

The Family, Animals & DV:

The intersection between human
and non-human family members
and trouble at home

**Presentation at State Bar of Arizona annual convention,
June 15, 2016, 8:45 a.m. to noon**

By Joan M. Bundy, Esq.

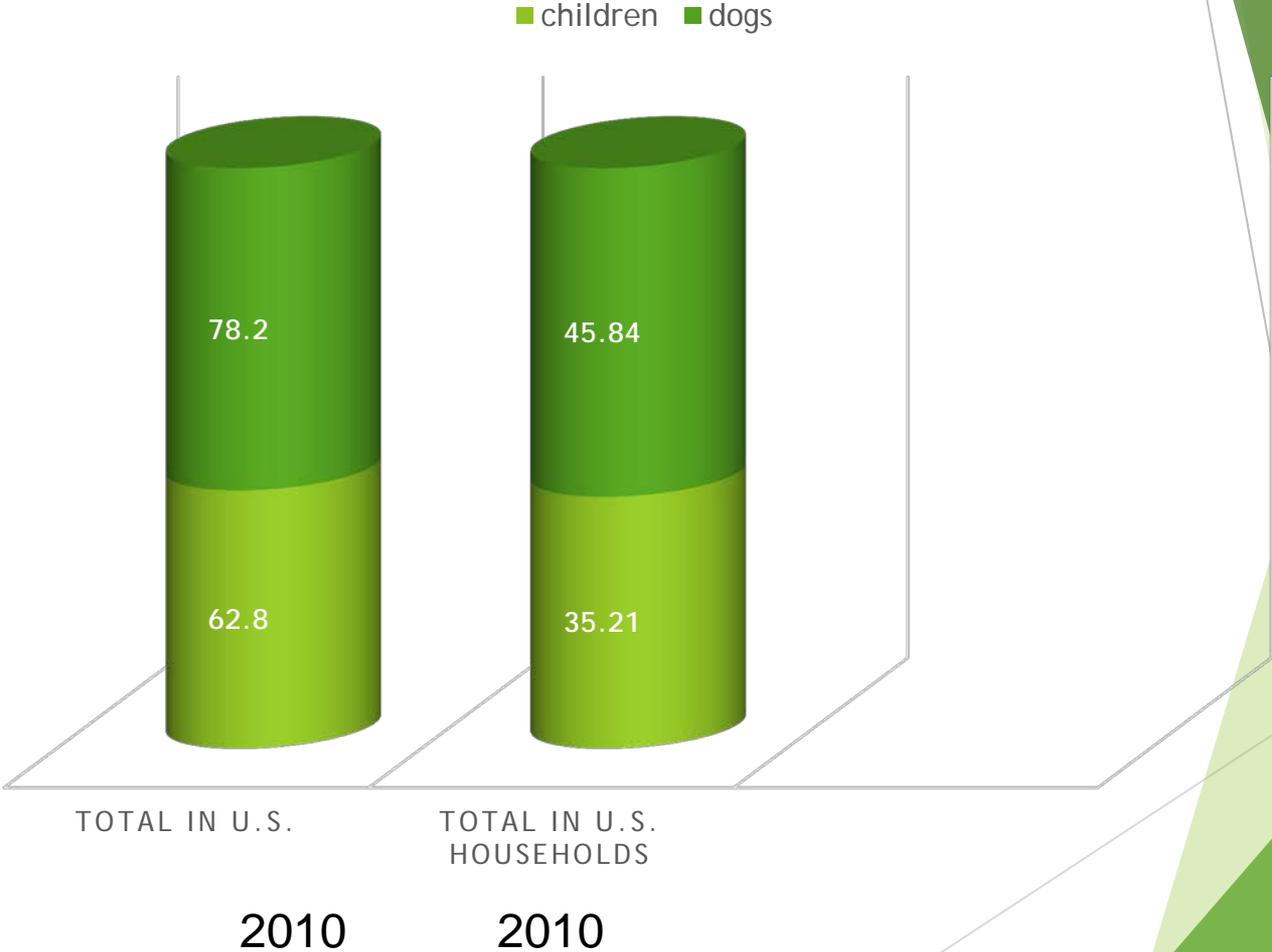


Summary of materials

What I plan to cover:

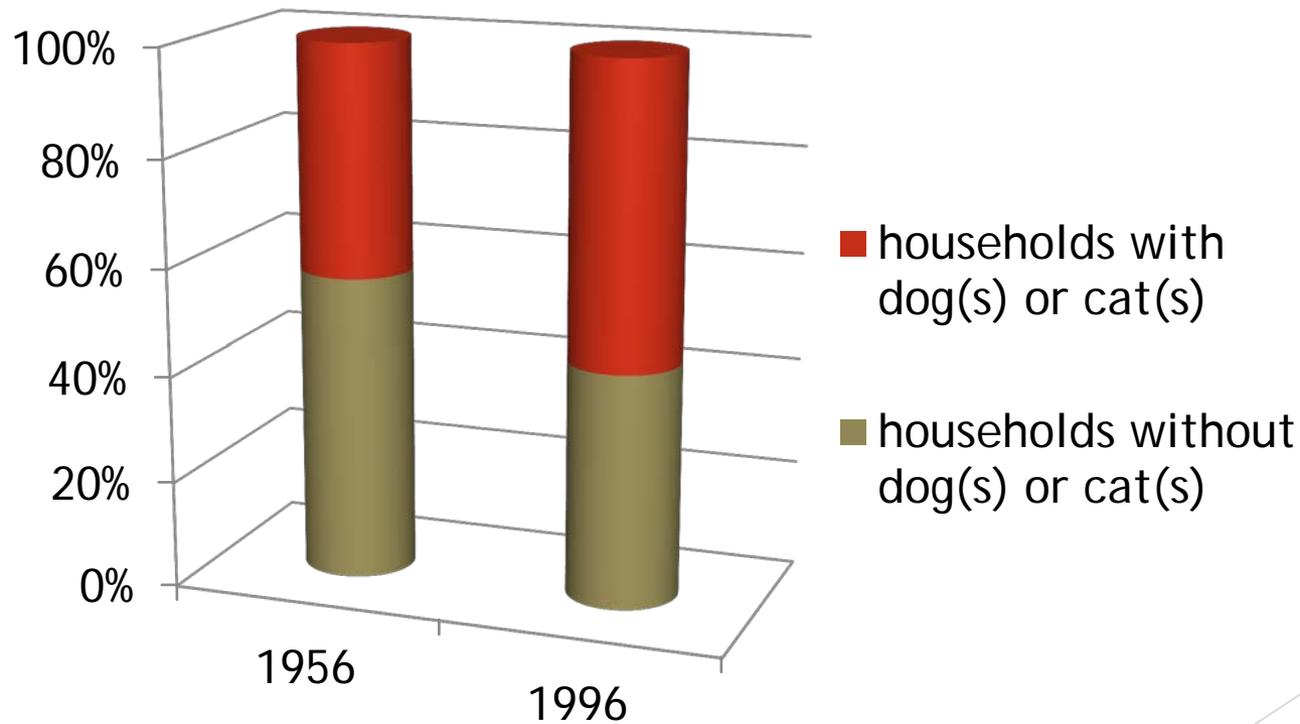
- 1) Some pet stats
- 2) Domestic violence and pets
- 3) Protective orders
- 4) Pet custody disputes
- 5) How to craft family and estate planning documents that properly address companion animals

How important *are* our pets?



* Source: American Pet Products Association

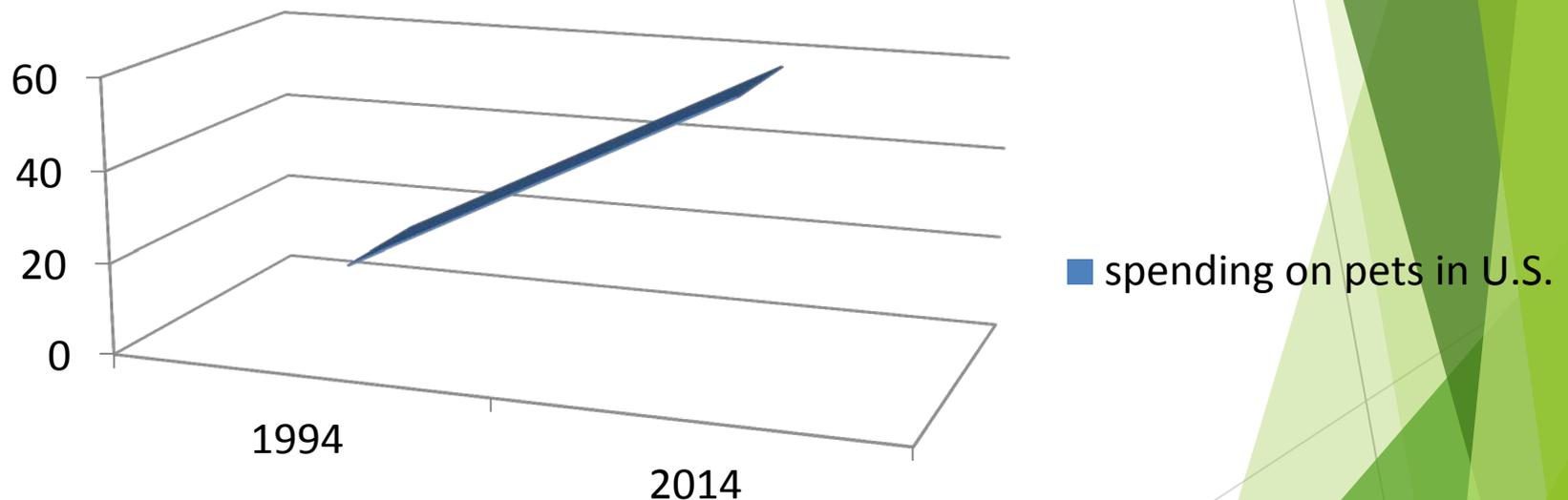
Households with dogs &/or cats



* Source: American Humane Association

Pets are big business these days!

spending on pets in the United States



* Source: American Pet Products Association

U.S. city with the highest per-capita pet spending:

Phoenix, Arizona!



And yet...

○ **Domestic violence is all about POWER and CONTROL!**

○ Domestic-violence perpetrators and victims and even just ordinary feuding/divorcing spouses can put Fido and Fluffy at risk.

○ I say perpetrators *and* victims because one of the most common reasons victims won't leave or delay leaving an abuser is because they don't want to leave behind their pet(s) for fear of what the abuser might do to them!

The sad realities...

o **Domestic violence-related animal abuse all too real.**

Many abusers try to keep victims in line by threatening or even harming victims' beloved pets. In 2013, the National Link Coalition reported that more than 71 percent of battered women stated their batterers had harmed, killed or threatened animals, and more than 75 percent of these incidents occurred in the presence of the women and/or children to coerce, control and humiliate them.

o **Leaving itself is a big risk.** Many victims don't leave because leaving often triggers increased danger (ironically). Many victims are killed by their abuser after they've left; leaving means abuser is losing control over victim, and frequently batterers react with increased violence.

Decision to leave may turn on whether pet(s) will be safe!

○ Many victims won't leave without their pet(s).

Amazingly, victims will stay with abusers to try to protect more vulnerable targets, like kids & pets. If a victim's only option is to go to a shelter where her pet isn't allowed, her fears for the animal's safety may keep her from leaving. She may not have any options for temporary care while she works on becoming safe and independent. More than a dozen studies have reported that from 18 to 48 percent of women entering shelters delayed their escape due to concerns for the welfare of pets or even livestock left behind!

Good news!

○ **There is some good news, though:**

Growing number of human and animal shelters now accept or help temporarily place DV-situation pets! These are typically called “safe haven programs.”

○ **Local examples of safe havens include:**

- Sojourner Center/Lost Our Home Pet Rescue (Maricopa County)
- Emerge Center Against Domestic Abuse/HSSA (Pima)
- Against Abuse, Inc. (Pinal)

Protective orders and the family pet

- **So how do we protect these animals?** If someone is truly afraid for life or limb of themselves or any of their loved ones, including four-legged ones, they should apply for an **emergency protective order** from the court, and make sure to request that it include not only the victim parent and child(ren) but also any family pet(s).
- **Superior Court is best**—especially if there is a family, juvenile, criminal or other Superior Court case already pending—but a justice court or even a city court is fine in a pinch! Whatever is quickest is the best way to go. You can always get it transferred up to Superior Court later (although there is a new Maricopa County Superior Court rule that OOP cases cannot be consolidated with family court cases any longer, not sure why).
- Luckily, many judges handling protective-order hearings are starting to inquire about family pets
- Even some **court forms** now mention them!

Case No. _____

Plaintiff's Guide Sheet for Protective Orders - Please Read Carefully

PRINT ALL INFORMATION ON THIS FORM AND ON THE PETITION.

Your Name

Your Address

(_____) _____
Your Daytime Telephone Number

City, State, ZIP

You may request that the Court keep your address confidential if the Defendant does not know where you live or work. If checked, the following addresses will be restricted and will not appear on the petition served on the Defendant:

- Restrict home address Restrict work address Restrict other address
 Restrict school address

Your relationship to the defendant is: (Choose only the FIRST category that applies to your relationship to the defendant.)

- married now or in the past
 live together now or lived together in the past
 parent of a child in common
 one party is pregnant by the other
 relative (parent, in-law, brother, sister, or grandparent)
 romantic or sexual relationship (current or previous)
 dating but not a romantic or sexual relationship
 other

Defendant's Name

Defendant's Address

(_____) _____
Defendant's Daytime Telephone Number

City, State, ZIP

DEFENDANT IDENTIFIERS

Please provide all information below to the best of your knowledge. If you do not know the Defendant's date of birth, an estimated date of birth is acceptable. Please indicate the date of birth is an estimate by checking the "Est." box below.

SEX	RACE	DOB	Est.	HT	WT
			[]		
EYES	HAIR	SOC SEC NUMBER			
DRIVER'S LICENSE #		STATE	EXP DATE		

ANIMALS and ORDERS OF PROTECTION – If you are requesting an Order of Protection to protect yourself, you may also ask the court to grant you the custody, care, and control of any animal owned by you, the defendant or a minor child living in your household if you believe that the defendant is a danger to the animals. (A.R.S. § 13-3602(G)(7)) If you are asking the court to include animals on an Order of Protection, please write your request on Line 9 of the Petition.

COPY

APR 18 2014

FILED 2:57pm

MICHAEL K. JEANES, Clerk
By: Stevens
Deputy

TRIAL COURTS OF ARIZONA IN MARICOPA COUNTY
Superior Court of Arizona/AZ007035J/0700 222 E. Javelina Dr. Mesa, AZ 85210

ORDER OF PROTECTION

Case No. FC2014-001263

Court ORI No. AZ007035J

County Maricopa State AZ

Former Case No. _____

PLAINTIFF

First Middle Last

PLAINTIFF IDENTIFIERS

Date of Birth of Plaintiff

v.

DEFENDANT

First Middle Last

DEFENDANT IDENTIFIERS				
SEX	RACE	DOB	HT	WT
EYES	HAIR	Arizona Prohibits Release of Social Security Numbers		
DRIVER'S LICENSE #	STATE	EXP DATE		
	AZ			

Defendant/Plaintiff Relationship: The Defendant and I are married (Married: 06/13/1998). We have a child in common.

Defendant's Address:

Phoenix, AZ 85048

WARNINGS TO DEFENDANT: This Order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial or tribal boundaries to violate this Order may result in federal imprisonment (18 U.S.C. § 2262). As a result of this order, it may be unlawful for you to possess or purchase a firearm or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) and/or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the Court in writing, can change this Order.

This Order is effective for one year from date of service. VERIFY VALIDITY (call Holder of Record):

County Sheriff's Office --- (602) 876-1061

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter.

Additional warnings are set forth on the next page(s).

THE COURT, FINDING REASONABLE CAUSE to believe that Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period), HEREBY ORDERS:

NO CRIMES. Defendant shall not commit any crimes, including but not limited to harassment, stalking, or conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury, against Plaintiff or Protected Person(s).

NO CONTACT. Defendant shall have no contact with Plaintiff except through attorneys, legal process, court hearings and as follows: Other May only text concerning the children.

THE COURT FURTHER ORDERS:

RESIDENCE. Plaintiff is granted exclusive use and possession of the residence listed below.

LAW ENFORCEMENT STANDBY. Defendant may return once with law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor this protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues.

PROTECTED LOCATIONS. Defendant shall not go to or near the Plaintiff's or other Protected Person's:

- Residence:
• Address Protected

FIREARMS. Pursuant to A.R.S. § 13-3002(O)(4), the Court finds that Defendant poses a credible threat to the physical safety of the Plaintiff or Protected Persons. Therefore, Defendant shall not possess, receive, or purchase firearms or ammunition and shall surrender same within 24 hours of service to: **Phoenix Police Dept. or Maricopa County Sheriff's Office**

OTHER ORDERS.

The Judge also grants the following requests:

- Chihuahua mix named Chaco

4/18/2014
Date


Judicial Officer

Terri Clarke
Printed Name

WARNING:

This is an official Court Order. If you disobey this Order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this Order.

ADDITIONAL WARNINGS TO DEFENDANT:

Violations of this Order should be reported to a law enforcement agency, not the court. Both parties must notify this Court if an action for dissolution (divorce), separation, annulment or paternity/maternity is filed. This is NOT a parenting time (visitation) or custody order. You must file those requests separately in Superior Court. If you disagree with this Order, you have the right to request a hearing which will be held within 5 to 10 business days after your written request has been filed in the Court that issued this Order. Nothing Plaintiff does can stop, change, or undo this Order without the Courts written approval. You must appear in Court to ask a judge to modify (change) or quash (disables) this Order. Even if the Plaintiff initiates contact, you could be arrested and prosecuted for violating this protective order. If you do not want the Plaintiff to contact you, you have the right to request a protective order against the Plaintiff. However, orders are not automatically granted upon request. Legal requirements must be met.

What can happen if you don't spell out exactly how custody will work

Step 1: Even if no DV, sole or primary custodial “parent” may lose interest, get “too busy” to train/spend time with pet, can no longer afford, new spouse and/or stepkids and/or kids with new family are allergic to pet, *blah blah blah...*

Step 2: Custodial “parent” gives animal away or sells it or relinquishes it to an animal shelter (instead of seeing if ex-spouse would like to and can accommodate the pet).

Step 3: Other pet parent finds out, goes to the animal shelter to retrieve pet, only to discover it has already been euthanized!

*(Don't let this happen to you or your clients! I have one word for you: **Microchip!**)*

Pet custody disputes are exploding!

- **Who gets Fido or Fluffy can be a HUGE battle!** If you think parents bicker vehemently over child custody, you ain't seen *nothin'* yet! (**Remember:** Pets get even less say than kids)
- **Disputing parties:** Roommates, boyfriend-girlfriend, spouses, etc.
- **Delayed childbirth:** With ever increasing numbers of women entering the workforce and pursuing careers out of either necessity or ambition, singles are getting married later in life (or not at all) and child-rearing is put on hold until the household is more established and financially solid. **So...couples often “try out” child-rearing with a pet or two!**
- **The graying of divorce:** As people live longer, 50+ divorces have been going up. Especially for empty-nesters or retirees, a pet can mean the world to them.

How is pet custody similar/dissimilar to child custody?

While many courts still balk at considering “best interests” of an animal as is the legal standard for human children, most are at least willing to assign animals a greater personal-property value than a toaster or other inanimate object. After all, they are living, sentient beings.

The needs of non-human animals and human animals, particularly babies not yet able to speak, are not all that different:

- **Nutrients** (milk/formula, water, food)
- **Toileting**
- **Bathing/grooming** (haircuts, nail trims, ear cleaning, etc.)
- **Basic nurture** – cuddling, holding, touch
- **Security/safety/protection** from temperature extremes and the elements
- **Medical care**, e.g., vaccinations, treatment for illnesses & injuries
- **Transportation**
- **Education and training** including “language” development

Determining ownership (who gets Fido or Fluffy)

Look to which “pet parent”:

- Adopted/Purchased the animal
- Spent more time with the animal
- Spent more time taking **care** of (and thinking about the needs of) the animal, like taking dog on walks
- Fed and watered it
- Administered supplements and/or medications
- Took to vet for vaccines, regular check-ups and as needed
- Bathed, brushed, clipped nails, etc./taken to groomer*
- Signed up and took to obedience training, agility, doggie daycare, dog park, play dates, etc.
- Bought food, treats and toys*
- Paid for vet care/meds/supplements*
- Licensing/renewals, rabies vaccines, microchip, etc.*

* Receipts/documents can be very helpful here!

So what should be included in a pet custody agreement?

- Like a **child custody order**, minus things like school, extracurricular activities and religion!
- **Sole/joint/primary custody?**
- **Holidays as well as regular time**
- **Travel:** If the parties live long-distance from each other or there will be any vacations or other long-distance trips with Fido or Fluffy, who will pay? Will notice be required/how much? Provide itinerary? Cargo/cabin?

Pet custody agreements (cont.)

- **“Pet support”**: Think of “child support” and/or “cash medical support” in family-law parlance—typically designed to cover such things as food, veterinary care, medications, grooming, etc.
- **Legal as well as physical custody**: If joint, must consult with each other about all important decisions regarding the pet
- **Right of first refusal**: What happens if the other pet parent can’t watch the pet during his or her regularly scheduled time?
- **Estate planning**: How to provide for your pet on the off chance it should it outlive you (include language that other pet parent takes care of the animal should you be unable to)
- **Relinquishment clause**: Don’t forget to include this!
So important!

The family, animals and DV wrap-up...

- ▶ Overall, the status of our beloved companion animals is improving. However, it is still important to keep in mind their best interests at all times whenever they come up in your practice or just life in general.
- ▶ Practice tip: ALWAYS ask the prospective client if they have any pets at home!
- ▶ Thank you so much for your attention!
- ▶ Questions/comments? Call me at 480-721-3832 or email at joan@joanbundylaw.com.

A man in a grey sweater is sitting at a desk, looking at a laptop. A black and white cat is sitting on the laptop. The man has his hand to his face, looking thoughtful. The background shows a desk with a water cooler, a vase of flowers, and a bookshelf.

**I know divorce
is tough, man.**

**But my food dish
isn't gonna fill itself.**