

Flying Solo: Dividing Pets

By Jan Warner and Jan Collins

Question: I read your column several months ago, never thinking that I would ever be involved with “pet custody” -- but here I am. My husband left me last month and, in order to avoid the anguish of fighting over Trippy, our six-year old terrier, I suggested that we write out an agreement, without lawyers, that gives me “custody” and him “visits” on alternating weekends from Saturday morning until Sunday evening. We had the agreement witnessed and notarized.

Before our split, Trippy was house-trained. But since my husband began taking Trippy to his strange new apartment for weekends, Trippy has regressed, is messing all over my house, is not eating, has lost weight, and looks pretty depressed. My husband denies there are problems and wants his visits. He has threatened to take me to court. Here’s my question: If I go to court, will a judge require Trippy to continue visiting based on our agreement, even though I didn’t know when I signed it that Trippy would be so upset?

Answer: When we wrote about cockatoo custody issue some weeks ago, we did not anticipate the volume of messages from our readers in similar straits with their domestic pets.

It’s estimated there is one pet for every two Americans, with nearly 125 million cats and dogs living in American households. According to a recent survey, a majority of those questioned would prefer a cat or dog over human companionship if stranded on a deserted island. Most pet owners view their pets more as family members than as personal property.

The question, it appears to us, is whether you and your husband can fashion a shared property interest in a pet so that one of has primary “custody” and the other can “visit.” And if so, whether the agreement can be modified because one party to the agreement says the pet is suffering. And this is where things begin to get sticky.

Some states legally classify pets as “personal property” – much like lamps or sofas. In those states, we believe that agreements like yours that go beyond granting ownership may be void.

At the same time, although you and your husband clearly intended to fashion a mutually shared property interest in Trippy, if your terrier is considered to be personal property, we don’t believe the agreement will be modifiable by the court unless there is a clause in the agreement that allows modification.

On the other hand, while animals may be considered property, some courts and state legislatures are taking notice of the distinctive quality of pets that differentiates them from sofas and lamps, and therefore entitles them to more legal protection and different treatment. Lawmakers in some states have recognized that the loss of a pet is a much more emotional experience than losing an antique of significant economic and sentimental value.

For example, the Tennessee legislature enacted laws that allow the owner of a pet to recover non-economic damages in connection with the wrongful death of a pet. Yet, courts still consider

family pets as marital property that is to be divided, because despite their unique qualities, family pets are not treated like human beings.

So while you and your husband have attempted to determine “custody” and “visitation”, as a practical matter, until public policy swings the pendulum toward the creation of an “enhanced” classification of personal property, the answer to your question will remain up in the air.

However, with our culture’s interest in pets, we believe that our courts will soon begin treating pets as more than personal property, and will allow folks like you and your husband to share your pets. For more information, go to <http://www.animallaw.info/>