

Custody Isn't Just for Kids: New Laws Set Up Pet Custody

Working out an agreement is the best alternative, although a lawyer or mediator is sometimes necessary

by Brette Sember



The best way to get custody of your pet is to work out an agreement on your own with your spouse | Credit: Getty

When you divorce with pets, you both may want the pet to live at your own home. This can set up a conflict that can be challenging to resolve. Fortunately, laws in many states are becoming more attuned to the special status pets have in a family.

Pets Aren't People

For most of American history, pets did not have any special status in a divorce case. Instead, “pets were characterized as ‘chattel,’ meaning, personal property, with the courts generally ruling that a dog or cat

is no different than a sofa, a bank account, or a piece of artwork,” explains attorney Martha Cohen Stine from Cohen Stine Kapoor LLP in New York, New York.

If a couple divorced and couldn't agree about who should get the pet, courts looked at ownership records (licenses, purchase/adoption contracts or names on vet records, etc.) to decide who owned the pet. There was no consideration of the pet's needs or which spouse could better care for the pet.

Changing Attitudes, Changing Laws

In the past 10 years things have begun to change. Many states have passed laws or had court cases that set out a different standard for determining ownership of a pet in a divorce, using what is in the best interests of the pet to decide custody, similar to how child custody is determined.

New York, New Hampshire, California, Alaska, and Illinois now all have laws requiring judges to consider what is best for the pet when determining custody, and laws are in the works in other states. Some states, such as Florida, Vermont and Texas have had cases where courts have applied a similar standard in specific cases.

How to Get Custody of Your Pet

The best way to get custody of your pet is to work out an agreement on your own with your spouse, recommends lawyer Naomi Schanfield of Bikel, Rosenthal & Schanfield in New York, New York. Your state doesn't have to have a pet custody law for you and your spouse to work out a custody and visitation agreement on your own.

Stine suggests you create “a written agreement setting forth exactly how the pet visitation will work, each party’s responsibilities for the pet, and the manner

“If you don’t settle, it’s up to the court, which will follow your state’s rules about pet custody. If your state considers pets only as property, Schanfield says, ‘The court will likely consider which person has historically taken care of the pet (taken it for walks, taken the pet to the veterinarian, etc.) and which person can better provide for the pet going forward.’”

in which each party will contribute to the costs of maintaining the pet.”

If you can’t agree about pet custody, your attorneys may be able to reach a settlement. You could also see a mediator who could help you reach an agreement on your own.

If you don’t settle, it’s up to the court, which will follow your state’s rules about pet custody. If your state considers pets only as property, Schanfield says, “The court will likely consider which person has historically taken care of the pet (taken it for walks, taken the pet to the veterinarian, etc.) and which person can better provide for the pet going forward.”

Stine says ownership and microchip records as well as the names on vet bills and pet supply receipts are important and will sway a judge, “as well as which party would benefit more from having the dog in his or her life, which party would provide the dog with the best chance of prospering, loving and being loved.” Who spent the most time caring for the pet is also important as well as “each party’s motivation for wanting to keep the dog, for example, “for emotional support or for breeding.”

Even if your state does not consider the best interests of the pet, your attorney can still try to convince the judge about what would be best for the pet.

Sharing Pet Custody

Dianne Fong, 52, of Toronto, Canada had two cats she shared with her ex-husband when they separated. They also shared a teen daughter. Because their daughter was attached to one of the cats, they agreed the cat would travel back and forth with her. Her daughter “was apprehensive about all the changes, and having Finley with her all the time made things easier for her. My ex and I lived within walking distance of each other, so it was an easy arrangement to implement,” Fong said.

They shared the vet bills and Fong kept their other cat full-time. The arrangement

worked well for everyone except Finley, who “grew more and more uneasy about the arrangement, probably because he enjoyed being the sole cat in the household at my ex’s place more than having to share space with Morris [the other cat] when Rose [my daughter] was with me. We talked it over with Rose and decided that Finley would stay at my ex’s place permanently.” Fong missed him, but it was clear to everyone he was happier living at the other house, and her daughter still got to spend time with him.

The Cost of Pet Custody Cases

Your attachment to your pet might lead you to feel you would do anything to get custody, but Stine warns that “all litigation, including pet litigation, is expensive and many people would not be in a financial position to pursue it.”

Lynne McMennamin, 54, of Bel Air, Maryland shared two dogs she was deeply attached to with her ex-husband. “When we got divorced, this was the most challenging part of the divorce agreement,” she said. One dog had been her husband’s dog before they met, and she knew she had no chance of getting custody of him. However, during the marriage, the couple rescued a Malamute named Thor.

“Thor was special to me, and I didn’t want

to give him up. It was months before he would sleep outside of a closet, and it took him nine months to wag his tail,” said McMennamin. “He had been so abused before we got him. But he was the sweetest dog once he learned he could trust us.”

She and her former husband could not agree despite many negotiation attempts. The case was becoming increasingly expensive and “at one point my attorney just said ‘get another dog’” because the cost of litigating it was so high, McMennamin said.

“My husband was moving to a house with a big yard, and I was moving to an apartment, and we both felt it best to keep the dogs together. Ultimately, we worked into the divorce agreement that I could take Thor any time I wanted with at least 24 hours notice,” she said. “I would pay half of the medical bills.”

Pets are important family members so taking the time to work out a reasonable custody and visitation plan for them can help everyone adjust to the end of the marriage. ■