

**ESTATE PLANNING TO PROVIDE FOR THE CARE OF
YOUR PETS AND OTHER ANIMALS**

By BETTE HELLER, ESQ.

Prepared for Animal University, February 2011

Introduction

No one wants to think about dying or becoming incapacitated. However, the truth of the matter is, it is going to happen to each and every one of us, sooner or later. The problem then is, what happens to our loved ones when we are no longer able to take care of them.

There are provisions in the law for how to deal with children who are left without parents. The law provides for the appointment of a Guardian to take custody of them and take care of them physically; and the appointment of a Conservator to handle their property (money) for them - both until they are of an age where the law feels they are old enough to take care of themselves. But there are no provisions in the law for the care of our animals. In fact, under the law, animals are considered "property" and as such do not have any rights, and their emotional wellbeing are not taken into consideration. But, in fact, we who own animals, consider them as part of our family, and often elevate them to an honored position akin to our "children". Thus, we want them cared for as well or better than our human children.

As stated above, if you do not make provisions for your children, the law will do so for you. Trusts have always been a way for people to provide for their children (and others they wish to benefit) on their own terms. A trust holds assets for the benefit of whoever is named as its "Beneficiaries". The person who sets up the trust is called the "Settlor" or the "Grantor". If the trust is set up during a person's lifetime it is called an "Intervivos Trust": if it is set up upon the death of a person under the terms of his/her Will it is called a "Testamentary Trust". The "Trustee" manages the assets and determines, within the parameters of the terms of the trust, how to distribute the assets to the beneficiaries. The terms of the trust can be as creative as the Settlor wants, within certain confines of the legal system.

Throughout modern times, many people (mostly in England and the United States) have tried to leave all or some of their assets in trust for their "pets". We commonly refer to these as "Pet Trusts". Whether or not these Pet Trusts are

upheld by the law of the State or Country where they are being administered depends upon the laws of that State or Country and how they are interpreted by their Courts. In the United States, our legal system has a legal theory called The Rule Against Perpetuities that prevents trusts from continuing forever. That Rule is based on the lifetime of the beneficiaries of a trust who are living at the date the trust was created, which are called “measuring lives”. Whether or not a Pets Trust was upheld by a particular Court depended upon whether or not that Court determined that the Pet, as beneficiary of the trust, could be considered a “measuring life”. Thus, the law was quite uncertain when it came to Pets Trusts. Recently, many States, including Colorado, have enacted Pets Trust Statutes that exempt a Pets Trust from the Rule Against Perpetuities, thus allowing them to be upheld.

We will discuss how the Colorado Pets Trust Statute works in a future article. In addition, there are other ways to provide for your animals in the case of your incapacity or death, and we will discuss those techniques as well.

As an Attorney, my job involves many diverse issues.

In preparing an Estate Plan, my job is to help the client make the appropriate decisions regarding: the care and custody of children and animals should the client become incapacitated or die; the distribution of the client’s assets upon their death; who should be in charge of taking care of the client during a period of incapacity and of the client’s children, animals, and assets after their death; etc. Once those decisions have been made, I must prepare Estate Planning documents that carry out those provisions under the confines of our laws. Making those decisions can bring up a variety of emotions for the client, and I find that in helping the client I become somewhat of a social worker - asking appropriate questions to help them sort out their emotions and wishes; listening to their problems and concerns regarding family issues and money issues; and guiding them towards the options that are available to them to solve those issues.

Once a client has become ill, incapacitated or has died, my job is to assist the family in handling the legalities that arise around the issues listed above. Again, I often find myself in the role of social worker, trying to assist the family in dealing with not only the legalities, but also the emotions that surround their grief in losing a loved one. I find that if the client has clear and proper documents in place, there seem to be less emotional issues for the family, as they are free to deal with their grief rather than having to deal with expensive and unsettled legal issues as well.

Another area of my practice is to assist clients in preparing to receive Medicaid Benefits to help pay for their long-term nursing care (whether at home or in a nursing facility). More often than not, however, the client has not done any advance planning, and the family comes to me after the client has become incapacitated to help obtain those benefits. Again, I often find myself in the role of social worker in these situations.

I have also assisted adult clients in dealing with the death of their children, be they minors or adults. The same issues come up in this area. But the emotional issues seem to be stronger, since parents are not supposed to survive their children.

These emotional issues not only permeate the transition from living to dying of people and their human family members, but also of people and their animal family members. So, if we make provisions for the care of our human family members after our incapacity or death, why not make provisions also for the care of our animal family members.

Every client and every family is different. In assisting my clients and their families, I credit my “intuition” with giving me the ability to ask the right questions and say the right things to assist them in making their decisions, and getting through the grief and other emotions that come up in their meetings with me. For those that believe in Animal Communication, this technique can be used to assist in the issues surrounding their animal family members; and can also include consulting animals who have been gone from this world.

The next article will deal with the issues surrounding “Pets Trusts”. Subsequent articles will deal with the alternatives to “Pets Trusts”; making provisions for incapacity; and dealing with specific emotional issues that can arise in preparing for death.