

Who Gets the Dog?

June 17, 2021

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“But who gets the dog?”

This is a question I get often. In a situation like divorce, deciding where the dog will go can be tricky, as animals often feel like part of the family.

And while just a few states (Alaska, Illinois, and California) have treated dog ownership disputes like custody cases, in most states, animals are considered a type of “chattel,” or personal property—just like jewelry, clothes, and artwork.

Of course, in an ideal world, the parties are able to work out an agreement in regard to their animals, but if there is no written agreement as to who gets the dog and when the dog is likely to stay with the spouse who has possession. That is, if partner X moves out of the house, partner Y, who is still living in the house with the dog, will most likely get the dog. Most people are not aware of this, but it’s something both parties should keep in mind when considering moving out.

Now, if there are minor children involved, that is a different story. I am seeing a trend in case law wherein the dog is ordered to follow the children. This makes sense, as children are often bonded to their pets and the judge will not want to separate the children and the dog; in other words, the children’s happiness takes precedence over parental preferences.

Even when the decision is clear, such as when children are involved, logistics can still be a little sticky. For example, in a case of split custody in which the children travel back and forth between parents, arrangements must be made for the dog while the children are staying with the other parent. In some cases, the dog will travel to and from the parents’ houses with the children, but if the children attend school or daycare, the parents will have to separately agree to transition the dog from one house to the other.

There are also situations in which, children or no children, the parties agree that if the party in possession of the dog must travel, they will give the other party the right of first refusal before seeking third-party care (such as a kennel).

Each situation is different and will require legal expertise to get the right agreement in place. When considering who will “get” the dog, it’s important for parties to have an experienced attorney draft language to include who will have the dog, how the dog will be transferred between the parties, and how the dog’s expenses will be paid—this will help move things along more quickly and give the party in question a higher chance of a favorable outcome.