

# Personal Pet Prenuptials

## Assuring that the Property of Companion Animals is Rightfully Cared for in the Event of a Couple's Separation

**Tag Words:** companion animals, property, animals in divorce cases, legal status of animals, pet trusts

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### Summary:

Even though animals are sentient beings with feelings, lives, and interests, they are considered “property” in a court of law, ranking them in the same status as a chair or coffee table. Instead of leaving it up to the courts where animals are only treated like furniture without feelings, couples entering a marriage or relationship that have or purchase a companion animal should consider a pet prenuptial agreement to determine the fate of the companion animal in the event of separation or divorce.

**Video Link:** <http://www.youtube.com/watch?v=zBIgs-WpsIw&feature=youtu.be>

### Introduction: Animals as Property Under the Law (JM)

What does it mean to be labeled a property? Property is anything that is owned by a person or entity. Therefore, abiding by this definition, animals are property. The status of companion animals is of the same status awarded to a non-living material good. Currently, the law states that animals are personal property and should be awarded to an owner the same way a television or chair would be. If the law were to be expanded in the future, the first point to expand on is David Favre's concept of “living property”. David Favre is a professor of law at Michigan State University and has written articles regarding animal rights and what should be done in the future. David Favre coined the term “living property” which defines pets as “physical, movable living objects- not human- that have an inherent self-interest in their continued well-being and existence”(1). David Favre's concepts are solely based on companion animals due to the fact that society is not yet equipped to grant rights to wild animals or animals involved in research. David Favre states that his idea of “living property” arises because animals, like humans, have interests. Animals are interested in living, socializing, eating, sleeping, reproducing, and moving (1). He wants the interests of animals to be given more attention and consideration. As we attempt to change the status for animals under the law, we are considering and protecting the pet's well-being and future.

When an animal's owners get divorced, the question of who gets custody of the pet arises. As pets become more like family members, this problem is becoming more frequent in today's society. Some couples are able to work this out on their own and have their agreement reviewed by the court. However, for those who cannot come to an agreement, today's courts are being asked to go above and beyond to make on a decision on who will obtain custody of the pet. Under the law, animals are considered property, the same status as a coffee table or chair. The court determines which partner gets custody of a material good, a piece of property,

by looking at several factors. The court can apply either the laws of community property or of equitable distribution in making its decision. In a community property jurisdiction, the couple's properties are split 50/50. In an equitable distribution jurisdiction, the court will split property fairly but not equally (2). The court also looks at whether or not the couple has a prenuptial or postnuptial agreement. When dealing with pet custody, the same factors apply because pets are considered "property". Some courts have started looking at which owner the pet spends more time with, or who takes the most care of the pet, while others have approved shared custody to the divorced couple as well as visitation rights with the pet for the owner who does not gain custody.

In the court case *Desanctis v. Pritchard*, the court dismissed this divorced couples' complaint, which asked the court to settle the agreement that would provide shared custody of their dog. The appellate court voided this settlement due to the fact it was trying to appoint custody and visitation to "personal property" (3).

Because animals are considered property, there is also the question of who will take care of an animal in the unfortunate event that an owner falls ill or dies and is unable to do so. One way to ensure that an animal's well being will be taken care of when the owner is incapable to take care of the animal is with a pet trust. Pet trusts allow an animal to be taken care of long after owner illness or death.

If animals are going to be considered property, instead of living property, there must be legal documents under the law that are going to protect the animal's future and well-being. The greatest solution one can propose in order to protect custody rights during a divorce as well as animals' rights is to propose a prenuptial pet agreement. In addition, pet trusts will ensure that our companion animals have continuous care throughout their lives.

### **Emotional Attachment (CJ)**

There has long since been a debate between if a pet is a member of the family or just that, a pet. Decades ago, dogs and cats were kept on farms to help herd animals and catch vermin, the pets earned the right to stay by working but weren't considered part of the family. We have long since deviated from that trend and most of the time we are seeing pets included in family portraits and on bumper stickers. This would give us cause to believe that we now view pets as members of the family. If this is true, then why in the eyes of the law are they usually seen as personal property? Why is a dog awarded to someone the same as a couch?

We as a society are becoming more emotionally attached to our animals than our ancestors were. If you lived on a farm and your herding dog passed away it was bad because it hurt the farm but now if the family dog dies people grieve and sometimes have to go to therapy or take time off from work to cope. A survey done by insurance company Direct Line, which does car, home, travel and pet insurance, "found that pet owners collectively take eight million 'sick' days a year to get over the death of their animals" (4). The fact that people take eight million days off a year to grieve the death of their pets is something that cannot be ignored. The loss of a pet is as traumatic as the loss of any other family member; this shows

that the level of emotional attachment between humans and their animals is very high. Sure you might get upset if your TV breaks, but it doesn't compare to the loss of a family pet.

There is a big difference between personal property and living property. As David Favre was quoted in saying earlier "living property" is defined as "physical, movable living objects- not human- that have an inherent self-interest in their continued well-being and existence," we cannot claim that our pets are simple personal property that can be fought over. They are living property that can move, interact with us and rely on us to take care of them. A table might require you to fix it if its leg falls off or your video game might interact with you virtually, but these are just inanimate objects that won't die if you don't take care of them. The biggest argument against animals being classified as living property is the argument that they are inferior to humans. Animals do not have the mental capacity and physical attributes that humans have. Living property must be well taken care of and when it comes to divorce, they must be awarded to the individual who will care for them and has their best interest at heart.

### **Current Trend in Pet Custody Battles (CJ)**

Unfortunately, it is not uncommon for couples that have companion animals to break up or get divorced. Who takes custody of the animal then becomes an issue. The American Academy Matrimonial Lawyers found in a survey "that 25% of its respondents (matrimonial lawyers) reported an increase in divorce cases where pets were at issue" (5). Even though there is an increasing trend in pets in divorce cases, the laws have stayed the same. States do not consider granting custody of the animal as they would a child, as pets are merely viewed as property

The most recent case of a pet's ownership being contested in New Jersey court was the case of Houseman vs. Dare. The couple that had been dating for four years purchased a pedigree dog for \$1,500; three years later they ended the relationship and decided Houseman would take the dog. No written agreement was made of this. Houseman allowed Dare to visit with the dog as long as he returned him, which he always did. A year later Houseman allowed Dare to take the dog while she went on vacation, upon returning he would return the dog back to her. Houseman filed a complaint but since there were no proof of agreements pertaining to the dog, Dare was allowed to keep the dog solely on the grounds that he was already in possession of the dog and Houseman was paid \$1,500, the value of the dog (6).

Houseman was not satisfied and appealed the court's decision claiming that the dog was worth more than his initial purchase price. She argued that he should not be viewed as regular property and that he had "unique sentimental value" (5). The court agreed that the monetary compensation was not enough. "The court held that the dog would still be treated as an item of personal property and that Houseman and Dare would share joint possession over the dog" (5). However the judge did state that this was not a matter of pet custody but of division of personal property.

This court case was a major step in the right direction for the pet custody movement. The court understood that the dog was more than a piece of property in that Houseman had a strong emotional connection to the dog. But it is still a long way to go because in the end the judge clearly stated that the decision wasn't made from a pet custody point of view but as a division

of personal property. However, many pet owners view their pet as a member of their family. Ideally, the emotional bond should be one of the main factors in a custody battle and not whoever paid more. Clearly, the pet to go to the person who has the financial means to take care of the pet, but that should not be the first and only factor.

Currently it seems that most cases involving pet custody or a pet as personal property come down to who paid for the pet and not who cares more for the pet. Original adoption payments, vet bills, and food costs all come into question when figuring out who will be awarded the pet. This comes from the belief that whoever paid for everything invested more into the pet and thus they should be given their “property” but this completely negates any emotional bond between human and pet.

### **What Happens If I Am Unable To Care For My Pet? (EK)**

Pet owners should be concerned about who will care for their animals in the event of illness or death. Due to the sensitive nature of human’s relationships with their pets, it can be quite troubling to imagine what one’s pet may endure following its owner’s death. Unfortunately, often times, if one does not specify plans for their animals before his or her death, they commonly end up in a shelter. This is often attributed to the fact that children, who are appointed power of attorney, meaning that “an individual is authorized through the courts to represent or act on another’s behalf in: private affairs, business, or legal matters” may be unwilling or unable to care for their parents’ pets.

Amy Shever, founder of 2<sup>nd</sup> Chance 4 Pets, started a nonprofit <http://www.2ndchance4pets.org> aimed towards assuring proper pet care following the death or incapacitation of the primary owner. Prior to establishing this organization, Amy Shever observed that animals that were put into shelters after a lifetime of being in a loving home quickly deteriorated. Shever stated that the abandoned animals “would just curl up in a ball and wouldn’t eat...” “the experience at the shelter can be incredibly overwhelming for them, and many of them become despondent” (7). Forcing an animal to leave such a stable and comfortable environment for the uncertainty and neglectful home of a shelter is something, which any pet owner would want to avoid. For many, pets are considered a member of the family, and they deserve to be taken care of and treated as such.

The general public is largely unaware of the idea of “pet trusts”, which allows ones pet to be cared for and protected long after their death or illness (7). According to James Hettinger from The Humane Society, “The lack of knowledge sends an estimated 100,000 to 500,000 pets to shelters each year after their owners die or become incapacitated” (7). Pet trusts differ greatly from simply including an animal in one’s will. If one establishes a pet trust, his or her pet can be cared for immediately after a medical emergency or death. In the case of wills, it may only be activated upon death, and may take weeks before it is recognized and enforced by the courts. Although it may be wise to include a provision in the will as to how the animal should be cared for, the rightful owner should also create a pet trust.

Fortunately, in recent years, crafting a pet trust has become increasingly more commonplace. In June of 2008, pet trusts were only recognized by 39 states plus the District

of Columbia. However, as of January 2014, 46 states now permit pet trusts. Even though tremendous strides have been made regarding the acceptance of pet trusts, owners are unable to leave money directly to their pets due to their property titles as “non-living property”.

To bypass the predicament assuring that funds are allocated towards an animal in case of an emergency, an executor of the estate and a caregiver are appointed to allocate these funds accordingly, and to watch after the pet as needed.

A frequent misconception surrounding pet trusts is that they are solely for those with luxurious lifestyles. Frances Carlisle, trust and estates attorney in New York says that “Pet trusts aren’t just for the wealthy.. [the goal] is the make sure a plan exists for the care of the animal” (8). A pet trust could be allocated for just enough money to provide basic food and medical needs, or for an extravagant and luxurious life. The ranges within the types of pet trust requested by owners is extremely vast, and luckily due to the increase in their popularity, many respected organized, such as The Animal Legal Defense Fund, and The Humane Society offer such pet trust plans (9).

Legally, a pet trust still can be challenged in a court of law, however it is much less common. Such challenges tend to occur between disgruntled families regarding the amount of money allocated towards an animal. Such a case was shown in the matter of the estate of “Charlotte F. Stafford”, in which the deceased woman’s nephews challenged her will leaving \$100,000 to her cat, Kissie. The nephews argued that their aunt was influenced by her friend and caregiver, and was not in the right state of mind upon writing her will. However, the courts ruled that she was indeed in the right mental state, so this challenge was thereby denied (10).

Animal owners, in any legal dispute are concerned with the wellbeing of their pets if they are unable to take care of them. This too applies in cases of divorce in which one partner is appointed custody. Considering the alternatives of our beloved pets not being in the most capable hands, is hard to cope with. For this, reason we hope to educate the public regarding precautions that can be exercised to avoid such a situation appearing in court.

### **A Step in the Right Direction (JM)**

There are no established laws on pet custody in New Jersey. As the law currently stands in New Jersey, the court considers pets as “property” to be divided during a divorce. In one Pennsylvania case in which a couple got divorced, each partner wanted custody of the dog. At the end of the trial, the husband accepted and said he would leave custody of their dog to his wife if he were allowed visitation rights. The judge ruled that he would not be allowed visitation to the dog because that would be the same thing as “appointing visitation to a lamp” (11). For this reason, every state in the United States considers animals as property. However, the argument that pets are worth more to their owners than their fair market value was successfully used in the Houseman v. Dare New Jersey Court of Appeals Case in 2009. Because animals are becoming such big parts of our lives, under NJ law, individuals may argue that a pet holds unique value and is irreplaceable. Only if the judge agrees, he or she may order a shared-possession arrangement. When making a pet custody agreement they

consider if either person owned the pet before the relationship began, who pays the veterinary bills and who buys the food, who takes better care of the pet, and if a child has a special attachment to the pet, who has primary custody of the child. The law for New Jersey as well as the rest of the states needs to be established; animals need to be considered “living property”. In order to avoid the custody battle over pets in a divorce, pet owners should sign a prenuptial pet agreement. A prenuptial pet agreement will make it easier for the rightful owner to obtain their pet during a divorce.

The reason there has not been much progress toward a solution for this is because our law system is based on tradition. Judges rely on past court cases to handle current cases. This makes it difficult to implement something new and improved. There are benefits to the law’s old-fashioned views of pets as “property”. Because pets are considered property, this entitles couples to decide in advance who will have custody of the shared pet when the relationship ends. This can be done through a prenuptial pet agreement. By completing a prenuptial pet agreement one can establish the expectations of each partner in the relationship. If you do not have a written agreement, a judge will need to consider proof of adoption, registration, an existing bond with children, provided vet care, etc. One best way to protect the custody of your animal is to keep all paperwork provided to you at the time of purchase or adoption. This provides clear proof that the animal belongs to you. A prenuptial pet agreement may not always be so simple to obtain.

### **Community Action: Construction of a Pet Prenuptial Agreement that Identifies Ownership of the Pet in the Event of a Separation**

#### **Justification (EK, JF)**

Although in the past, determining pet ownership has been extremely controversial due to property rights, messy divorces, and uncertain wills, our society has continued to make strides. For our community action project, we have decided to craft our own “Pet Prenuptial Agreement”. As referenced above, the current laws regarding pet ownership are based on a multitude of factors, which ultimately decide ownership. However, while ownership is being determined, the family and loved ones involved could be experiencing extreme hardship on top of an already difficult situation. If we create a “Pet Prenuptial Agreement”, there will be a clear-cut answer to who has rightful ownership of the animal.

Divorces especially tend to get rather “messy”, and emotional. An individual could claim rights to an animal solely to hurt their partner. For this reason, deciding all of these arrangements prior to mayhem would be beneficial. By crafting a pet prenuptial agreement we are ensuring that the animal will be in the proper hands. Irrespective of whether or not animals’ property rights are where we believe they should be, a pet prenuptial agreement allows the pet owners to take this debate into their own hands; understanding that their pet is a living being that has feelings and would experience trauma in the event that they lose their human companions and the place they know as home.

Additionally, signing a Pet Prenuptial Agreement would bypass any additional court proceedings or verbal agreements. Within the pet prenuptial agreement, we plan to specify

who rightfully owns the animal, has provided for the animal, and will provide for the animal for the duration of its life. Both parties should sign and date the prenuptial agreement to assure its validity in court.

This idea has been used in other fashions and has proved to be exceedingly successful. As mentioned above, pet trusts, which set aside specific care instructions with a sum of money for an animal, is becoming more commonplace. If society could look to this progress, and model its pet prenuptial agreements in the same way, it would ensure top-level care for our pets.

### **Prenuptial Pet Agreement (CJ, EK, JM, JF)**

This is an agreement between \_\_\_\_\_ and \_\_\_\_\_, who are entering into a relationship/marriage. They are agreeing to follow what is stated in the following document if the relationship/marriage were to come to an end.

They may choose one of the following methods of determining who gains custody of the indicated pet(s) \_\_\_\_\_.

1. \_\_\_\_\_ will automatically gain full custody.
2. \_\_\_\_\_ who has paid the majority of the bills regarding the pet (vet, food, etc) will be granted custody.

They may also choose shared custody.

1. Every other week the pet(s) is/are switched between the parties. Each individual will be responsible for paying for food and vet bills on their own.
2. One party will have main custody and the other party may request visitation at any time.

When one party is awarded full custody of the pet(s), they must pay the other party for

1. the fair market value of the pet(s) determined to be \$ \_\_\_\_\_.
2. compensation for costs related to the care of the pet determined to be \$ \_\_\_\_\_.
3. the loss of companionship of the pet(s) determined to be \$ \_\_\_\_\_.

In the event that the person granted full custody can no longer provide for the animal, the animal shall become custody of the pre-appointed beneficiary (\_\_\_\_\_).

If no beneficiary has been appointed at this time, pet ownership will automatically be appointed to the other party involved.

By signing this agreement both parties agree that this shall be the final decision on all matters. No other argument will be entertained.

\_\_\_\_\_  
1st Party

\_\_\_\_\_  
2nd Party

\_\_\_\_\_  
Date

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**Letters to the Editor** (sent Nov 2014)

Dear Editor of Pet Planet Magazine,

My name is Jennifer McDonald and I am a student from Rutgers University. It has come to my attention that there are some inconsistencies within our legal system regarding the custody of animals. Specifically, there are problems with our companion animals whose owners' get divorced. In today's society animals are being considered family members and the argument of who gets custody of the pet is becoming a more frequent problem in court cases. Animals are being placed in the hands of the unrightful owner due to lack of ownership evidence, etc. One way to solve these animal custody battles is with a prenuptial pet agreement that I would like to propose.

I am reaching out to you because I would like to ask you a few questions. Would it be possible for me to submit a potential article or editorial to be published in your paper? If I cannot submit an article, will you consider publishing a letter to the editor?

I strongly believe that speaking to the public about our concern will bring more consideration animals under the law, and will be a step towards a change in our legal system. An article in your paper would be a great opportunity to do so. I appreciated your time and I will attach a letter to the editor. Please contact me at (###)###-####.

Sincerely,

Jennifer McDonald

Dear Editor of The Bark,

My name is Elizabeth Krisch, and I am very interested contributing my opinions on animal equality to your publication. In recent years, many cases have come up regarding the property rights of animals. As of now, animals are not considered to be "living property". For this reason, in circumstances such as divorce, animals are appointed based almost entirely on a market-value basis. Since they have the same rights as an inanimate object, an animal could easily end up in the wrong hands. I have been trying to find ways to bring this pressing issue to light, so I have begun crafting a "pet prenuptial agreement", in order to protect well-being of household pets. This idea is not as foreign as it might seem, as "Pet Trust" are becoming exceedingly more widespread in practice. Although animal property rights have yet to be changed overall, perhaps we can help avoid their further harm caused by fallacies in the legal system.

I can be further reached at (\*\*\*) \*\*\*\*\*, and I look forward to hopefully contributing to public education regarding this issue. Sincerely, Elizabeth Krisch

Dear Editor of Modern Dog Magazine,

My name is Chris Jones and I am an Animal Science student at Rutgers University in NJ. I am writing to you to shed light on an issue that you and many of your readers may not be aware of, the issue of dogs (and all pets) being involved in divorce proceedings. Unfortunately in the world we live in there are more and more divorces and with more divorces we see more pets being fought for. But we aren't seeing a change in legislation. Animals are still being treated the same as a tv or a table, by that I mean they are just property. We need them to be fought for as if it were custody of a child. They are living property and deserve to be treated as such. For example if there was a pet agreement part of prenuptial agreements when people enter into marriage, or if more thought was put into who has more of an emotional connection during the court proceedings. We need to advocate for this change to be made or else we will never make progress for our pets.

I can be further contacted at (\*\*\*) \*\*\*\*\*, I hope to be of service to your magazine.

Sincerely,

Chris Jones