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Dealing with Pets after Separation, Part 1: Understanding the Law on Personal Property

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Family law is about how serious cohabiting relationships start and end, how children are cared for after separation, how the bills are paid after separation, and how the property and debts that accumulated during a relationship are split when it ends. Despite the folks who'd very much like to apply for custody of or access to their pets after separation, the law on custody, guardianship and access only applies to human children.

In the eyes of the law, pets are personal property, like a coffee cup, a cow or a car. I'm not saying this is right, mind you, just that this is how it is; no matter how attached you might be to your pet, your pet is *property*. As the adjudicator said in *Gardiner-Simpson v Cross*, a 2008 case from Nova Scotia:

"[4] Emotion notwithstanding, the law continues to regard animals as personal property. There are no special laws governing pet ownership that would compare to the way that children and their care are treated by statutes such as the [statutes on family law]. Obviously there are laws that prohibit cruelty to animals, but there are no laws that dictate that an animal should be raised by the person who loves it more or would provide a better home environment."

In this, the first half of two-part article, I'm going to talk about the laws on personal property that might apply when a couple can't agree on how they'll manage their pets after separation. In the second half of this article, I'll describe the sorts of orders you can and can't ask the court to make about pets.

Before continuing, however, I need to emphasize the importance of remembering that *pets are property*, or, to put it another way, that *pets are not people*. If you have an issue about a pet following separation, it will probably help to make a point of mentally substituting “the toaster” for “the dog” when you’re thinking about the problem. Unplugging your feelings from intentionally emotional problems like these can often make it easier to work your way through them.

Here are the general rules about owning and co-owning personal property.

Most of the time, the person who bought the pet owns the pet.

There are some exceptions to this rule, like if you found the animal wandering the streets or you bought the pet as a gift for someone else. However, in general and as with other kinds of personal property, if you bought it, you own it.

If you bought the animal, you can provide evidence of the purchase, and your ownership, through a sales receipt, or a bank statement or credit card statement, showing the details of the purchase. If you don’t have paper evidence of the transaction, you may be able to demonstrate ownership by being the person:

- who is listed as the owner at the vet’s office;
- whose name is on the city ownership licence; or,
- who is identified on a kennel club registration or breeder’s certificate.

In general, a person who receives a pet as a gift owns the pet.

Making a gift of something is one of the more common ways, along with selling or trading things, that an owner of property can transfer ownership of the property to someone else.

Someone who buys a pet, and then gives it to

someone else, loses the right to have and enjoy the pet; the person to whom the pet is given, on the other hand, becomes the owner of the animal, and, with ownership, gains the right to have and to enjoy the pet.

...it’s important to know that more than one person can own a pet, just like more than one person can own a car or a house.

If you received the pet as a gift, you may be able to prove that ownership of the pet was gifted to you by providing:

- letters, notes or cards that might have accompanied the gift;

- evidence of what the giver said to you about the gift, like “happy birthday, I bought you this ferret;”
- evidence of what the giver said to others about the gift, like “I bought Sandra a ferret for her birthday;” or,
- evidence that the giver has given similar gifts in similar circumstances, like “I give all of my children ferrets for their sixteenth birthdays.”

Proving that something was a gift is about proving the *intention* of the owner to make a gift. The transfer of ownership isn't a gift without that intention!

Say your boyfriend stops caring for or feeding the dog, stops taking it for walks and stops taking it to the vet, and say you've started doing all those things. Although it's true that you're doing all the work, it doesn't mean he's necessarily given the dog to you unless he actually says, “take the dog, it's yours.” However, there are some exceptions to this. Read on.

You might be able to claim ownership of animals that are stray or abandoned.

The basic rule is that an owner's rights in personal property are never lost unless the owner intends to get rid of the property. But what if the owner of a stray animal can't be found? What if the animal's owner has abandoned it?

I won't say much about owning stray animals, since this article is about property rights between couples who are separating. I'll just say that you may be able to keep animals that you find, as long as you don't know who the proper owner is and never find out who the proper owner is. If, over time, you become the person who normally cares for the animal you might gain a right to have the animal that is enforceable against everyone else... except the proper owner.

Now it might be possible for you to argue that the proper owner has abandoned the animal, especially if the owner has stopped caring for or feeding the animal, stopped taking it for walks and stopped taking it to the vet, and you've taken over all those chores. Arguing that your partner has abandoned a pet can be challenging, however, and it's up to you to prove that she's abandoned the animal.

Here's how an adjudicator from Nova Scotia described the law of abandonment in the 2014 case of *Chiasson v Kennedy*.

"[16] ... Abandonment occurs when there is 'a giving up, a total desertion, and absolute relinquishment' of private goods by the former owner. It may arise when the owner with the specific intent of desertion and relinquishment casts away or leaves behind his property ... abandonment involves ... an intention to relinquish title, 'that is, an indifference as to the fate of the chattel, coupled with sufficient acts of divestment'..."

And that, in a nutshell, is what you have to prove to show that your partner has abandoned her pet.

"Chattel," by the way, is another term for personal property.

If you can't claim ownership of the pet even though you've been the only one caring for it, you may be able to claim compensation for your contributions.

If you've wound up doing a lot of the day-to-day work associated with the pet or paying for a lot of the animal's expenses, like food, vet bills and grooming costs, and you can't find a way to claim that you own the animal, you can ask for the next best thing: compensation for your contributions to the maintenance of the pet. This is called an "unjust enrichment" claim.

Although we normally see unjust enrichment claims in the context of someone's contributions to real property – houses, condominiums and cottages and so forth – I don't see any reason why the claim couldn't be made with respect to personal property. The idea behind claims like this is that you've made contributions to property owned by someone else for which you'd normally be paid in some way.

There are three things you have to prove to establish unjust enrichment:

- the owner was *enriched* because of your contributions to the animal (for example by not having to buy pet food or pay for someone to walk the pet);
- you *lost something* as a result of your contributions (like the money you spent feeding the pet or the money you could have made walking someone else's pet); and,
- there is *no legal reason* for the owner to be enriched by your contributions (like a contract which required you to care for the pet).

If you're successful, you'll then have to prove the amount by which your efforts

enriched the owner. Although you won't get to keep the animal unless there's no other way for the owner to pay out what he or she owes you, at least you'll be partially repaid for the time and money you've spent on the beast.

More than one person can own an animal.

Finally, it's important to know that more than one person can own a pet, just like more than one person can own a car or a house. This might happen if both people put money into buying a pet, if the pet is bought using money from a joint account or if the pet is bought using money borrowed from a joint credit card. It might also happen if the person buying the animal intended that both people would own it.

Ideally, you'd prove joint ownership with a sales slip that demonstrates a joint contribution to the purchase by saying something like "received for the purchase of Sam, the four-month-old purebred daschund, \$100 from Sandra and \$100 from Kaitlyn." This would create a presumption that both of the buyers own the pet. However, sales slips rarely say anything so useful, and most buyers never think of asking for it. Absent this sort of proof, you'll need to demonstrate that you both intended to jointly own the animal. Just like gifts, intention is everything.

Things like sales receipts that show both names ("Sam, sold to Sandra and Kaitlyn for \$200"), city licences in both names, statements from joint bank accounts and credit cards showing the purchase all tend to support the argument that both of you meant to jointly own the pet, but none conclusively prove that this was your shared intention. You might be able to prove that you both had this intention through:

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- letters, notes or cards that you might have exchanged around the time of the purchase;
- evidence of what your partner said to you about the purchase ("I'm so happy we bought Sam together"); and,
- evidence of what your partner said to others about the purchase ("Sandra and I bought Sam together").

However, it's not always an advantage to co-own a pet, as we'll see in the next part of this article.

Options for the court

Okay, these are the important parts about the law on personal property that apply to pets. Assuming this information doesn't help you and your ex come to an understanding, you may find yourself having to go to a mediator, an arbitrator or a judge. In the second part of this article, I'll write about the the sorts of orders you can and can't ask the court to make about pets after separation.

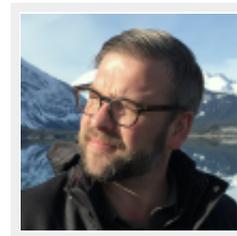
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