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LawTalk Blog



We are separating – what happens to our dog?

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Date: Monday September 7, 2020

In today's society, our dogs and cats are often more than just pets and are considered part of the family. Therefore, a common question that arises once a couple separates is, 'who gets the dog?'

How are pets dealt with in Family Law?

The *Family Law Act 1975* ("the Act") doesn't have any specific provisions that relate to animals. The Act provides the Court with the power to make orders about how property is divided, maintenance and parenting matters. Under the Act, pets are considered 'property.' This gives the Court the power to decide who will retain the family dog or cat – or any other pet/animal for that matter.

Commonly, most pets are domestic pets and have no monetary value. If the animal is a pedigree or a show dog, then it may be determined to have a monetary value. If that is the case, the determined value is generally to be included in the asset pool.

For example, in the case of [Walmsley & Walmsley No 3](#) [2009] FamCA 1209, the court held that the pedigree dogs of the marriage were worth \$3,000. The wife retained the dogs, and the dogs were counted as an asset retained by her. Therefore, the dogs' monetary value was calculated when working out the final percentage of the overall property pool that each party was to retain.

So who gets to keep the pets after a separation?

Deciding who is to retain any pets after separation is an issue that can be left to the Court; however, it is not an easy decision to make. The Court has wide discretion when making decisions around pets, and they can take into account any factors they deem fit.

It is always best for parties to try and reach an agreement without the intervention of the Court as it is more cost-effective and less stressful for everyone involved.

Some factors the court will take into account to determine who gets to keep the pet:

- Who paid for the pet;
- Who is the pet registered to;
- Who has the financial means to meet the ongoing costs of maintaining the pet;
 - This includes vaccinations, food costs, vet bills.
- The extent of the relationship between the parties and the pet;
 - This includes who has looked after the pet, bathed it, fed it, took it for walks etc.
- The extent of the relationship between any children and the pet;
 - For example, in the case of [Jarvis & Weston](#) [2007] FamCA the court held that the family dog, which had no monetary value attached to it, was to live with the wife as the child of the relationship had a significant attachment to the dog and the child was living with the wife.
- The lifestyle of each party and whether it allows for them to adequately care for the pet;\ul>- this includes their working hours, the size of the party's house and yard.

These are only a few examples of things to consider in making this decision – the list could go on.

Again, it is recommended that parties try to reach some form of agreement concerning who is to retain the family pet as part of the overall property settlement. This can be done through written negotiations between the parties' lawyers, formal or informal mediation, or a settlement conference.

Should you require further advice about anything to do with a [property settlement](#) following separation, the Family Law team at [Andersons Solicitors](#) are here to help you navigate the process.

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