

Who Keeps the Pet after Separation?

A common question following separation is who gets to keep the dog? Given the anecdotal increase in pet ownership during the Covid-19 lockdowns, coupled with an increase in family violence during this period and the resultant separations, this is likely to be an ongoing area of concern.

Pets are increasingly being treated as members of the family – whether as a source of comfort for children, or even being treated as children themselves – “fur babies”. Who gets to keep Whiskers or Fido can therefore be a very emotional area of law.

If there is no agreement about the ongoing ownership of the pet, a party may wish to make an application to the Court.

Separations in Australia are governed by the *Family Law Act 1975*. However, there is no specific reference to pets in that legislation.

Unlike children, the Courts are not interested in what may be in the best interests of the pet. The Court is therefore unlikely to make orders for the pet to spend time with each party following separation, unless it was part of children’s orders. For instance, it may be held to be in the best interests of the children for the pet to accompany the children between their parent’s residences to provide comfort for the children.

Most likely the Court will treat pets like any other personal property or asset, such as a house or car. Where there is a dispute, the Court will make an Order as to which party can retain the pet, rather than making orders for the pet to spend time with each party.

■ What Does the Court Consider?

The main factor considered by the Court is who is the owner. This may be evidenced by who purchased the pet, whether it was a gift, whose name the pet is registered in, who cared for the pet, including taking the pet to the vet, puppy school or the park, grooming and general health care. It is prudent to seek legal advice regarding your individual circumstances and what evidence you would need to establish.

■ Reaching an Agreement

Going to Court can be a very expensive and emotional process. It is therefore recommended to try to resolve matters such as pet ownership with your spouse, without having to proceed to Court. This may be done directly between the parties, with the assistance of mediation, or through lawyers.

If you are able to reach an agreement about the pet, that can be by way of an informal agreement, or even formalised in Consent Orders that are filed at Court. Consent Orders are most often made in relation to parenting arrangements for children, or how the property of the relationship is to be distributed. However, the Consent Orders can also include who will keep the pet, who will pay for certain ongoing expenses for the pet, such as food and vet bills, and possibly whether there will be any ongoing shared care of the pet.

Another option is for pet owners to enter into an Agreement during the relationship, even before separation. This type of an Agreement is called a Financial Agreement (or “pre-nup”) and usually sets out how the assets of the relationship will be distributed if the parties separate in the future. However, the Financial Agreement could also include, or even just be limited to, arrangements for the pet if the parties do separate later – “pup-nup” or “pet-nup”! This is an Agreement made outside of Court and can give both you and your spouse certainty regarding the care of your pet in the future.

If you also have children, thought can be given as to whether it is sensible for the pet to travel between homes with the children. That way, not only will you and your spouse still have an ongoing relationship with your pet, but it can also provide companionship and be a source of continuity for the children following separation.

At McKean Park Lawyers we can assist you with all aspects of your family law matter, including how to formalise any arrangements regarding your pets.

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