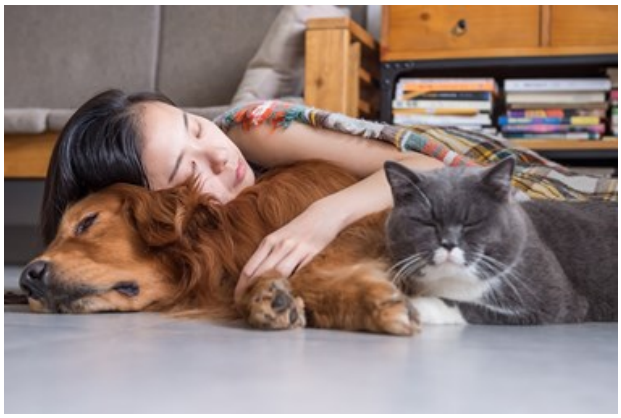


Who gets the family pets after separation or divorce?

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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As time goes on, we are seeing our pets more and more as an integral part of the family. As a huge animal lover and pet owner myself, I empathise with clients when they ask who will keep the family pets following separation. I have even had separating couples ask for 'spend time' arrangements for pets to be drafted in a similar fashion to parenting orders. Whilst we may see our pets like our children, the Family Court of Australia does not see it that way.

How does the Family Court see pets in the context of family law proceedings?

In the context of family law proceedings, pets are seen as personal property and are treated as such. If there is any dispute as to who owns the pet, the pet is seen by the Courts as a chattel and ownership will be addressed during property settlement negotiations.

We bought the dog together so who owns him/her after separation?

Generally, if the matter is amicable then the parties can decide between themselves who will keep the dog (or any other pets) and when the other party will spend time with the dog. If the dog is a family pet bought for the benefit of the children, then it is not

uncommon for the dog to live with the children and follow them between households with all food, vet, parasite protection and other expenses equally shared between the parties.

Consider this case:

In the matter of *Downey &Beale [2017] FCCA 316*, the parties had reached an agreement on every aspect of their family law matter except who retained the family dog.

The wife declared herself the owner of the parties' dog pursuant to *Section 78 Family Law Act 1975 (Cth)*. The Court declined to draw an inference from the husband's registration of the dog in his sole name, as he did not do so until after separation.

In this matter, it was difficult to determine who purchased the dog and who the true owner was. The wife's case was that the dog was purchased by her back in 2011 with the adoption fee paid by the husband as a gift to her when the parties were dating but not living together. During this time, the dog remained living with the wife and her parents at her parents' home.

When the parties moved in together, the dog lived with them both.

Following separation, the dog lived with the wife.

His Honour made the finding that: *"ultimately, on the evidence that is available and applying the rules of evidence thereto, I accept that the wife was the owner of the dog… irrespective of who paid for the creature, it was purchased for her as a gift".*

What Orders can be made with regards to the family pet?

If Orders are required to be made in relation to pets, they will be made as part of a property settlement. As pets are generally not of great monetary value, it is rare to require the Court to assist in the making of an Order regarding family pets. The exception to this is if the animals are income-producing animals such as cattle on a working farm or a racehorse. Otherwise, the Court will generally not take into account the monetary value of the pet.

How can I best try to protect my pet in the event of separation?

If, after reading this blog, you are concerned about what may happen to your beloved pet in the event of a separation with your partner, following the case of *Downey &Beale* you can do the below to try to prove ownership:

- Keep records indicating who paid for the pet at the time of purchase.
- Keep records of who pays for vet bills and food.
- If necessary, provide bank statements showing that you paid for similar expenditures clearly relating to the pet.

- Have the pet listed in your name with your vet.
- If the pet is registered, have it registered in your name. Noting that registering the pet in your name close to or after separation, will likely not have the desired effect.

Get help from a family lawyer

It is understandably distressing for pet owners to be separated from their pets especially if they are the primary caregiver. Our pets really are our family and we are hopeful that Australian Courts will soon recognise that and see pets as more than property to be attributed to one party or the other.

If you're experiencing difficulties negotiating property settlement, including who gets the family pets, or any other family law issues, we can assist you to ensure your rights are protected both now and in the future.

It's also important to remember that time limits apply to property settlement in family law matters. You can read more about this in our blog, "Are there time limits for property settlement after separation or divorce?"

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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