

We're Splitting Up: What About the Pets?

By Amy A. Edwards

Like many people, I have a cat. Ok, maybe I have a couple of cats. They sleep most of the time but they are warm and fuzzy and do something that makes me laugh on a daily basis. They are both orange and I have a habit of referring to them as the twins. Today, many people think of their dog, cat or other pet as a family member. These pet owners often have more than one pet.



The Twins

What Happens to pets when a family splits because of separation or divorce?

In North Carolina, pets caught in divorce generally are considered personal property and the court has the same authority to distribute them to a spouse or former spouse in the same manner as a coffee table.

When there are children in a separation or divorce, the court must consider only what is in the child's best interest when determining who has custody of that child, regardless of what the parents want or need. In contrast, when the court determines which person will keep which pet, there is no *legal* requirement that the judge base his or her decision on the best interest of the animal. Moral or ethical standards are not necessarily the same as legal requirements. In marital property cases, judges will assign a value to an animal and grant ownership of it to one of the parties as he or she sees fit. The reasons a judge has for ruling on who keeps a pet are his or her own, made in his or her discretion.

There is a trend in the legal world towards animals having a meaning greater than the coffee table or some other piece of property, even if the trend starts with baby steps. In child custody cases, a judge may require the pet to go back and forth with a child for visitation at each parent's home, which is presumably done because that would be in the child's best interest. North Carolina has created very specific legislation to allow the court to consider the pets when there is domestic violence in a family, even where there are no minor children. NC Gen. Stat. §50B-3 says the court may "Provide for possession of personal property of the parties, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household."

Most of the time, people can reach some agreement about who keeps the dog or the cat. It is uncommon for people to leave it to the judge to award a pet to one spouse or the other. But what can pet owners do to resolve these disputes based on what they think is in the pet's best interest? If both people agree, they can enter into a contract concerning their pets. They can specify where the animal(s) will live or be pastured, set aside regular visitation times for each person to see the pet, and even arrange for the costs and medical care. The great thing about a contract is people can customize it to fit their needs instead of relying on a judge and the law.

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