Ask the Animal Attorney
The Bailees in Your Pet’s Life
by Jeff Delott, Esq.

Introduction
The law considers many pet-related businesses, such as groomers, kennels, stables, trainers, dog walkers etc., to be “bailees.” As such, the law imposes various rights and responsibilities upon them. It is important for these businesses to know their obligations and potential liabilities as pet bailees. Likewise, pet owners who use these businesses’ services should know what rights they have in this relationship.

What is a Bailee?
A bailee is a person who receives personal property for a particular purpose, and when that purpose has been fulfilled, the bailee returns the property. The person who delivers the property to the bailee is the bailor. The arrangement where the bailor delivers property to a bailee is called a bailment. A bailment is a form of contract, which does not need to be in writing.

For example, a pet owner is a bailor when delivering a dog, which is usually considered personal property, to a groomer, who is the bailee. The agreement by which the groomer lawfully takes possession of the dog in order to groom it and return it to its owner afterwards is a bailment.

Bailee Duties
The law imposes duties upon a bailee, and the bailee may be liable for a breach of those duties. In general, a bailee has a duty to use ordinary care in keeping and preserving property, before returning it to the bailor. Thus, where a kennel returned a dog that had contracted a disease, the pet owner was entitled to recover damages from the kennel for negligently failing to return the dog in the same condition as when received. Also, failure to return pets because they were lost or had died, has raised the presumption that the bailor was negligent. A bailee, such as a groomer, could also be liable if it returns the pet to somebody not authorized by the bailor to receive the pet, e.g., the ex-spouse of the pet owner.

Bailee Standard of Care
When a bailee is hired to perform services, the bailee is responsible for exercising that degree of skill and care required to accomplish the service in a reasonable manner. This means the bailee is only liable for negligence. Thus, if a dog were scalded while being groomed, the groomer might be liable for failing to exercise the requisite level of care.
What constitutes negligence depends upon the particular facts of the situation. For example, if the scalding occurred because the water heater unforeseeably malfunctioned, the groomer would probably not be liable.

**Bailee Liability**
The bailee’s liability is not limited to the bailor for the cost of the bailed property. A bailee could be liable to a third person for additional damages. For example, if a dog sitter walks a dog and the dog attacks an innocent bystander, the dog sitter could be liable to the bystander for personal injuries. However, if the pet owner fails to inform the pet bailee that the dog has dangerous propensities, such as biting, then the pet owner, not pet bailee, would probably be liable.

It should also be noted that under New York law, if a veterinarian fails to return a pet in as good a condition as when delivered by the pet owner, the vet could be liable for breach of a bailment agreement as well as veterinary malpractice. Under Pennsylvania law though, a claim of breach of bailment agreement cannot state a cause of action for veterinary malpractice.

**Bailee’s Employees**
The owner of a pet business, such as a training business, might be liable for a pet’s injury even if the owner had nothing to do with the pet. This is because the owner is frequently liable for its employees’ actions. So where an employee left a horse unattended, and the horse was stolen, the employer of the negligent attendant was liable because the theft was due to the employee’s negligence. However, absent that negligence, the employer would not have been accountable for the theft. Moreover, even if an employee of a trainer intentionally injured a dog, sufficient to impose criminal liability upon the employee based upon animal cruelty, that criminal intent and liability could not be transferred to the trainer.

**Need for a Written Bailment Contract**
If a bailee breaches one of its duties, the bailor can sue the bailee for damages. It is possible for a bailee to insulate itself from liability for a breach of duty, even for acts of negligence, by means of contract. However, the contract must specifically refer to the limitation, clearly notify the pet owner about the limitation, and obtain the pet owner’s assent to the limitation.

Courts dislike such limitations and will void them unless they are very carefully drafted. Consequently, contracts to limit a bailee’s liability should also include less severe limitations, such as limiting liability to the cost of the bailed property, in case a court nullifies a provision that totally absolves the bailee of liability.

For example, a groomer should have a contract specifically absolving it from liability for acts of negligence of all workers, limit damages to the cost of the pet’s market value, have clearly drafted language printed in bold lettering notifying the pet owner of the limitation, and require the pet owner’s signature.

**Bailee’s Lien**
A bailee who is hired to render services is entitled to compensation for those services, which should be set forth in a contract. Additionally, a bailee hired to render services usually has a lien for the value of the labor or services provided. New York provides a statutory lien for animal bailees. To illustrate, where a pet owner refused to pay a dog
trainer because the dog was injured while in the trainer’s custody through no fault of the trainer, not only was the pet owner not entitled to recover damages for the dog’s injuries, because there was no negligence, but the trainer was allowed to enforce its lien for services rendered. Similarly, a veterinarian or stable that boards an animal retains a possessory lien upon the bailed animal until payment is received. However, that lien is forfeited if the animal is returned voluntarily to the owner.

Conclusion

Pet bailees should have written contracts setting forth the terms for the services provided. The contracts need to be drafted carefully, particularly if minimizing liability. Pet bailees also should be aware of their rights available under the Lien Law. Pet owners should realize that they might be absolving pet bailees from liability when signing contracts for their services, and should be cognizant about the bailee’s right to retain the animal under the Lien Law.

This article focuses on general legal principles, and the information provided should not be acted upon without professional advice. The Law Offices of Jeffrey Delott, Esq. have the expertise and knowledge to represent pet owners and pet bailees regarding any legal issue concerning animals. Mr. Delott is a graduate of the University of Pennsylvania School of Law, and practices law in Long Island, N.Y. He can be reached via e-mail at PetLawyer@aol.com.