Who keeps the family dog? How a separation lawyer can help determine pet ownership

Date : August 9, 2017

Following a divorce or separation, couples often see a separation lawyer to assist them in reaching an agreement as to the distribution of assets such as houses, vehicles and other valuable items.

But who keeps the family dog?

For many a dog isn't just a pet, he is man's best friend, your security guard, a cuddle buddy and the one you tell all your problems to. His value is priceless.

So how does the Court determine who gets to keep this little furry member of the family if parties can't agree?

Unlike with parenting matters, the Court does not have the power to make an order determining where a pet is to reside. Nor does the Court have the power to order if and when the other party will be permitted to spend time with the pet or required to financially support the pet. The Court can however make a determination as to who the pet will be the property of.

Earlier this year in the case of Downey & Beale the Federal Circuit Court of Australia made a determination highlighting this reoccurring dilemma for separating couples. In *Downey & Beale* the Court had the sole job of determining ownership of the parties' pet dog. All other property matters had already been agreed between the parties.

In making a determination, Judge Harman explored who the dog was to reside as a matter of 'ownership of property' as assessed like any other asset of the relationship. With the dog regarded as property, the Court does not take into consideration the best interests of the dog as they would in deciding where a child should reside. Alternatively, in coming to a determination the Court must assess whether is 'just and equitable' to make a property adjustment of the dog's ownership. In doing so the Court assessed factors such as; who purchased and paid for the dog? Who did the dog live with during after separation? Who maintained and cared for the dog and related expenses (i.e. took it to the vet)? Whose name was the dog registered in?

It was agreed that the Husband had purchased the dog for the Wife and the Wife had maintained and paid for ongoing expenses related to the dog. Registration of the dog had been done by the Husband, however this did not occur until 8 months after separation and subsequent to the Wife having asserted her claim of ownership. Nonetheless, the Court held that registration was ordered to be transferred to the wife as the legal owner as a result of her continuous and unbroken possession of the dog prior to and during the marriage and her financial and physical maintenance of the dog on a daily basis.

Separations are never easy, and when pets that are considered family are involved in a

property settlement along with your house, cars, jewelry and furniture this can become a very stressful time. If you are currently involved in a separation, a separation lawyer can assist you if you are seeking to maintain or regain custody of your pet. A separation lawyer at our firm can advise you as to how the Court will likely determine what is a just and equitable outcome, and anything that can assist you in increasing the probability that you can keep your pet.

Speak to one of them today! Contact us on **1800 300 170** or email us at **familylaw@matthewsfolbigg.com.au**

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.