



October 2010

## Plan Now to Protect Your Pets Later

*By Gina M. Barry, Esq.*

Some consider their pets to be members of their family. Others have made a career out of breeding, raising and/or sheltering animals. When animal owners pass away, if they have not made provisions for the continuing care of their pets, the outcome can be disastrous. Often, the recipient of the pet does not care to, or is not prepared to, take on the responsibility of providing ongoing care. As a result, the pets are then euthanized, neglected or abandoned. If you care about the ongoing welfare of your pet after your demise, your estate plan should specifically address your pet.

Most often, an animal owner will desire to establish a trust for the benefit of their pet. The majority of the United States recognize trusts that name an animal as the beneficiary; however, while pet trust legislation did recently pass the Massachusetts House, Massachusetts still does not recognize such trusts. While it is not possible to create an enforceable trust solely for the benefit of an animal, it is possible to establish an enforceable trust for the benefit of the animal's caretaker.

One of the most important decisions when planning for your pet is determining who will serve as your

pet's caretaker. It is important to name at least one alternate caretaker, if not several, who would provide care if the originally named caretaker was unable to do so. The most commonly named caretakers are relatives, friends, the pet's veterinarian, the pet's actual breeder or a breeder of the animal's breed generally, or an animal shelter or sanctuary. A number of animal sanctuaries have emerged that will provide care for your pet until its demise. These facilities vary greatly in terms of the environment they provide, the cost of placing an animal within the sanctuary and the type of compensation that they will accept.

The next most important decision is determining how the caretaker will be paid. The caretaker may receive only funds to cover all verified expenses associated with caring for your pet. Normal and customary expenses would include housing, food, veterinary care, grooming, and burial and cremation fees. Another alternative is to provide a lump sum to the caregiver based on the care to be provided until your pet's demise. Note well that this distribution scheme may encourage the caretaker to skimp on your pet's needs in order to allow the caretaker to retain the distribution personally.

To ensure that the plan is carried out as intended, it is important to remember that your pet will pass through your estate as personal property. Thus, it is important to leave your pet to the caretaker in your Will. Your plan should also address the final disposition of your pet. Here, the inclusion of strict guidelines concerning euthanasia should be considered.

In addition to providing for the ongoing care of your pet once you have passed away, a comprehensive estate plan will also provide for the ongoing care of your pet should you lose the capacity to handle your own affairs, whether due to physical or mental illness. In that event, your Health Care Proxy, a document naming someone to make health care decisions for you, and your Durable Power of Attorney, a document naming someone to make financial decisions for you, should contain special provisions acknowledging your pet and providing for your pet's ongoing care.

Most often, a Durable Power of Attorney will authorize the person named to handle a laundry list of financial transactions. Usually, the document also contains an

expansive clause attempting to encompass all other financial transactions not named. When an animal owner is incapacitated, the animal must be placed with a custodian and the money must be spent to provide ongoing care. To avoid any controversy regarding the care and custody of your pet, your Power of Attorney should authorize the person named to take custody and control your pet if you are incapacitated. The document should further authorize the person named to arrange for someone to provide care for your pet, even to the extent that said care would require monetary compensation to the caregiver.

With respect to your Health Care Proxy, it should notify the person

named and/or medical personnel, that you are an animal owner and that your pet is dependent upon you for care. While medical personnel will certainly first attend to your care, if you remain incapacitated, the language of the Health Care Proxy will remind the person you have named, and should alert medical personnel, of the need to ensure the ongoing care of your pet.

When you establish an estate plan that takes into consideration the issues raised herein, you are taking the steps necessary to ensure the ongoing care of your pet should you become incapacitated or pass away. Without such a plan, the fate of your pet is, at best, uncertain, and at worst, unspeakable.

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