Animals are Regarded as Property in a Court of Law

Can We Change the Property Status of Animals to “Living Property”?

Tag Words: Animal Cruelty. Property Law, Animal Law

Authors: Kerri Close with Julie M. Fagan, Ph.D.

Summary: Animals are considered “property” like other inanimate objects in a court of law. Most people are surprised when they learn that their beloved pet is worth only what they paid for it. David Favre proposes the idea of changing the property status of animals to that of “living property.” This new status would improve the treatment of and ensure the quality of life of animals. To initiate change in the property status of animals, we need to promote public awareness and solicit outcry to bring this to attention of our lawmakers. Sign our petition on Change.org! [https://www.change.org/petitions/us-senators-change-the-status-of-animals-from-property-to-living-property](https://www.change.org/petitions/us-senators-change-the-status-of-animals-from-property-to-living-property)

Video Link: [http://www.youtube.com/watch?v=zU2jdQXBGY8&feature=youtu.be](http://www.youtube.com/watch?v=zU2jdQXBGY8&feature=youtu.be)

The Current Problem: What it means to be labeled as Property

The property status awarded to animals is the same status given to non-living items such as a car or a coffee table. If an angry neighbor comes into your yard and keys your car, you can sue them for the damage done, and they will have to pay to have it fixed. This is the same case with an animal; if an angry neighbor decides to injure or kill your beloved pet, the most you can do is sue for the market value of the animal. In most cases, this is considered to be the price at which you purchased the animal, and if this is a mixed breed dog or cat, that price would not be very high. If you were to witness your neighbor killing your beloved pet, you cannot sue for mental distress or the loss of companionship. This is because attachment to a pet is likened to a person’s attachment to his or her school ring or a family heirloom (1).

The following case appropriately proves this point: Andrew Gluckman was taking his golden retriever, Floyd, on a flight home, where the dog was stored in the baggage compartment. After an hour delay of departure, however, Gluckman realized he would miss his connection flight, and disembarked. Little did he know, during the hour that the plane was sitting there, the baggage compartment reached 140 degrees Fahrenheit. When Floyd’s crate was brought to him, it was covered in blood from the dog’s attempts to escape. The pet was immediately brought to the vet, but died due to brain damage and severe heat stroke. Gluckman sued the airline, but did not receive compensation for the loss of his companion because his dog was merely considered as a piece of property, like his luggage (2).

Another troubling aspect is the fact that a person can bring a perfectly healthy and sound animal to his or her veterinary hospital, and have that animal euthanized. Euthanasia in and of itself is not a problem, as it is necessary in regards to extremely sick and injured
animals that are suffering. The issue lies in the fact that a healthy animal, which is neither suffering nor hurt, and which would otherwise lead a long life, can be euthanized at the whim of the owner. If a veterinarian does not wish to use euthanasia on such an animal, the owner can leave and search for another that might. This is all made possible due to the property law, which gives the owner almost complete control over his “property”.

**Proposed Solution: “Living Property” Status**

David Favre, a Professor of Law at Michigan State University, has written numerous novels and articles regarding animal rights, and what needs to be done. He came up with the innovative solution to the property status of animals, and coined this with the phrase of “living property.” He has a clear understanding of the law system and the way that society works in general, and this understanding leads to a realistic approach in what can and cannot be done. He notes in his works that he is focusing primarily on companion animals, because society has not yet reached the point where it can afford to give rights to wild animals, animals involved in scientific research, or animals in the food industry. He includes the word “living” in the title because the law should directly apply to those beings that have an interest in being and remaining alive. Property is the other word because the law then only applies to those animals that are the property of humans (i.e. companion animals).

Favre states that his idea for the “living” property status came from the notion that animals, like humans, have certain interests. These include, but are not limited to: living, caring for young, socializing, consuming food, sleeping, and liberty of movement. These are aspects that are commonly known, and can be measured to some degree. He wants the interests of animals to be given more consideration, but recognizes that it is not currently possible for them to get rid of their property status. Thus, he proposes that a greater amount of importance be placed on the interests of animals, and, to a reasonable degree, be taken away from the interests of humans.

He proposes, for example, a limitation on the ability of humans to sell certain animals. A limitation on selling cats, he says, would leave the allocation of these animals to gifts, inheritance, and adoption. With no economic motives, the potential for breeding cats in adverse conditions would be minimized, thus decreasing the likelihood of kitten mills. He also proposes the idea of animals that earn a large amount of money, such as a racehorse, perhaps being given a small percentage of these earnings. This money would go towards a trust fund for their well-being. He states the transfer of animals should sometimes be limited if such a transfer is not in the best interest of the animals. The example given is one of a young man who is left six horses in an inheritance, but does not have the resources to care for them. In such an instance, the horses should be removed before they start to show signs of neglect and distress (3).

**Potential Ramifications of Granting Animals “Living Property” Status**

In an ideal situation where this new status had been achieved and applied, there are a few changes that would potentially take place. It is important to note that these changes would
not include any extreme measures. If people were opposed to this new status because they were afraid that it would mean that they could not own pets, or that their current pets would be removed from them, these fears should be erased. The “living property” status promotes an increased consideration on an animal’s interests, and it would be against these interests to remove an animal from a happy and healthy established environment. That being said, if there is a breach in the already existing anti cruelty laws, such as an owner committing abuse or neglect, it stands to reason that the animal may be removed or criminal charges may be applied. This is not relevant to the implementation of the new “living property” status, because it is a set of laws that already exist and would not be changed.

David Favre does present a set of rights that would be applied along with the implementation of the “living property” status. He concedes that these rights are not concrete in any way, and are susceptible to change from legislative and court opinions. These rights focus primarily upon looking at the world from the animal’s perspective, and making sure that they are given fair consideration without placing the needs of humans first. This is novel in that it has never been done before: humans have always come before any animal. These rights are, of course, practical in that they are not too extreme: they take into account what society would be ready for, and what would be acceptable as a whole.

Here is the list of rights that Favre presents:

1. Not to be held for or put to prohibited uses
2. Not to be harmed
3. To be cared for
4. To have living space
5. To be properly owned
6. To own property
7. To enter into contracts
8. To file tort claims

He describes them each in detail in his article, “Living property: A New Status for Animals within the Legal System,” which is available to the public on the Internet for free. This is a great and worthwhile read, and it will provide a better understanding of these proposed rights, as the information would be coming from the source itself. In a recent (12/18/2013) communication (see below) with Prof. Favre, he suggested to cross out # 7 as “this would not make much sense for others”.

As far as a change is concerned, by giving animals these rights, they are also getting the ability to take action if they are broken. Obviously the animals themselves would not be able to stand up for themselves, but there are many people and organizations that would. This would create a change from the current situation under the property status because the animals would be seen as individuals in a court of law, and would be given due consideration if there was evidence that one of their given rights had been broken. Therefore, if can be inferred that there would possible be more legal ramifications placed
upon humans for harming animals, and a knowledge of these rights would be important before purchasing a pet.

If the Information is already out there, why is there no change?

There are many animal rights advocates out there, and there are also many noted scholars who have published compelling work regarding the property status of animals and increasing their rights. It stands to reason, then, that the next question be: why has nothing been done? Why are animals still considered property under the law? Why, in 2012, did another dog perish from heat stroke on a plane, with the only compensation being the airline paying the cost of that dog’s flight ticket? The answer lies in a lack of publicity. The work is there, but people are not actively looking for it. There are many people who love their pets, and consider them a member of their family, but they do not know that their beloved animals are given the same rights as their sofa at home. They do not know that they are the ones who can change this.

In addition, our law system is based on tradition. Judges will refer to past court cases and past history when making current rulings, and it is extremely difficult to implement anything new. If there is a strong history in an area, then it is almost impossible for change to happen and this is the case regarding the property status. Time and time again, issues with the custody of an animal or breaches of possible rights of an animal have been brought to court, and the side defending the animal loses. This happened in the case of Gluckman v. American Airlines, Inc, and it also happened in a noted custody battle of a dog. A couple had split, and each party wanted custody of their beloved dog. At the end, however, the husband conceded, saying that he would be willing to leave custody with his wife if he was allotted visitation. The judge ruled that he would not allow visitation to the dog, as it would be equal to appointing visitation to a lamp (4.) This is because there is no precedent; our pets have never been seen as more than property, so why start now?

Community Action: Raising public awareness about the Property Status of Animals

David Favre’s notion of a “living property” status is perhaps one of the most realistic and best ideas out there. The way to move forward then, is to promote public awareness. There is power in numbers, and the only way that this can be changed is to get many people to know about, understand and want change.

To promote public awareness, a petition with Change.org has been launched (12/19/2013) which focuses on getting signatures to support changing the property status to that of a “living property” status. In this petition, we explain to the general public that their pets are considered property, and that this is a problem, much like what was wrote at the beginning of this paper. This petition, once we get many signatures, will be sent to our US Senators and others that have the potential to change the law. The ultimate goal is to get people to know and understand the issue through the petition and video to warrant attention and subsequently, change the legislation.
Despite the fact that our legal system revolves around tradition, and the fact that there could be a considerable amount of time before a change is possible, it is worth, at least, starting the discussion. Firstly, most people owning pets have no clue that their beloved pet is treated the same as an inanimate object in a court of law. If more people knew this, there would be public outcry. This is what is needed in order to start this "discussion". Specifically, what it would take in our legal system to have the property status changed to that of “living property.” To start with, a large amount of public support would be necessary, as that is what would garner attention at the federal level. Our petition on change.org, a site which frequently garners nationwide attention, could be picked up by various groups locally and regionally. Within the first 24 hours of launching the petition, we got over 100 signatures – and that is without advertising it! We intend to promote the petition to various groups to get as many signatures as possible. The people would then request that their legislators that represent their views request change. Perhaps the action to take from here would be to request an amendment or appeal to current law, in the hopes of discarding the current property law, and resurrecting the new “living property” status in its place.

Below is the link and the text of the Change.org petition:


Did you know that animals/pets are considered property under the law? A person’s beloved dog or cat has the same legal rights as his or her coffee table. If someone were to injure a companion animal, for example, the most one could do is sue for the market value of the animal. This is the same action that would be taken if someone were to damage your coffee table; they would compensate for its value.

A perfect example is the case of Gluckman who sued American Airlines, Inc. for the loss of his Golden Retriever who later died of heat stroke and brain damage due to the Airline’s hot luggage compartment during a flight. Gluckman was not compensated for the loss of his companion because, like his luggage, his dog was only considered an item of property.

You are asked to sign this petition if you think it is a good idea to change the status of animals as “property” to "living property", a term coined by David Favre, a professor of law at Michigan State University. To learn more about this, go to: http://www.animallaw.info/articles/art_pdf/arus93marqrev1021.pdf

This new status is simple: place a higher importance on the interests of animals, and take into account that they are living beings. This status came from the notion that animals, like humans, have certain interests. These include, but are not limited to: living, caring for young, socializing, consuming food, sleeping, and liberty of movement. It makes no sense to put animals in the same category as our furniture.
Watch our video [https://www.youtube.com/watch?v=zU2jdQXBGY8](https://www.youtube.com/watch?v=zU2jdQXBGY8) and decide for yourself if you believe that the property status of animals should be changed to “living property”. If so, sign below and we will let our lawmakers know that we believe this change should be made!

**Correspondence**
Before we posted the petition we wanted to make sure the wording was correct regarding specific knowledge of the legal system and the exact ways that this law could be changed. Also, for this method of public participation to work, the right people need to be contacted in the legal system, and the right steps need to be taken. An error can be the difference between a successful petition and one that is ignored. To prevent this, therefore, an email has been sent to David Favre, who is a professor of law, and has an extensive knowledge of this subject, so he is more than qualified to explain the legal pathways. The following emails were drafted and sent- with the most recent first:

Subject: RE: living property status - your comments?
From: "Favre, David" <favre@law.msu.edu>
Date: Wed, December 18, 2013 8:45 pm
To: "fagan@rci.rutgers.edu" <fagan@rci.rutgers.edu>

Julie, I am truly impressed. Your petition does an excellent job of summarizing a difficult topic. I think you got it right. I would only request that you remove item #7 from the list of rights for animals, it is what was in my article, but upon reflection, will not make much sense to others.

How will change come: ideally a state legislature could adopt a new law. Or, individuals could seek to create the new status by a deed, but we don't know if that would be effective until a court considered it in a case. We can talk on the phone if things get rolling.

The video was very cute, and may be effective, give it a shot. Thanks so much for this creative project on behalf of animals.

Prof. David Favre  
Michigan State University College of Law  
648 N. Shaw Lane  
East Lansing, MI 48824 - United States  
favre@law.msu.edu  
Editor-in-Chief, Animal Legal & Historical Center  
www.animallaw.info

-----Original Message-----
From: fagan@rci.rutgers.edu [mailto:fagan@rci.rutgers.edu]
Prof Favre:

I wasn't sure when you'd be back. Kerri and I are interested in finding out whether you think our change.org petition is worded ok (see our prior email below and at the end of the attached class paper) - we have not sent it yet because we wanted to check with you before we did.

Julie

Dear Professor Favre,

My student Kelly Close emailed you in September with some questions regarding your position on changing the property status of animals to that of \"living property.\" One of the goals of the class projects is to make a positive impact on society with regards to the chosen issue. To bring awareness to the public about the property status of animals, we made a video [https://www.youtube.com/watch?v=zU2jdQXBGY8](https://www.youtube.com/watch?v=zU2jdQXBGY8).

We are also creating a petition with Change.org, which will focus on getting signatures to support changing the property status of animals from \"property\" to that of \"living property\". The petition attempts to explain to the general public that their pets are considered property, like a chair or a desk, and that this is a problem. This petition would be addressed to those that have the potential to change the law, most likely at the federal level. The ultimate goal is to get enough signatures from the general public to warrant attention and subsequently, a change in the property status of animals. We would like you to look at the petition prior to launching it and correct any statements, or add something we've omitted.

A few more questions:

What might be the legal steps to change the property status of animals to that of the living property status?

Should we suggest to people signing the petition that they contact their legislator (is that the most productive was to go – legislator)? Was there a legislative bill ever proposed that could be voted on and enacted? Or is it based totally on common law, court opinions/decisions?

Who gets the ball rolling? Who might we send the signed petitions to? State senators, or judges within the court system ???
Thank you for your time and effort,

Kerri Close
and
Julie M. Fagan, Ph.D.
fagan@rci.rutgers.edu
Associate Professor of Animal Sciences
Rutgers University
84 Lipman Dr.
New Brunswick, NJ 08903

His response was:

Thanks for your interests in my article. I think it is still at the idea stage. It will take court opinions or legislative action to make it a reality, and I don’t think we are there yet. Clearly more public discussion is necessary. I am working on a book to help this process.
Prof. David Favre

Prof. David Favre
Michigan State University College of Law
648 N. Shaw Lane
East Lansing, MI 48824 – United States
favre@law.msu.edu
Editor-in-Chief, Animal Legal & Historical Center
www.animallaw.info

Hi,

My name is Kerri Close and I am an animal science major at Rutgers University. I am currently taking an Ethics in the Sciences colloquium, which is focused around a research project in an area of our choosing. I came across the subject of animal rights and became fascinated, leading me to choose this as my project topic.

I recently read your article, "Living Property: A New Status for Animals within the Legal System," and found it to be both interesting and compelling. I think that the idea of a "living property" status is an excellent solution to the problem regarding the current property status that animals hold.

I understand that you are very busy, but I am emailing you in the hopes that you will answer a few questions that I have. Please take your time in answering, as I do not want to inconvenience you in any way.

My questions are as follows:

Since you published your article in 2010, has any progress been made towards giving animals the status of “living property”?

I am curious as to what needs to be done to get this status for animals, as there seems to be significant work being made for it.

Do you think that more publicity in this area would be beneficial for getting the “living property” status?

Thank you so much for your time and effort, I really appreciate any information that you can provide me with.

Sincerely,

Kerri Close

It is clear from Prof. Favre’s correspondence that there are more steps that need to be taken in order for a change to be possible. His answer also shows that he believes that generating public knowledge will help, as he is currently in the process of writing a book. To implement the solution therefore, a popular newspaper such as USA Today was contacted, in an attempt to submit an article. Doing so would allow a large audience to come into direct contact with the problem. Even something as simple as a national poll asking the public what they think about the property status of their pets would spark curiosity and interest. In addition, a video was created and uploaded to various social media websites, such as youtube and facebook, since they have become so popular, and have a large following.

The director of the Rutgers Eagleton polling center was contacted in an attempt to create a national poll of some sort, which would seek the public’s opinion on the property status of animals. Unfortunately, Rutgers Eagleton did not think that a poll would be the best option for this project, and the correspondence went as follows:

Dear David Redlawsk,

I am currently enrolled in Ethics in the Sciences here at Rutgers University with Dr. Julie Fagan, and I am doing a research with project animal rights; specifically on why we are not considering animals as living property as opposed to their current property status.

I would like to promote public awareness of the issue and think that an excellent way to do this is through an online poll. I came across your website for the Eagleton Institute for Public Interest Polling, and I think that all of the work that you do is great. My question, therefore, is whether or not it would be a possible for me to work with you to create an online poll for my project. You seem to have a large audience base, and that would be fantastic for my goal of public awareness.

Thank you for your time and effort,
Kerri Close
kec144@scarletmail.rutgers.edu
with Julie Fagan, PhD. Fagan@rci.rutgers.edu
Kerri,
Thanks for your note.
I'm not exactly sure what you mean by "create public awareness" through an online poll. Polls are typically about collecting data, not about pushing information out to the public. If you were interested in collecting public opinion data, a poll would be an appropriate vehicle, but not really for putting out information.

In fact, the Rutgers-Eagleton Poll is primarily a telephone-based survey in any case; while we have capacity to do online studies, we do not do many of them, and we do not have a ready list of email addresses to which we could send messages.

Sorry to not be any more helpful, but as least as you describe it this is probably not the right direction for what you need.

Best,
Dave Redlawsk

In addition, the editor of USA Today was also contacted in hopes of either submitting a letter to the editor, writing an article, or conducting a poll with them. A reply has not yet been received, but the message to them was this:

November 7th, 2013

Dear Editor of USA Today,

I am a student from Rutgers University, and it has come to my attention that there are some discrepancies within our legal system regarding animals. Specifically, they are given a property status that makes them equal to inanimate objects in the eyes of the law. This is an issue that I think is unjust and important to bring to people's attention.

I am reaching out to you because I have a few questions, and they are as follows:

Would be possible for me to submit a potential article or editorial to be published in your paper? If I cannot submit an article, would you consider publishing a letter to the editor? Also, would it be feasible to conduct an online poll with USA Today regarding the public opinion on the property status of their pets?

I think that promoting public awareness is key to getting anything changed, and this would be an excellent opportunity. I am a big fan of USA Today, and your time is greatly appreciated. I will attach a letter to the editor for your consideration, and please let me know if an article or poll is possible.

Thank you,
Kerri Close
References


Letter to the Editor (Submitted to USA Today)

Dear Editor,

It is alarming to note that in a society as free and equal as ours, there is still one group being oppressed: our pets. Animals are not regarded as living beings under the law, but instead are given a property status. This means that they have the same rights as the nonliving, inanimate objects that we own. It does not seem right that a dog is held in the same category as a coffee table in our legal system.

As a whole, society is not currently ready for any radical changes regarding the property law. It would not be logical, for example, to grant animals the same rights as humans, for many reasons. The goal is to take one small step at a time, and an ideal first step would be to implement David Favre’s idea of a “living property” status. This new status is simple: place a higher importance on the interests of animals, and take into account that they are living beings. This status came from the notion that animals, like humans, have certain interests. These include, but are not limited to: living, caring for young, socializing, consuming food, sleeping, and liberty of movement. It makes no sense to put animals in the same category as our furniture, because they are extremely different. A table chair, for example, is not alive, and therefore does not have any of the interests listed above. Clearly, it is time for some changes.

Sincerely,
Kerri Close