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Pets are an important part of our families. They play with our children, keep our elderly company, are used for therapy, comfort us, celebrate us, and love us unconditionally. So, what happens when the family splits up due to divorce or separation? Since our pets feel like our “children” it would seem that the logical answer would be that the pet should remain with the person who would best care for it, yet in most states, that’s not what happens. In most states, pets are considered property.

Until 2017, the court throughout the United States viewed pets as property, like furniture or cars, to be distributed at the time of divorce. However, in 2017, Alaska became the first state to require courts to consider the best interest of the pet when deciding who gets pet custody when the parties separate. Since then, Illinois and California have passed pet custody laws. New York currently has legislation regarding pet custody waiting to be signed into law. This means that in every state, other than Alaska, Illinois and California, who gets the pet is up to the Judge’s discretion if the parties are unable to agree.

Current statistics indicate that 85 million U.S households (67 percent of all homes) have at least one pet (<https://spots.com/pet-ownership-statistics>) in the home, so this is an issue that comes up regularly. Since pets are currently considered property, if the parties are unable to agree, the criteria that the courts utilize in order to determine custody include things such as the cost to care for the pet. As property, historically, even if a party were to be awarded custody or visitation of the family pet, the courts did not consistently enforce those orders. This point was illustrated in a 1995 Florida divorce case where the wife was granted visitation rights for the family dog that (https://www.huffpost.com/entry/divorce-pet-custody_n_4533193) was a premarital asset owned by the husband. The husband didn’t comply with the visitation schedule the court-ordered, and when the wife went to Florida’s First District Court of Appeals, the court did not enforce it.

“As personal property, dogs must be awarded pursuant to dictates of equitable distribution statutes,” the decision read. *“Determinations as to custody and visitation lead to continuing enforcement and supervision problems... Our courts are overwhelmed with the supervision of custody, visitation, and support matters related to the ... protection of our children. We cannot undertake the same responsibility as to animals.”*

While the 1995 Florida Court of appeals decision was indicative of the way in which pet custody matters were handled during divorce, the tide seems to be changing. Instead of awarding custody of the pet to the owner of the pet, according to ownership documents, some courts are applying a “best interest of the pet” standard, similar to the standard that is applied to children in custody cases. With the best interest of the pet approach, the courts examine where it would be best for the pet to live.

Current Law Changes and States that Recognize Pet Visitations

In a world where fewer couples have children, pets as “family members” are more and more common and accepted. And it’s beyond just dogs and cats. I’ve had clients create visitation schedules for hamsters, gerbils and another heated case involving a talking parrot.



Currently, only three states have pet custody laws in place: Alaska, California and Illinois. Wisconsin was actually the first state to propose a bill (<https://www.ejj-law.com/are-states-on-their-way-to-implementing-pet-custody-laws/>) that would require judges to consider the best interests of the pet when deciding custody. It did not get signed into legislation, but it did inspire the state of Alaska to propose a similar bill and become the first state to enact a pet custody law in 2017 (<https://www.postcrescent.com/story/money/2017/02/04/alaska-adopts-custody-law-pets/97242834/>)

. The Alaska Pet custody legislation also includes financial pet support arrangements.

That same year, Illinois became the second state to adjust pet custody laws to be in favor of pets' overall welfare followed by California in 2019. Now, New York is also considering an amendment to the state's domestic relations law. The pending bill, which has been passed by both the New York State Senate and Assembly, would require judges to "*consider the best interest of a companion animal when awarding possession in a divorce or separation proceeding.*" (<https://www.nysenate.gov/legislation/bills/2021/s4248>)

What Happens in Courts that Don't have set pet Custody Laws?

These decisions are left to judges, who are guided by previous case law and court rulings. If the pet was obtained prior to the marriage or given to one spouse as a gift, most courts would grant ownership to the legal owner since it would be considered separate property. However, issues arise when the pet(s) was obtained during the time of marriage and are deemed marital property.

Like every aspect of divorce, evidence is crucial. The more evidence one can provide that they are one, the rightful owner of the pet, and two, would be the better living option for the pet, the more likely a judge will be in favor of giving that spouse full custody – or ownership – of the pet or pets. Without an agreement between the parties, courts are unlikely to create or enforce a visitation schedule for the pet, but the courts will look at the specific facts and circumstances of each case when determining which spouse will have custody of the pet. While some pet experts argue that visitations may increase anxiety or lead to overall changed behavior in pets (especially dogs), permitting the dog to see the other spouse and the children that formerly lived with the pet full time can be wonderful for everyone involved.

Some couples may attempt to manipulate pet ownership for control over a former spouse or to sway the children. I've had clients specify in their agreements that their former spouse may not purchase a new pet as they feel the child would prefer to stay at the home where the pet is located.

In the instance where a pet is considered marital property, the following is likely to be considered in court:

- If there are children involved, do the children have a close relationship with the pet? If yes, the pet will likely be awarded to the person with primary custody
- If there are no children, which party is better suited to care for the pet and which party has been the primary caretaker (feeding, walking, grooming, etc.)?
- What are their personal schedules? Who has more time to care for the pet?
- If there were any instances of neglect or abuse from one party

Pet custody in a divorce is very emotional and maybe heart-wrenching. Since there are only three states that currently have pet custody laws in place, the best practice for divorcing couples is to come to an agreement about the pets prior to going to court. That agreement may later be converted to a court order as part of your divorce which will be binding and enforceable like any other legal document.

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Family Member or Asset? The Gray Area of Handling Pet Custody in Divorce - Pets Magazine in New York | Dogs Magazine | Cats Magazine
Times and USA Today. She has been interviewed by National Public Radio (NPR), The Donna Drake Show and Wake Up Call Podcast, has been featured in Newsday, USA Today, and Long Island Business News Print Edition, and is the author of You're Getting Divorced...Now What?, the ultimate divorce court guide.



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