



## Pets and other animals in the family law system

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Many families and couples often welcome furry friends into their homes and lives. Pets are often cherished members of a familial unit. But what happens to those pets (or other animals) if the relationship ends? Who gets custody of the pets after separation, so to speak?

### How does the family law system deal with pets and animals?

In some cases, couples invest significant amounts of money into their pets or other animals. Rare breeds of pets or potentially profitable animals such as racehorses or greyhounds can be highly valuable and represent a significant asset within a party's net asset pool. In other cases, pets are considered to have 'sentimental' value, rather than financial value.

Interestingly, there is no mention of pets in the *Family Law Act 1975* (Cth) ("the Act").

However, at common law, pets and animals have been consistently dealt with as nothing more than chattels. This means that they are only considered as a 'asset' that is assigned a value and that [one party may 'keep' through property settlement negotiations](#).

Generally, a pet will have a nominal dollar value (and an abundance of sentimental value). Conversely, income-deriving animals (such as racehorses and greyhounds) or pure-bred pets can have significant values, which can create complexities around valuation.

Given pets often have little dollar value, it's not often that parties will include a pet in their asset pool and seek the court to make orders in respect of a pet.

### The Family Court does have the power to make orders in relation to pets

If necessary, the court does have jurisdiction to make orders for one party to retain a pet.

Generally, in making such a determination, the court will weigh up the following factors:

Who purchased the pet, or who was gifted the pet?

Whose name is the pet registered in?

Who was the primary carer of the pet; i.e. who fed the pet and was responsible for vet appointments and the like?

Who met the pet's ongoing expenses, such as food, pet insurance, grooming and vet bills?

Who has suitable accommodation for the pet? For example, if a party rents, they may not be able to house the pet or if a party lives in a third-storey apartment, this may not be suitable for a large dog.

It is important to note that the court views pets as simply property, therefore [there is no regard for the 'best interests' of pet, as there is for children in parenting proceedings](#).

## Sharing 'custody' of your pets after separation

Whilst family law does not consider pets as anything more than chattels, often separated couples choose to make provision for each party to 'spend time' or share the care of a pet, post-separation.

Due to the complex and unpredictable nature of caring for animals (somewhat not dissimilar to caring for children), if parties chose to make ongoing arrangements for the shared care of a pet, there are many things that must be considered.

Who will care for the pet, and on which days or at what times?

How will handover work? Is this practical on an ongoing basis?

How will ongoing expenses be shared (or alternatively, who will be responsible for expenses), such as:

pet food;

grooming;

pet insurance; and

vet bills.

Who will be responsible for ensuring regular vet check-ups are managed, to keep track of important health matters such as immunisations, worming etc?

How will medical decisions be made (should medical issues arise in the future)?

It is important that both parties are clear in respect of their obligations to maintain and care for a pet at the time of making orders, so as to avoid costly and stressful conflicts in the future.

There are also important considerations if it is decided that one party is to keep a pet (to the exclusion of the other party); such as whose name the pet is registered in or whose details are recorded on a pet's microchip.

## **Formalise any agreement you come to about your pets**

As always with property settlement (and other family law disputes), it's great if you can come to a mutual agreement. This reduces cost and stress for all parties.

Reaching an agreement without going to court is always preferable, but once that agreement is reached, it's important to record it and formalise it with Consent Orders.

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