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

⁷The 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.G.S. § 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.G.S. § 67-4.1(a)(1)a2.

⁸N.C.G.S. §§ 67-4.1(a)(1)a2 and (2)a.

⁹Use 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.

¹⁰The "owner's real property" means any real property owned or leased by the owner of the dog. N.C.G.S. § 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.

¹¹N.C.G.S. § 67-4.1(a)(1)a2-(2)b.

¹²See *supra* note 9.

¹³N.C.G.S. § 67-4.1(a)(1)a2-2(c).

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

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

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.

¹⁴N.C.G.S. § 67-4.1(a)(1)b.

¹⁵N.C.G.S. § 67-4.4.