



Who Gets the Dog?

BY STEPHANIE BLUM



As of January 1, 2019, the law that governs what happens to the family pet in a divorce changed. Pets had been treated as personal property that could be valued and “divided.” A family’s cat or dog — or iguana for that matter — was treated no different from a lamp. If, for example, a puppy was a gift from wife to husband, the husband would get to keep the pet in the divorce because it was treated as his separate property. It didn’t matter if the wife was the one who fed the dog, bathed the dog, took the dog to the vet, etc. Nor did it matter if the children resided primarily with their mother and were bonded to their dog. The court was not allowed to consider the “best interests” of the pet as it did when making orders for custody of children.

But as of 2019, the law changed. It recognized that pets are more like children than furniture!

Family Code Section 2605 provides that in a divorce the court may assign sole or joint ownership of a pet, taking into consideration the care of the animal. Pets include any animal that is kept in the household (not horses, for example). Notwithstanding if the pet is one party’s separate property, the court has the ability to ignore whether the pet is separate or community property. The family code actually provides the court with a definition of care, which includes, but is not limited to, the provision of food, water, veterinary care and safe and protected shelter.

The court can also make temporary orders for the care of the pet that will be in effect until the divorce is concluded. Those temporary orders shall not have any impact on the court’s final determination of who ultimately gets to keep the pet. With this new law, the judge now can make orders for both parties to share the dog just as if it were a child. If the parties cannot agree, the court can make orders for a custody schedule or for the parties to share in the right and responsibility to make medical decisions about the pet. Of course, it is always better for a divorcing couple to work out the particulars of their divorce, but

if they can’t, now the court can make orders about the time sharing arrangement of the family pet that considers the pet’s best interests.

So just as you would prepare to litigate the custody of children, if you can’t reach an agreement about the pet, you need to prepare to litigate the issue of your pet’s best interest. Maybe that means keeping a log of how often you walked the dog — or stepping up your involvement with the pet if you are the spouse who was less involved. Who took the dog to the vet for shots or scheduled the groomer? Perhaps you need to keep track of how often you or your spouse cuddle with the dog. Maybe it means lining up witnesses who can attest to who cared for the dog most or who the dog is more bonded to.

It is also important to consider how that schedule could change in the future. Do you want to agree that the schedule can be modified if circumstances change? You should also think about making an agreement about how expenses relating to the pet will be divided. Owning a pet can become quite expensive. If your pup someday needs knee or hip surgery, it can cost thousands of dollars. Who is going to be liable for those expenses?

Additionally, the court has the power to issue restraining orders that include the family pet. The court may order the respondent to stay away from the animal and forbid the respondent from taking, harming, or otherwise disposing of the animal. If you are requesting a domestic violence restraining order against your spouse and you have a family pet, you should seriously consider asking for orders that also protect your pet.

The good news for animal lovers is that the law has evolved to treat pets as family members just as it would children. The bad news, of course, is that who gets the pet is yet another issue in a divorce that can take on a life of its own. This is just another reason why it is important to retain skilled family law counsel to assist you when going through a divorce.

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