

NEW YORK DIVORCE MEDIATION WITH COMPANION AND FARM ANIMALS

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This material, or a similar version of it, first appeared in THE REPORT of the New York State Council on Divorce Mediation (NYSCDM), Vol. 2013, No. 3, available at <http://nyscdm.org/resources/the-report>. Reprinted with permission.

Divorce is an emotional time for all parties involved. One household becomes two. What lies ahead in life's next chapter is new and undefined.

This article discusses the unique challenge surrounding the personal worth of animals — both companion and farm — at divorce, and offers pointers to divorce mediators who face these issues, which can complicate even the finest settlement agreements. Many divorce mediators have war stories involving the settlement that almost got away because of an animal, be it a family pet, pleasure horse, or livestock in a multi-generation farm family.

Litigation about “who gets the animal” often creates a permanent wedge between the parties. Mediation, on the other hand, encourages creative problem solving about animals that is not typically available in court.

VALUING PETS AS PROPERTY DOES NOT PROPERLY ADDRESS THE EMOTIONS DRIVING CONFLICT IN DIVORCE

In New York State, farm and companion animals are both seen as personal property. (In some states, the law in this area is changing). Yet both farm and companion animals often have emotional, historic and aesthetic value that is difficult to quantify. Most animal owners don't see their animals as property or tangible assets. According to the National Resource Center in a paper entitled *The Link Between Animal Abuse and Human Violence*, approximately 48% of U.S. pet owners define their pets as companions and 49% go so far as to define their pets as family members. Not surprisingly, only 2% of U.S. pet owners identify their pets as property. See Phil Arkow & Anna Melbin, “Practical Strategies for Serving with Pets,” NC ADV Conference (July 24, 2012). Although similar statistics for farm animals are unavailable, most livestock producers have emotional attachments to the animals they raise. These attachments can give livestock owners a sense of identity. And we find that, like children, animals may be casualties of a divorce when they are used by one spouse as an emotional bargaining chip or to gain power over the other spouse.

It is easier for most of us to relate to emotional attachment to companion animals — such as dogs, cats and horses — than to emotional attachment to farm animals. Yet the latter are just as common. For example, a sixth generation dairy farm in Upstate New York may put increased value on cattle born with a certain pedigree, or derived from certain lines of animals (*e.g.*, descendants from Grandpa's cows or a winning 4-H heifer at the State Fair). Alternatively, a couple may have purchased pigs or sheep together, though one spouse did most of the manual labor, while the other handled bookkeeping. The spouse who did the manual labor may feel that

the pigs or sheep are his/hers because he/she was the person who fed them each day, gave them vaccinations, made sure they had water, and stayed up late for health emergencies or calls to veterinarians.

Of course, unlike many other types of assets subject to division at divorce, individual companion animals and breeding livestock cannot be physically divided. Several issues revolving around companion or farm animals may arise during divorce mediation. The following are a few common examples:

- **The animal(s) might be a reason for the conflict between the parties.** (“She never did clean out the kitty litter!” “That dang dog kept us up barking at the coyotes all night — we could never get any sleep!” Or, “She was always riding that horse when she should have been taking care of the home!”)
- **The animal(s) might be the last good thing that the couple shared.** (“I got her that puppy for our last anniversary, before she broke my heart.” “I used to love going out to check cows with him each night; it’s how I fell in love with him.”) One party may wish to keep the animal as a keepsake of when life was good. If that is the case, the mediator may decide to highlight these shared emotions so the couple can focus on the positive aspects of their past relationship.
- **Farm animal(s) may have symbolic significance for a party who comes from a multi-generational farm business.** (“I own a fourth generation dairy farm with my brothers, their wives, and my parents. She knew nothing about the dairy business before we got married. Just because we own cows together doesn’t make them hers. I was the one milking them twice a day. I want to keep herd in my own family and pass it to my children and my children’s children.”)
- **The animal may have a history with one spouse.** (“She is the progeny of the Grand Champion Heifer that I showed at the All East Livestock Exposition.” “I trained that dog to win at agility contests.” “That is a twelve time ‘Best in Show’ dog.” “I rescued that stray cat and cared for her.”)
- **The companion animal(s) might be working members on a farm operation.** (“That’s my cow dog. She helps me herd cattle. I spent years training her; she knows my commands. She is my right hand around the livestock and is invaluable to me.” “I need that horse to check the livestock when they’re grazing on the hilly terrain.”)

As divorce mediators, our ability to address our clients’ emotional attachment to both companion and farm animals is our stock in trade. This is often the cornerstone of why mediation works in divorces in which companion or farm animals are at play.

UNIQUE ECONOMIC FACTORS CONCERNING FARM ANIMALS

Not only should divorce mediators consider and weigh the emotional value of animals, but also the livestock business and the special economic value of farm animals. Divorce mediators should not forget that livestock and horse operations are businesses. The animals are likely assets of that business entity, whether it is in the form of a sole proprietorship; general partnership between spouses or among family members; a corporate entity; or a trust. Businesses have brand recognition, and issues such as goodwill, intellectual property, accounts receivable/payable, debts/loans, and salaried employees. All of these may come into play when a business is involved in a divorce action. Moreover, many farm operations are family businesses that are passed down from generation to generation and among siblings and cousins. In this light, animals can be complex business assets that cannot be overlooked. Some mediation parties may wish to focus on the impact of business valuation and succession planning on heirs.

Furthermore, the value of a particular head of livestock depends on myriad factors, including whether the animal is to be used for breeding or meat; its age; and its progeny and pedigree. There are even more considerations, such as disposition, color markings, and genetic characteristics (DNA markers predict marbling or meat tenderness). For example, a herd bull could have a fair market value between \$1,000 and \$20,000, depending on his phenotype and genotype. Divorce mediators unfamiliar with livestock or horses may believe that a cow is a cow is a cow, but that is not the case from either an economic or emotional standpoint. To illustrate, a thoroughbred racehorse or a horse used for team penning competitions will have a higher economic value than aged pleasure Quarter horses used for weekend horse rides with the family. That said, parties may put more emphasis on the emotional value of the livestock. Divorce mediators should listen to their agriculture clients so they will understand whether the clients value their farm animals primarily for economic reasons or for emotional ones.

SOME PRACTICAL POINTERS FOR DIVORCE MEDIATORS

If you are mediating a divorce with companion and/or farm animals, keep the following pointers in mind:

1. Depending on the situation, facilitate the discussion about animals early in the process. This will help prevent an impasse in later settlement negotiations. In some cases, animals can be almost as important an issue in divorce mediation as is child custody. For example, animals can be used as retaliatory weapons in divorces. If an amicable agreement about animals is reached early in the mediation process, the mediator can help the parties reflect on why they made that decision if a disagreement later arises.

2. Help the parties select the proper caregiver. Mediators should reality test to make sure the caregiver understands the responsibility of animal husbandry and ownership. This is especially crucial when livestock and horses are involved. One spouse may have watched the other spouse do most of the work during the marriage, and may not clearly understand the day-to-day responsibilities associated with animal care, such as deciding the proper feeding regime, administering necessary shots/vaccinations, or helping with calving. Likewise, in the case of

domestic animals, one pet parent may not understand the impact of the responsibility of daily walks with the dog on his or her lifestyle.

3. **Don't forget that the other spouse may seek visitation.** Even though courts see pets as property, couples going through divorce mediation may not. Mediators can help the parties decide on a creative visitation schedule. For example, a dog could stay with the other pet parent when the primary caregiver is on vacation, and on a set schedule of weekends throughout the year. If a pet or horse visitation schedule is agreed upon, it should be incorporated into any MOU (or separation agreement, if a lawyer-mediator is drafting).

4. **Discuss what happens if one party is no longer able to care for the animal(s).** To illustrate, in a recent divorce, the husband found his dog listed on Petfinders seven years after it was awarded to the wife in a divorce settlement. She had put the dog up for adoption six months after the divorce was finalized. Mediators can discuss whether the parties desire that one pet parent notify the other if he/she decides to put the animal up for adoption. Mediators can also discuss with the parties what would happen if an ex-spouse was no longer physically or mentally capable of caring for the animals, and the parties can agree who the contingent caretaker would be.

CONCLUSION

In divorces involving animals, courts often treat animals as personal property subject to equitable distribution. Parties often view their animals as children or with other emotional or personal attachment, but New York law does not. Divorces involving companion or farm animals can be more complicated than first meets the eye. Mediation offers a unique opportunity to address animal-related emotional and financial concerns. Armed with the information and strategies presented in this article, mediators can avoid becoming cautionary tales about the settlement that got away due to the animal(s).

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