

New York's New Law on Pet Custody in Divorce Proceedings: Who Gets the Family Pet?



On October 25, 2021, Governor Kathy Hochul signed into law a new statute, requiring that the “best interest” of a divorcing couple’s pet or companion animal be considered when awarding custody to a spouse, and applying many of the same factors considered in determining child custody. “Companion animals” or “pets” are defined as dogs, cats, and any other domesticated animal normally maintained in an owner’s household.

With the enactment of this law, New York joins California, Illinois, and Alaska in considering the interests of a couple’s pets during the divorce proceedings.

Before the passage of this law, pets were treated as property in New York, and courts generally awarded pets or companion animals to the spouse who purchased the animal and paid for its care. However, by now adopting the “best interest” of the pet as the primary consideration, each spouse will not only have the opportunity to prove why he or she will benefit from having the pet in his or her life, but also why *the pet* has a better chance of thriving and being loved in that individual person’s care.



Traditionally, the “best interest” approach has been used to determine custody issues for children of divorcing couples, which include *inter alia*, the home environment, specific needs of the child, the child’s preference and the parental involvement in the child’s life. The courts will now determine who is best suited to care for the pet(s) based on tangible factors, such as who feeds them, brings them to the veterinarian, takes care of their grooming and walks them, rather

than treating the pet(s) merely as marital property. The “best interest” standard will also likely consider who spends more time with the pet, and the pet’s relationships with family members.

In the past, pets could have been used for leverage in divorce negotiations regarding the division and distribution of marital assets. However, now the “best interest” standard will require thoughtful consideration of a pet’s quality of life and emotional wellbeing.



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