

Forte News

We are delighted to announce that Catherine Coxon has recently joined Forte Family Lawyers. Catherine is a second year lawyer seeking to consolidate her family law experience in a specialist family law firm.

PETS IN FAMILY LAW

We all know that the courts have power to make orders dealing with parental responsibility and the time that each parent spends with their children after separation. But what about the family pet?

Where should the family pet live? In Australia these disputes rarely reach the courts but are resolved by negotiation, with the assistance of the parties' lawyers. But ask "Alex", the 13 year old Golden Retriever who was at the centre of a legal "dog fight" in the United States recently, about the emotions involved.

Alex's owner died and the owner's divorced parents argued about where Alex should live. The issue of where Alex would live was so hotly disputed that a lawyer was appointed to represent Alex's interests. Ultimately, the divorced couple agreed to "share custody" of Alex in alternate two week blocks. Although there have also been family law cases in the United States in which "custody" and "visitation" orders have been made, usually pet disputes are dealt with in the same way as in Australian Courts.

A pet is "property"

Family Law Courts in Australia have no specific power to make orders about where a pet lives or who it spends time with. However, as a pet is regarded as "property", Courts have the power to make orders about who will have the ownership and possession of the pet.

Whilst a pet is treated as personal property in Australian family law, it is obviously very different to other items of personal property. A pet often has little or no monetary value and might even be a financial burden on the party who retains it.

It is also common for owners to have strong emotional ties with their pets. These ties are usually stronger than emotional ties to personal property which may have a higher purchase price or replacement value than pets.



How are disputes about pets resolved?

The most common results that we see are:

- When the parties have children, the pet stays with the parent with whom the children live for most of the time. Sometimes the pet goes with the children when they spend time with the non resident parent
- If one party retains the matrimonial home, the pet stays with that party at the home
- If an animal has significant monetary value, for example a show dog or a breeding horse, the value is taken into account in a property settlement against the party who retains the animal. In this situation, the value of the animal must be either agreed or evidence must be obtained about its value.
- If a pet was a gift, then it is retained by the party to whom it was given.

Issues about pets can arise in unexpected ways. In a recent dispute, the parties had older dogs. These dogs would not have a home once the family home was sold as one party had moved overseas and our client was moving into a flat. Our client had been unable to find homes for them. The parties agreed that the dogs had to be put down as no home could be found for them, but neither party wanted to take responsibility for "doing the deed".

Pet "custody" disputes are not the only context in which pets are relevant in the family law arena. Caring for a pet or multiple pets can be expensive. The reasonable financial expense of caring for a pet may be a legitimate living expense to take into account in determining an appropriate level of spousal maintenance.

If you have a pet dispute

We encourage our clients to resolve a dispute about pets outside of the Court system and without the assistance of lawyers. However, if agreement is not reached we are happy to help.

Please contact us on 9248 5800 or by e-mail to enquiries@fortefamilylawyers.com.au



CHATTELS

The word "chattel" is not often used these days, except by lawyers and real estate agents. It means "personal property", that is, property other than real estate. In family law disputes, the term "chattel" is usually used to describe furniture, artworks, jewellery and household items.

Chattels are treated in the same way as other property in Family Law Courts. They are identified, valued and included in the pool of assets available for division between the parties. In practice though, chattels are dealt with differently than real estate, shares and bank accounts because:

- A Court often has inadequate evidence about the value of chattels. The court looks at the market value of the items, not the purchase price, the insured value or the replacement value. Except in the case of collectables, antiques or jewellery, chattels often have a fairly low monetary value. For this reason, disputes about chattels are commonly resolved by agreement.
- In the absence of evidence about the value of chattels, or if chattels are of minimal value, a Court might treat the chattels as a factor to be taken into account in the overall settlement rather than specifically including the value of the chattels in the asset pool to be divided between the parties.
- Parties often agree about the division of chattels. For example:
 - o If the family home is sold as part of the property settlement, the parties agree to divide the chattels between them
 - o If one party retains the family home, that party often retains the lion's share of the chattels in the home

What will the Court do?

If parties cannot agree about the division of chattels, the Court has the power to make orders. It is reluctant to do so and will encourage the parties to negotiate as it is not cost effective for parties if the court has to hear evidence and make a decision. The types of orders a court can make include:

- one party retains all of the chattels
- specific chattels are given to one party, eg, personal papers, inherited items
- particular chattels are sold and the proceeds divided equally between the parties
- a "pick-a-pile" approach, where one party prepares two lists which divide the chattels approximately equally in value. The other party chooses which one of those lists to keep.

Update: Compulsory Family Dispute Resolution

The requirement for compulsory dispute resolution came into effect on 1 July 2007. Any person applying to the Court for a parenting order must produce a certificate from a registered family dispute resolution provider confirming that they have attempted family dispute resolution.

It is not necessary to produce a certificate if parents are asking the Court to make orders by consent. Other exceptions also apply, for example, if there are existing parenting orders, if there is urgency, or if there are reasonable grounds to believe there has been or is a risk of abuse of a child or family violence.

Details of registered family dispute resolution practitioners can be found at www.familyrelationships.gov.au.

Update: Government media release on relocation cases

The Attorney-General, Phillip Ruddock MP, announced that the Federal Government will clarify the law on how relocation cases are decided by the Courts. Relocation cases involve one parent seeking to change the main residence of a child or children so that it is a long distance from their existing home without the agreement of the other parent.

The Attorney-General said that the proposed provisions will ensure that the court considers alternatives to the proposed relocation, whether it is reasonable for a person opposing relocation to move closer to the child if relocation is permitted, and whether the person opposing the relocation could assume primary responsibility for the child if the person seeking to relocate does so without the child.

There has been speculation that the family law reforms of 2006, which introduced a rebuttable presumption of shared parental responsibility and a greater focus on the importance of a "meaningful relationship" between parents and children after separation, would make it harder for parents to obtain orders permitting them to relocate the permanent residence of a child. However, the Full Court is yet to provide any comprehensive guidance about how the changes arising from the 2006 reforms apply to relocation cases.

Since this press release, a Federal election has been called. Reforms will depend upon the outcome of the election.

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