



Pets in family law - property or parenting?

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For most couples who separate, [parenting arrangements](#) and/or [property settlements](#) are at the forefront of their mind. But what happens to the family dog, cat or any other pet who was a member of the family unit?

How are pets dealt with in family law?

The *Family Law Act 1975* (Cth) does not have a specific provision relating to pets and, even though many people regard their pets as members of the family, they do not fall within the definition of a child.

Pets are therefore considered to be 'property' – this means the courts consider pets in a similar way to any other household item such as a coffee machine or a car. The court has the power to make decisions as to who will retain the family pet as [part of the property settlement](#).

Deciding who keeps the pet - factors to consider

Although it is not an easy decision to make it is always best for separating couples to try to [reach an agreement without the intervention of the court](#). This can be done via [direct negotiations](#), [via lawyer-assisted negotiations](#) or [via mediation](#).

Practical considerations include the size of the parties' home/garden, social and work commitments and whether the parties' have the financial capacity to care for the pet on their own.

If the parties reach an agreement and wish to make it binding, they should consider formalising the agreement by way of an [Application for Consent Orders](#) or a [Binding Financial Agreement](#).

This case put emphasis on the relationship between a child and a pet

Parties should also consider the extent of any emotional relationship and/or individual attachment to the pet. In the case of [Jarvis & Weston \[2007\]](#), a court ordered that the family dog would live with the wife and the child of the relationship, given the child had a significant attachment to the dog and the wife was the child's primary carer.

What if we can't decide? Factors that the court will consider

If the parties are unable to reach an agreement about who keeps the family pet, an application can be made to the court for property orders which include the family pet.

In determining who is to retain the pet the court will consider the following factors:

- Who paid for the pet?
- Who is the pet registered to?
- Who looked after the pet? Who walked, fed, and took the pet to the vet?

When determining care arrangements for a child, Australian courts apply a '[best interests of the child test](#)'. The courts do not have regard for the 'best interests of the pet' when determining ownership.

If the pet has a significant monetary value, such as a pedigree dog or a racehorse, the value of the pet will be a consideration. This value of the pet will be used when working out the overall property settlement and what property is to be retained by each party.

Can we share the pet?

Shared care arrangements may seem like a fair solution however such an arrangement will ultimately require the parties to continue seeing each other on a regular basis for the duration of the pet's life.

If the parties choose to make ongoing arrangements for the shared care of a pet, it is important that the arrangement is clear to avoid conflict, stress and cost in the future. Things to consider include:

- What days/times will each party care for the pet?
- How will changeover work?
- How will ongoing expenses be shared?
- Who will be responsible for ensuring regular vet check-ups and making medical decisions in relation to the pet?

The arrangement must be practical on an ongoing basis.

Does the court have power to order shared custody of a pet?

In [Davenport &Davenport \(No. 2\)](#) [2020], the court determined whether it had the power to order the shared custody of a dog.

In this matter, the husband asked the court to make the followings orders on an interim (temporary) basis:

- That the dog be in his care for two days/nights per week;
- That he collect/deliver the dog from/to his wife at an agreed location; and
- That he contribute \$20 per week towards the care of the dog.

The wife argued that the court lacked the power to make that order.

The Judge noted that pets have traditionally been dealt with by the court as personal property.

In summary, and setting aside the issue as to whether the Judge could make the orders on an interim basis, the court determined that the dog was property and that it did not have the power to make orders with respect to the shared custody of the dog.

How can we help

Dividing up assets following a separation is difficult at the best of times and when pets are involved, this can heighten the stress and tension between separating couples.

If you have tried to negotiate with your ex-partner without success and would like assistance with future care arrangements for your pet, or any other aspect of your property settlement, [get in touch with one of our family lawyers](#) for a free initial discussion.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.