

Date of Hearing: April 3, 2018

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 2274 (Quirk) – As Amended April 2, 2018

As Proposed to be Amended

SUBJECT: DIVISION OF COMMUNITY PROPERTY: PETS

KEY ISSUE: SHOULD A COURT BE SPECIFICALLY AUTHORIZED TO AWARD TEMPORARY OWNERSHIP OF A COMMUNITY PROPERTY PET DURING A DISSOLUTION PROCEEDING AND DETERMINE FINAL OWNERSHIP CONSIDERING THE CARE OF THE PET?

SYNOPSIS

This measure would allow individuals in divorce or legal separation proceedings to request a court to allow sole or joint ownership of a pet animal acquired as community property during the marriage and would also give the court authority to grant temporary ownership of the animal during the course of dissolution proceedings. Case law and existing statutes recognize pets as a special type of property; and, consistent with that, this bill, while not change the pets' characterization as property, would allow courts to decide on ownership, considering the care of the pet. This bill only addresses household pets acquired as community property and it follows from similar statutes enacted recently in other states. This author-sponsored measure is supported by the San Diego Humane Society and the San Francisco SPCA and is opposed by the Association of Certified Family Law Specialists.

SUMMARY: Provides statutory guidance on the rights of parties in a proceeding for marital dissolution or legal separation to petition a court for sole or joint ownership of a community property pet. Specifically, **this bill:**

- 1) Allows parties in a proceeding for dissolution of marriage or legal separation to petition the court for sole or joint ownership of a pet animal, taking into consideration the care of the animal.
- 2) Permits the court, upon request of a party, to enter an order to require a party to care for a pet animal prior to the final decision on ownership. States that such an order shall not impact the court's final determination of ownership.
- 3) Specifies that "care" of an animal includes prevention of acts of harm or cruelty, as defined, and provision of food, water, veterinary care, and safe and protected shelter.
- 4) Defines "pet animal" as any animal that is community property and kept as a household pet.

EXISTING LAW:

- 1) Defines community property as all property, real or personal, wherever situated, acquired by a married person during the marriage while residing in this state. (Family Code Section 760. All further statutory references are to the Family Code, unless otherwise indicated.)

- 2) Specifies that separate property in a marriage includes property owned by an individual before the marriage and anything acquired by a spouse during the marriage by gift, bequest, devise, or descent. (Section 770.)
- 3) Requires the court, unless otherwise agreed upon, to divide the community estate equally between parties in a proceeding for dissolution of marriage or legal separation. (Section 2550.)
- 4) Subjects spouses to the general rules governing fiduciary responsibilities and imposes a duty of the highest good faith and fair dealing on each spouse such that neither shall take any unfair advantage of the other, including requirements of refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. (Section 721 (b) and Corporations Code Section 16404 (c).)
- 5) Requires spouses to uphold their fiduciary responsibilities from the date of separation to the date of the distribution of community or quasi-community assets or liabilities. (Section 2102 (a).)
- 6) Restrains both parties in cases of marital dissolution or legal separation from in any way disposing of property, real or personal, whether community, semi-community, or separate, as provided. (Section 2040 (b).)
- 7) Allows the court, on showing of good cause, to grant a petitioner requesting a protective order under the Domestic Violence Protective Act to have the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by the petitioner, the respondent, or a minor child in the household of either. (Section 6320 (b).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: Pets are beloved parts of many households and, as a result, may be the most contentious issue for some divorcing couples to resolve. Like all animals, pets are considered property under California law; and in dissolution proceedings, courts must determine how to divide property, including pets. This bill does not change pets' characterization as property. It simply creates uniform rules to assist parties and courts in determining what happens to family pets when couples divorce. According to the author:

Pets sometimes become our most mischievous and beloved members of the family. ...

In the eyes of the law animals are property. They are no difference than a house or vehicle that was mutually owned by a couple. This is unfortunate because pet owners do not share the same view. Pet ownership battles are often passionate and emotional.

AB 2274 changes how courts resolve pet ownership cases. Specifically, this bill empowers judges to take into consideration the ["care"] of a pet, in determining sole or joint ownership.

Case law recognizes pets as property, and, when appropriate as community property, but also recognizes their unique nature. In an unpublished 2015 California court decision involving property division in a divorce, the ownership of the dog was awarded on the basis that the animal was community property since neither party established that the animal in question was separate

property. Additionally, in a 2012 California appellate case dealing with wrongful injury of a pet animal, the court held that pet owners can recover reasonable and necessary costs in case of pet injury, even if those costs exceed the usual standard of recovery – the market value of the pet, in this case. (*Martinez v. Robledo* (2012) 210 Cal.App.4th 384.) That opinion provided that pets represent a special case of property and that the value of pets can be assessed differently than other types of property.

California already recognizes the unique role pets have by allowing their inclusion in protective orders under the Domestic Violence Protection Act. Though pets are considered property in the eyes of the law, existing family law statutes differentiate them from other types of property that individuals hold. For example, under the Domestic Violence Prevention Act, protective orders can extend to the care of an animal “owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either.” (Section 6320 (b).)

Definition of “Pet Animals.” This measure applies to “pet animals,” which are defined as “any animal that is community property and kept as a household pet.” To qualify as community property, a pet animal would need to be acquired during the marriage and not meet any of the standards for separate property (if a pet were given or bequeathed to one individual in the marriage or was acquired by one spouse before the marriage, it would be separate property, not community property). Additionally, animals kept for commercial uses would not fall under the scope of this measure. For example, livestock or race horses acquired as community property for investment or profit would not be considered household pets and would not be subject to the rules in this bill.

The bill does not explicitly address the issue of service animals in cases of marital dissolution or legal separation. However, given that service animals are intended for use by a particular individual to serve her or him in a specific capacity, a service animal would not meet the definition of community property and would be considered the separate property of the spouse to whom it is in service.

Care of pets before final determination of ownership. This measure also allows parties, during the pendency of their dissolution proceeding, to petition the court to make an order of care for a pet prior to the final determination of ownership. By the terms of the bill, this preliminary order is not intended to impact the court’s final determination of ownership of the pet. In other words, if a court orders that one spouse shall care for the pet while the divorce or separation proceedings take place, that decision will not impact the final ownership determination by the court.

As currently in print, this bill would also allow for the court to issue an order prohibiting the euthanizing of the pet animal before the final determination of ownership. However, this provision is unnecessary and may have unintended negative consequences. Since parties to marital dissolution or legal separation proceedings already have fiduciary responsibilities for community assets that would prevent destruction or damage to community property during the proceedings (*see* Sections 721 and 2102), community property pets are already protected from unwarranted destruction. Moreover, by explicitly allowing orders to prohibit euthanasia of a pet, the court may unintentionally create a situation in which a pet animal with sudden onset of a life-threatening condition (e.g., being hit by a car) cannot be euthanized because of a court order prohibiting such actions by a party to dissolution, without going back to court for a change in the order. In such a case, a pet animal may suffer unnecessarily. Additionally, even if consent of the

other party to marital dissolution or legal separation proceeding were a condition of providing euthanasia to a community property pet animal, one can imagine situations where the other party is incapacitated or unavailable to provide consent to proceed with euthanasia or it becomes another bargaining chip in the divorce. As a result, the author has agreed to amend the bill to eliminate the following clause: ", prohibit each party from euthanizing the pet animal, or both".

Uniform rules for the final determination of ownership. When making the final determination of ownership of household pets, this bill would require courts to consider the pet's care. Care of a pet animal is defined in general terms that avoids being unnecessarily prescriptive while also encompassing broad provisions for both the prevention of harm and the promotion of positive outcomes for the pet animal in question. In terms of preventing negative consequences for a pet animal, the bill language refers to the deterrence of cruelty and acts that would be considered crimes, namely, "the prevention of acts of harm or cruelty, as described in Section 597 of the Penal Code." Care also entails the promotion of positive outcomes for the pet through "provision of food, water, veterinary care, and safe and protected shelter." This determination by a court is, appropriately, very different than the much more involved best interests determination that a court makes when deciding child custody. Additionally, the bill language avoids any reference to "well-being" or "best interests" in order to distinguish the issue of ownership of community property pets from the question of child custody.

Legislation in Other States. Both Alaska and Illinois have recently passed similar statutes dealing with the ownership of pets during dissolution of marriage or legal separation proceedings.

ARGUMENTS IN SUPPORT: In a joint letter, the San Diego Humane Society and the San Francisco Society for the Prevention of Cruelty to Animals (SPCA) argue that this measure empowers judges to consider the care of animals and will reduce conflicts and extended disputes about animal ownership in divorce and legal separation proceedings. Supporters make the case that pets play a special role in people's lives and should not be seen as equivalent to property in cases of marital dissolution and divorce. And in response to concerns about whether this bill might increase court workload, they cite a 2014 survey by the American Academy of Matrimonial Lawyers showing a 22 percent increase in pet custody hearings in court – courts are already dealing with these cases. Additionally, divorce is a common reason for people to relinquish their pets to a shelter, and groups supporting this measure argue that the law should support couples' efforts to look out for their pets and not increase the number of homeless pets.

ARGUMENTS IN OPPOSITION: Opponents with the Association of Certified Family Law Specialists contend that cases of marital dissolution and legal separation already face significant delays and issues of contention in court, particularly surrounding child custody. By adding in sole or joint ownership of pet animals as a determination courts can make in divorce proceedings, the already backlogged family court proceedings may become even more delayed as judges consider the well-being of a pet animal in addition to the myriad of other factors that come into play when making decisions about community property division and child custody. Opponents argue that current law already provides courts with the authority to award pets to either party and that the bill would lead parties to litigate over who is better able to care for the pet.

It is important to note that, as amended, the bill no longer requires courts to consider the well-being of pets. Additionally, courts are already dealing with these disputes today (*see* the 2014

American Academy of Matrimonial Lawyers discussed above). This bill just establishes a uniform way for them to do so.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego Humane Society

San Francisco Society for the Prevention of Cruelty to Animals (SPCA)

Opposition

Association of Certified Family Law Specialists (ACFLS)

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