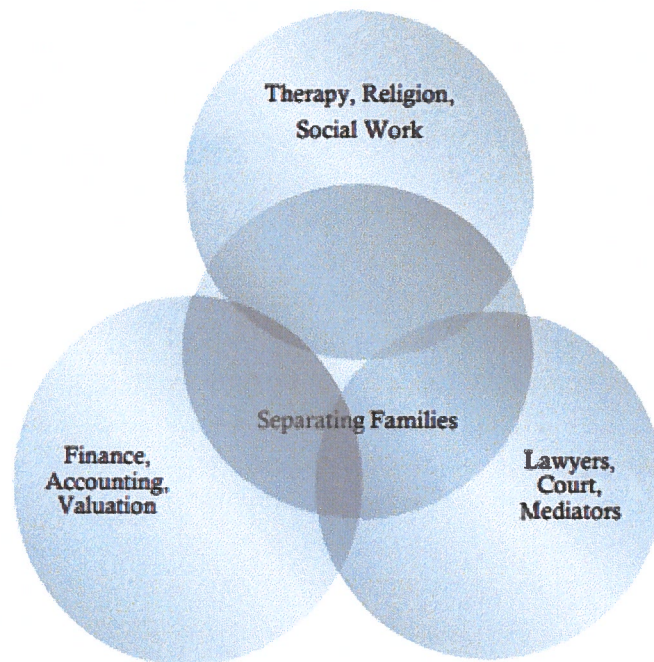


SENSIBLE SEPARATION

This issue of *Sensible Separation* will focus on children of divorce.

EDITOR, GREG KINCAID

FALL, 2017



Sensible Separation is an interdisciplinary newsletter for professionals assisting families with divorce or separation. If you would like to contribute an article, please submit to GKincaid@hrkklaw.com. For more information about divorce mediation, please visit www.SensibleSeparation.com. Another opportunity to share helpful thoughts or insights about our work exists on the Sensible Separation FACEBOOK page, which is located at www.facebook.com/sensibleseparation. Please visit our site. We appreciate the traffic and any helpful information that you would like to share.

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In this edition of *Sensible Separation* there are two articles. The first is an article I recently wrote for the AFCC journal on the issue of dogs (pets) and divorce. I am simply re-publishing the article in its entirety on the theory that most of you are not members of AFCC but might have an interest in the subject. The second article is from local Family Law attorney, Rich Becker. It can be a strange feeling for clients when the divorce is finally over with--a mixture of sadness and celebration. Unfortunately, there is often a great deal of post-divorce work that often still needs to be done. I thought it might be helpful to have a check list to use with clients. Rich put one together for us. Thank you!

Dogs and Divorce—Is it time for a new approach?

By Greg Kincaid

When someone mentions the family pet in the middle of their divorce, most lawyers shut down. Although they may not actually say it, I'll tell you what I suspect crosses the average legal mind...

You're kidding me. You're an emotional train wreck, your children are suffering, and your finances are in shambles—and, now, you want to spend your limited time and resources arguing over the dog, too!

Those sentiments are not totally wrong. But, they aren't totally right either. When it comes to dogs, and pets in general, we need to develop a more sophisticated and thoughtful problem-solving model. I'd be honored to start the dialogue. To handle pets and divorce with the requisite sensitivity and insight, like most problems we face, we'll need to think about the problem from a variety of different perspectives. Only then, will the entire picture come into focus.

A. A Legal Perspective.

The legal perspective on pets and divorce is frankly arcane and outdated. In general, as far as the law is generally concerned, there is no difference between a beloved family pet and a barnyard sow. Oink, oink or bow wow—it makes no legal difference. Even more starkly, there is no difference between a pet and a piece of furniture. An animal is personal property; nothing more. A dog's feelings, needs, and best interests are irrelevant. When lawyers and courts divide personal property—like dishes and towels—it's not a particularly good argument to assert that you happen to like the object in question more than your spouse or that the object in question seems to like you better. Nor would a court award a sofa to the spouses on an alternating week schedule. Most of the tools we use to divide personal property seem absurd when directed at pets. So, what does happen? Thankfully, most families work something out. But, sadly, the spouse that is more attached to the pet(s) can easily find himself or herself being emotionally blackmailed. *You want the dogs, then I'll take the Porsche.* It's not that the law is lazy, outdated or insensitive; these are very difficult problems and sometimes when people are left to solve their own problems (because the court won't do it for them), that's just what they do: solve their own problems. When judges feel ill-equipped to make the right decision, who can blame them for kicking the can down the proverbial road.

B. A Dog's Perspective.

In a divorce, it's easy to skate right past the dog's needs. Instead, the arguments are all about the humans involved and their needs. As a mediator, I have received emails or memos with pages of narration about how much the dog means to the owner/spouse. Interestingly, dogs and kids are often treated alike. The dog-parents are often focused on their needs and not the dog's needs. One could easily theorize that the same parents that argue over their children are also likely to argue over their dogs—for essentially the same selfish reasons. Dog expert, Cesar Millan, in his *book A Member of the Family: The Ultimate Guide to Living with a Happy, Healthy Dog*, points out that because dogs (and humans) are pack animals, a divorce is emotionally stressful for the dog, too. A divorce is the break-up of the pack, or the family unit. Why wouldn't dogs have similar feeling of loss and anxiety? Instead of thinking about dogs like a piece of furniture, what if we thought of them as sensitive and caring animals that also have needs? Needs, it turns out, that are very similar to our own. What if, instead of applying property principles to our pets, we applied the same considerations that we use when thinking about the human animal? If we treated dogs like living creatures and not chattels, how would our analysis differ? I don't know for sure, but I suspect we might have the same kinds of dialogues we have every day with respect to children. When we put the children's needs first, somewhat miraculously, most custody disputes dissipate into thin air. Wouldn't the same happen with pets?

There are questions that just need to be asked when thinking about the dog's needs. How does your work schedule impact your ability to care for the animal? Why would it make sense to give the dog to the spouse that travels frequently and as a practical matter isn't available to meet the dog's needs? If one spouse is already feeling financially slammed, does this bode well for the pet's vet care? How attached is the dog to the children or to one owner? I understand that thinking about children and dogs in the same fashion has its limitations. Perhaps we're not ready to think about court ordered doggy-support, but surely we are ready to start treating pets like the loving family members that they are.

C. A Child's Perspective.

I don't have many memories of being seven years old. In fact, I only have one. The day a man came and took away my dog. I don't think I was a unique child. My dog was the center of my universe. As a Navy pilot, my father was often absent. Fritz filled that gap. He was a manly dog—quiet, patient and always attentive to me. I spent hours playing with him or just staring at the passing clouds with my head resting on his chest. Fritz was also a no-nonsense and fiercely protective dog. In the end, that was why my parents felt the need to give him away. My grandmother picked me up one day and gave me a big squeeze. Fritz did not understand that it was a loving embrace. To him, I was being attacked. He, growled and jumped on her, knocking her to the ground. He stood over her, with teeth barred. Absent my mother pulling the 110- pound German Sheppard off her, bad things might have happened. Of course, getting rid of the dog was a sound adult decision. But... Fifty years later, I still haven't forgiven them for giving my dog away! Sorry sis, but if someone had asked me to choose, I would have said, "Give my sister away, but not my dog!" In my parent's defense, I'm sure they had no idea of the depth of the emotional connection I had to the black German Sheppard. And, well, that's my point.

Parents spend a lot of money and effort trying to keep a house because they are convinced children are attached to a house. At the same time, some families barely give a passing thought to the family pets. It might be far more important to the children to have the dog available than that cozy southwest bedroom looking out over Elm Street. It only makes sense: biological attachments are far deeper than residential attachments.

D. A Fresh Perspective.

At least one state has started to change the legal terrain in some very positive ways. Alaska has recently passed a law that allows courts to consider the best interest of the dog when deciding which spouse gets the dog. The same law also allows for “joint custody” awards and extends *protection from abuse orders* to pets. It’s a great first step. Now, the rest of us need to get our state legislative bodies to follow suit. In the meantime, divorce courts are courts of equity. Fairness is the guiding light. I see no reason why we can’t argue that the “equitable” thing to do is to consider the best interest of all family members—human and pet.

But hopefully we can avoid court altogether by wisely steering our clients away from these conflicts. When the question comes up from our clients-- *what do we do about the dog(s)*-- be prepared with something better than “The law really doesn’t care about pets.” Instead, ask the important questions. “Are your children attached to the pet? If so, would it make sense for the children and the dog to spend as much time together as possible?” Can both parents afford the pet? Is there any way you could share the pet?

I’ve written four dog-themed novels. In my recent novel, *Noelle*, I explored a plot element using a dog as a transitional object—that is, the dog goes back and forth with the children. Neither parent gets the dog. The kids get the dog! I’ve done this with several families in my mediation practice. Each parent is responsible for maintaining the dog at their own house and they split the vet bills. Not only does this approach give the children a sense of continuity between households, but (arguably) it gives the dog a real purpose, too!

I believe that, professionally, we may have underestimated the importance of pets in a divorce. I believe too that the tools we bring to bear on this problem have been unnecessarily limited. I hope that this article has served its limited purpose. Let’s all begin to think more carefully about our client’s pets.

Greg Kincaid is divorce mediator in Overland Park, Kansas and one of our members. He is also the New York Times best-selling author of six novels, all published by Penguin Random House. Two of his novels—*A Dog Named Christmas* and *Christmas with Tucker*--were made into Hallmark movies. His latest work, *Noelle*, was just released. In this novel, Greg borrows from his law practice as a divorce mediator to tell the story of Kansas family torn by divorce and healed by a dog. Please visit www.gregkincaid.com for more information.

Divorced, now what?

By Richard Becker

Subsequent to your divorce, you should take certain actions unless they are prohibited by the terms of your divorce documents (the Decree of Divorce, and if they exist the settlement agreement and parenting plan). The list of actions includes, but is not limited to, the following:

1. Change the beneficiary designations on your retirement plans, because your ex-spouse likely is listed as the primary beneficiary;
2. Change the beneficiary designations of your life insurance policies, because your ex-spouse is likely listed as the primary beneficiary;
3. Review the designations on any power of attorney you may have signed, such as a durable financial power of attorney or a durable health care power of attorney. If need be, change the designated agents because you likely designated your ex-spouse as your agent;
4. Remove your ex-spouse's name from any financial account awarded to you, such as a bank account or a mutual fund;
5. Review your last will and testament and determine if any changes need be made to it;
6. If there is payment of child support, notify your ex-spouse if you have a change of financial circumstances, which may include:
 - a. A change in your income;
 - b. A change in your employment or self-employment;
 - c. A change in the work related child-care costs; and
 - d. A change in the cost of the health insurance provided for the child(s);
7. If required, take steps to refinance any debt, such as a mortgage or car loan;
8. Remove your ex-spouse from the ability to use any of your awarded credit cards;
9. Make sure your ex-spouse takes your name off of the credit cards awarded to them;
10. If a retirement plan is to be divided, take immediate steps to effectuate the division, which may include the need for the drafting of a Qualified Domestic Relations Order; and
11. Carefully review the divorce documents, including any settlement agreement, parenting plan and decree of divorce, and:
 - a. Make sure you are abiding by all of their provisions; and
 - b. Calendar any relevant dates when a future action is to occur and follow-up to see if it has occurred.