

ENSURING CONTINUING CARE FOR FAMILY PETS

THE PET PROTECTION AGREEMENT¹ AND PET TRUSTS

By Rachel Hirschfeld, Esq.

Have you asked your clients whether they have pets? If you have, and if they say yes, they are most probably concerned about the continuing care of their companion animals. As their ‘trusted advisors’ you can offer several solutions.

Because it is relatively new, the concept of legally enforceable documents which protect the future of beloved pets,² such as the Pet Protection Agreement and Pet Trust has been covered in the mainstream press mostly as novelty or farce. The scant coverage provided has been dominated by “infamous” cases such as those of Leona Helmsley and Oprah Winfrey—celebrities who provided millions of dollars in trust for the care of their animals.

What’s not as widely covered is the silent explosion in like-mindedness among many Americans who may not be as well-heeled as those celebrities but who are nevertheless just as interested in providing continuing care for their dearly loved pets, if only they knew there were an option available to them.

Two statistics should be instructive:

- In 2009, Americans will spend \$52 billion³ on their pets, up from the \$41 billion⁴ spent in 2007. Nearly a 27% increase over three years.
- Almost four million dogs and cats are euthanized at shelters each year, nearly

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² Rachel Hirschfeld, *Ensure Your Pet’s Future: Estate Planning For Owners And Their Animal Companions*, ELDER’S ADVISOR, Marquette University Law School, Vol. 9, No. 1 at 155, 2007.

³ Diane Brady & Christopher Pameri, *The Pet Economy: Americans Spend an Astonishing \$41 Billion on Their Furry Friends*, BUSINESS WEEK, Aug. 6, 2007 at 46.

⁴ *Id.*

9,600 per day.⁵

Clearly the market for pet-related products and services is heading higher and at a considerable clip. While it is likely that the number of animals euthanized each year is comprised mostly of ill, lost, feral or irresponsibly abandoned animals, it is just as likely that a considerable number of domestic pets were unwittingly condemned because their owners did not think—and were not advised—to make arrangements for them.

Today, people live longer, have more pets, and treat them more like family than ever before. One question that has begun to arise is who looks after a companion animal if the owner becomes sick, disabled or dies. Family members and friends can be a source of tremendous support, but even if well-meaning, they may not be able to follow through in caring properly for a surviving pet. Informal commitments might collapse for various, unanticipated reasons such as allergies, work schedules, lease restrictions, the responsibility of extended families, and incompatibility with other pets. Thus the necessity to create legally enforceable documents that secure a pet's continuing care arises.

There are three concepts to consider: a client may use all three or choose to simply use the Pet Protection Agreement and/or Pet Trust *and* confirm existence of those documents in the Will.

I. The Pet Protection Agreement. The Pet Protection Agreement, created by the author, is a document whose purpose is to establish “continuing care” for animals when owners are unable to care for them. It is a unique product that incorporates different theories of law into a quick, effective, and inexpensive way for pet owners to guarantee the well-being of their pets should the unthinkable occur. It is a “fill-in the blanks” document that can be

⁵ Humane Society of the United States, *HSUS Pet Overpopulation Estimates*.

completed on line at *www.Petriarch.com* in 15 minutes with or without the help of an attorney.

The Pet Protection Agreement is a signed, legally enforceable document between a minimum of two individuals or entities: the pet owner and pet guardian or pet guardian organization. The document provides detailed instructions regarding the pet's care. Pet owners are urged to name a shelter or sanctuary as a retirement home that may take ultimate responsibility for the pet.

The Pet Protection Agreement is enforceable while the owner is alive—even if incapacitated—and after death.

II. A Pet Trust. An effective but often complicated arrangement requiring an attorney. If the owner plans to leave substantial property or funds specifically for the care of pet(s) it is recommended to incorporate the pet trust in estate planning documents.

A Pet Trust can ensure that a pet will receive care in strict accordance with the owner's wishes. It can define detailed expenditures for the pet's care in varying amounts and stages and invest funds with a view toward growth of principal for future use on behalf of the pet, heirs, and charitable recipients.

Moreover, a Pet Trust can make certain that the pet owner and pet will remain together through the owner's disability. In order to encourage compliance, pet owners should strongly consider leaving a portion of the sum that remains in the trust, *pro rata*, to any facilities that keep the owner and pet together.

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III. A Will. Many people believe a pet’s care can be guaranteed in a will. They are mistaken. A will is valid only after death. It is usually not read until after burial. What happens to the pet in the meantime? A will does not permit the owner to provide detailed instructions for the pet’s care. Nor may the owner direct the management and disbursement of funds throughout the pet’s life. Good intentions notwithstanding, listing a pet *only* in a will may leave a beloved pet unattended and uncared for.

Providing for a Pet in the Event of the Owners’ Disability or Death: Pet Trusts and Pet Protection Agreements

All pet protection documents should include the following nine points of information:

1. Identify Pet Owner

“Who owns the pet?” is the first question answered in pet protection documents. Legally, pets are classified as property. Thus, it is important to establish and document ownership so that legal court battles can be thwarted in such cases as divorce or splitting from domestic partners or roommates.

Recent ownership issues surrounding Katrina victims regarding the pets they had to leave behind raised awareness about this. For example, often “Katrina” pets were adopted out without knowing who owned the pet and what if any arrangements had been made for the pet. And the question of who owns a pet can easily be resolved even in natural disasters through the use of the Pet Protection Agreement or Pet Trust governing proprietorship.

2. Identify Pet(s)

In order to ensure positive recognition, identify the pet in detail. This serves as a precaution that can help prevent the pet's guardian from replacing the original pet with a new one so as to fraudulently extend rights to trust distributions or benefits.

3. Include "All My Pets"

Including "all my pets" saves the effort of having to formally amend or create a new document whenever a new pet enters or leaves the family.

4. Funds

Funding is optional and can easily be a percentage of an insurance policy, bank account, 401 K, or even the sale of a home. Many people choose to leave money or property for the care of their pets.

The following factors should be considered when determining how much money or property to set aside:

- number of pets,
- type of animal,
- pet's age,
- pet's health,
- medications,
- life expectancy (especially important for pets with long life expectancies such as particular breeds of domestic birds),
- lifestyle—the standard of living one wishes to provide the pet,
- veterinary care and the need for potentially expensive medical treatment,
- services: groomers, walkers, animal-sitters or a professional boarding business,
- food and diet,
- daily routines,
- toys,
- socialization and friends,
- travel,
- compensation for people involved in caring for the pet(s),
- cost of living and inflation, and

- disposition of pet after s/he dies (e.g., burial or cremation and memorial).

Hint: Consider leaving a small bank account in joint names, owner and guardian, so the guardian will have instant access to funds in case of emergency.

5. Pet Guardian

Carefully consider who will physically assume care of the pet when the owner is no longer able to fulfill that role. Also select a successor pet guardian in the event that the first is unable or unwilling to care for the companion animal.

6. Name a Shelter or Sanctuary of Last Resort

Regardless of how many pet guardians and successors are named, the owner should be advised to name a shelter or sanctuary as a “back-up” because a pet generally will outlive all the guardians, and shelters or sanctuaries could assist in finding a new home for the pet. Usually, shelters and sanctuaries require a fee, and this must be considered in how much money to leave.

7. Keep Pets Together

One consideration that will have a significant impact on the choice of pet guardians is the fact that pets that have been raised together and/or have otherwise bonded are generally happier if kept together.

8. Pet Care Instructions

Include detailed instructions regarding the pet’s care much as a parent, leaving for a long trip, would provide to a babysitter. A detailed document will ease the transition for the pet and the pet guardian—and protect the pet guardian’s spending in case

questions arise. On the other hand, it is also important to allow the pet guardian to exercise discretion when faced with new circumstances.

9. Remainder Beneficiaries

Keep in mind that the remainder beneficiary's financial interest may run counter to the pet living a long or short life. For this reason, consider including a shelter or sanctuary that has a stated purpose of caring for animals. Presumably, such organizations would refrain from challenging the available caretaking funds as being too generous.

Conclusion

Companion animals have come to play an increasingly significant role in the modern family. It is well documented that seniors with pets live more fulfilling lives and the importance of pets should not be poo-pooed away as mere luxury or eccentricity. Pets develop routines and become accustomed to the lifestyle they enjoy with their owners. Our goal should be to ensure that every pet that has found a loving home is guaranteed a secure future.

The Pet Protection Agreement and Pet Trust are ideal tools to help owners and their pets remain together, establish procedures for legally transitioning pet ownership, and ensure that pets are cared for by a chosen guardian.

Over two-thirds⁶ of all Americans consider their pets to be family members, making a Pet Trust and/or Pet Protection Agreement a logical imperative. No one likes to see pets consigned to a shelter when their owners have passed away. It is painful to think of leaving family behind. There is no greater sense of security than knowing all beloved members of your family have been provided for, whether they are two-legged, four-legged, or feathered. Their devotion is

⁶ Cindy Hall & Suzy Parker, *USA Snapshots—What We Do For Our Pets*, USA TODAY, Oct. 18, 1999, at 1D.

unconditional. You will be doing a great service for your clients when you help them adequately secure their pets' futures.

Rachel Hirschfeld is the creator of the Pet Protection Agreement™ and the Hirschfeld Pet Trust, the catalyst for which was Ms. Hirschfeld's beloved rescue dog, Soupbone. She is a member of the New York State Bar Association's Special Committee on Animals and the Law, the New York City Bar Association's Committee for Legal Issues Pertaining to Animals and the Animal Law Committee of the American Bar Association.

Ms. Hirschfeld is a frequent author and lecturer on pet trusts, pet protection agreements and estate planning for people with pets. She has appeared in national media, including The New Yorker, ABC Nightline News, CNN, CBS the Early Show, the Today Show, the Wall Street Journal, Cat Fancy Magazine, Newsday, the New York Sun, Dow Jones, the Bottom Line Retirement and the National Academy of Elder Law Attorneys' Journal. Ms. Hirschfeld works closely with animal shelters throughout the United States. Ms. Hirschfeld can be reached at 1-877-773-7778 and rachel @Petriarch.com. See www.Petriarch.com and www.PetTrustLawyer.com.



The Soupbone Angel

**"The Greatness of a nation and its moral progress
can be judged by the way it's animals are treated."
Gandhi (1869-1948)**