



PET CUSTODY AGREEMENT & GUIDE

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1. Overview

Break-ups are difficult for everyone involved. For unmarried couples, the process of sifting through property purchased during the relationship can be tricky at best, agonizing at worst. For the most part, compromises about items can be made and the parties can move on with their lives. More challenging issues arise if the former partners purchased or found a pet during the relationship. After bonding with the animal and treating him or her as a member of the family, it can be jarring for one party to consider that their pet may disappear from their life entirely.

For some couples, the right solution may be a pet custody agreement, which describes each person's rights and responsibilities for the pet after a break-up. This can resolve disputes about ownership, custody, and expenses, and make it easier on the individuals and the pets in the long run. The animals' best interests will be considered and the parties will be able to move on with their lives with a minimum of conflict.

2. Dos & Don'ts Checklist

- Pet custody is a relatively new area of law. Historically, pets have been considered mere "property," just like a car or an appliance. From this perspective, the idea of custody doesn't make sense: after all, most people don't consider questions of visitation with their stoves. The person who can prove they "own" the animal has always had the right to take it with them. Increasingly, however, courts have begun to recognize the fact that pets are a different kind of property, and are starting to consider questions of pet custody as similar to those about child custody.
- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not expressly stated in the document.
- Sign two copies of the agreement, one for you and one for the other party.
- Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew.
- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Pet Custody Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to provisions in the form. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a pet custody agreement. Write in the date on which the agreement will become effective (often the date on which it is signed). Identify the names of the two pet owners that are signing the agreement. Note that each party is given a name (e.g., "Party One") that will be used throughout the agreement. Don't worry too much about which party is Party One and which is Party Two – these are for naming purposes only, and don't give either person any advantage over the others.
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. In this agreement, the recitals include a simple statement of your intent to enter into a pet custody arrangement.

Use the space provided to discuss your relationship, including information about the length of the time you were living together and the names of your Pets. If you only have one Pet together, change all references in the Agreement from "Pets" to "Pet."

- **Section 1: Custody and Visitation.** Explains how custody (i.e., the care, control, guardianship, and maintenance) and visitation of the Pets will be addressed. There are two options provided, and you should select the one that best characterizes your agreement and delete the other one. In the first, one person is given primary custody of the Pets. In other words, the Pets will live most of the time with that person. However, the other person is given the right to visit with the Pets on certain specified occasions or periods. Use the space provided to explain how visitation will work under your arrangement. Feel free to include any provisions that may control (e.g., the non-custodial Party gets the Pets for several weeks in the summer, every other weekend, etc.). In the second, the parties agree to split the custody of the Pets. That is to say, the Pets will live half of the time with one party and half of the time with the other.
- **Section 2: Expenses.** There are an infinite number of arrangements the Parties can make about distributing Pet expenses, and only a few of these are outlined in the Agreement. You and the other Party should discuss what will work best for your situation, including any arrangements that aren't outlined (e.g., each Party pays a specific percentage). For each of the listed categories, you are asked who will be responsible for paying for those costs. In each, there are four options: (1) Party One, (2) Party Two, (3) the Parties equally (50/50), and (4) each Party during its period of custody. The first two indicate that one of the Parties will be solely responsible for those expenses. In the third, the Parties agree to split the costs equally. In the fourth, you agree that the Party that has physical custody of the Pets when the expenses arise will be responsible for paying for those costs. Note that if you select one option for any one category of expenses, you don't have to choose that option for all categories.

- **Section 3: Transportation Arrangements.** Allows you to specify how the Pets will be handed off for any visitation periods. This doesn't have to be complicated, but may help prevent misunderstandings, particularly if one Party has moved some distance away from the original home. For example, you may want to settle questions of who is responsible for bringing or picking up the Pets from one person's house. This may depend on who has a car, a car best suited for transportation, or the time to make the pick-ups and deliveries.
- **(Optional) Section 4: Future Income.** This is an optional provision that lets you decide how you will divide any income earned by the Pets. For example, if your Pet is used in a commercial, or wins at a dog show, where do the proceeds go? You can decide that all of the money goes to one person, or that it can be split between you. Delete this provision if you do not want to make arrangements about your Pets' income. If you remove this section, correct the section numbers and references in the Agreement.
- **(Optional) Section 5: Limitations on Transfer.** This is an optional section that lets each Party stop the other one from transferring the Pets to the pound. If the person in possession can't take care of the Pets any more, he or she must notify the other person so that they have the option either to take primary custody or to help find a new home for the Pets. If you remove this section, correct the section numbers and references in the Agreement.
- **Section 6: Major Decisions.** There are two options provided. Select the option that best suits your agreement and delete the other option. In the first, the Parties agree that both Parties have responsibility for making major decisions about the Pets' welfare. If an emergency occurs, the Party that has the Pets at that time can make any care decisions. In the second option, the Parties have to consult and agree about major treatment decisions, regardless of whose care the Pets are under at that time.
- **Section 7: Additional Decisions.**
 - (a) Relevant Information. The promise to keep the other Party informed about the Pets.
 - (b) Access to Records. Provides both Parties with access to Pet records and information.
 - (c) Schedule Consultation. Requires the Parties to talk to each other about activities that could interfere with the other Party's visitation.
 - (d) Return of Property. States that any Pet property (e.g., toys or food) that was sent with the Pets needs to be brought back with them.
 - (e) (Optional) [Other]. This is an optional subsection that allows you to add any additional requirements to suit your arrangement. If there is nothing else you want to include, delete this provision.
- **Section 8: Representations and Warranties.** Details the Parties' promises under the Agreement. Each Party is agreeing to enter into the arrangement based on the conditions listed in this section (e.g., that each is capable of entering the Agreement and satisfying its terms). You can feel free to add any additional promises in this section.

- **Section 9: Other Documents.** States that the Parties promise to sign any additional documents or contracts if those become necessary to complete the Agreement, or to make the Agreement effective. For example, if the Parties want to change the ownership registration of a Pet, or revise the microchip implant ownership information, they agree to work together to draft and sign any relevant documents.
- **Section 10: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both Parties.
- **Section 11: Successors and Assigns.** States that the Parties' rights and obligations will be passed on to heirs or, in the case of companies, successor organizations or organizations to which rights and obligations have been permissibly assigned.
- **Section 12: No Implied Waiver.** Explains that if either Party allows the other to ignore or break an obligation under the agreement, it does not mean that Party waives any future rights to require the other to fulfill those (or any other) obligations.
- **Section 13: Applicable Law.** Allows the Parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state law in the blanks provided.
- **Section 14: Counterparts / Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the Parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. This may be helpful during a break-up, where signing parties want to have as little interaction as possible - this section ensures that the agreement can be concluded efficiently, without sacrificing its validity.
- **Section 15: Severability.** Protects the terms of the Agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire document. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 16: Entire Agreement.** The Parties' agreement that the document they're signing (together with its exhibits) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a Party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 17: Headings.** Notes that the headings at the beginning of each section are meant to organize the document. Any interpretation of the agreement should not be based on the headings.

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SAMPLE PET CUSTODY AGREEMENT

This Pet Custody Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between _____, ("Party One"), and _____, ("Party Two," and together with Party One, each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Parties were in a [nonmarital] relationship, cohabitating in a common household, [and have lived together since [_____]]; and

WHEREAS, during the course of their relationship, the Parties acquired certain pets, namely _____ [and] _____] (collectively, the "Pets")

WHEREAS, the Parties are in the process of dissolving their relationship and wish to divide custody of the Pets pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the above recitals and the promises and benefits contained herein, the Parties hereby agree as follows:

2. CUSTODY AND VISITATION

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