

SWIZZLE, STAY! WITH ME

PET PROTECTION DOCUMENTS

By Rachel Hirschfeld, Esq.

"The greatness of a nation and its moral progress
can be judged by the way its animals are treated."
Mahatma Gandhi (1869-1948)

“Who owns the pet?” is the first question in pet protection documents. It is important to establish ownership so that legal court battles can be thwarted during divorce or splitting from domestic partners or roommates. So, it’s a good idea to have an agreement governing proprietorship.

Legally recognized and enforceable instruments can now be created by pet owners —pet trusts and pet protection agreements—so that when their owner is unable to care for them or dies, the pet’s care will be continued.

Today, over 88 million cats and 75 million dogs are living in American homes and being treated as part of the family. It is not uncommon to find owners sharing their beds with their pets as well as taking them on vacations. Americans spent \$41 billion in 2007 on their pets and are expected to spend \$52 billion yearly by 2010.

The consequences of failing to provide for a pet’s transitioning and continuing care can be a hardship on the pet. Unfortunately, the crucial issue of who will care for their pets when they are no longer able to do so is postponed, forgotten or infrequently addressed.

In some instances the pet is considered a dear member of the family and care will continue. However, in most cases there is no one left who is able or willing to care for the pet. Too often, the pet will end up with neither a home nor a family. Actually, nearly 9,600 per day pets end up in shelters where in 2007 almost four million dogs and cats were euthanized.

Regardless, the owner probably will feel more secure with a legal document than with a promise or handshake for a pet’s continued care. Additionally, the switch and the transition is smoother for all involved with an official record of the owner’s intent.

Pet Protection Documents

1. Pet Trust

The pet trust allows for specific pet care instructions and directs the management and disbursement of funds left in the trust for the entirety of the pet's life. Thus, the pet owner is able to control how much and how often to schedule expenditure of resources.

An excellent reason to establish a pet trust is that pet trusts can maintain that the pet and owner be kept together, regardless of whether the owner requires in-home, assisted living facility, or nursing home care.

Additional advantages of establishing a pet trust is that trust funds are not subject to probate. One can avoid delay by court inaction or hold-ups by court contests, which interfere with the pet's much needed immediate care. Furthermore, pet trusts are not public documents since they are not subject to probate.

2. Pet Protection Agreement¹

Named after its creator, Rachel Hirschfeld, Esq., the legally enforceable Hirschfeld Pet Protection Agreement is a combination of written contract and trust, between at least two individuals or entities: the pet guardian or pet guardian organization and, of course, the pet owner. Pet protection agreements operate not only after the pet owner's death, but most importantly, during the pet owner's life, including any period of disability. The pet protection agreement can be completed at a fraction of the cost of a pet trust online at mypetprotection.com, with or without the help of an attorney.

The pet protection agreement provides unlimited space for instructions regarding the pet's care with an easy click menu, identifies the pet owner, designates service providers and back-up pet guardians. It urges the pet owner to name a retirement home, shelter or sanctuary to care for the pet in the event that neither the pet guardian nor successor pet guardian are able to fulfill that role.

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3. Wills, Health Care Proxies and Powers of Attorney

The value of pet protection documents can be enhanced by including enforceable provisions concerning the care of animal companions in wills, health care proxies and powers of attorney. Remember, wills operate only after the pet owner's death, while health care proxies and powers of attorney operate only before a pet owner's death. By contrast, pet trusts and pet protection agreements operate *both* during the pet owner's life and after the pet owner's death.

Top 10 Tips

1. Pet Ownership

All counselors and consultants should ask their clients whether they have any pets and who owns the pet.

2. Throughout Life

First of all, the word "incapacity" should never be used when filling in pet protection documents to describe the owner's possible mental state because it may trigger, or be used as evidence in, a court proceeding. Specifically, the pet owner may become unable to care for one or more aspects of the pet's life, yet not be legally incapacitated. For example, an arthritic owner may want the pet guardian to begin acting, in a limited role, simply because he can no longer adequately walk the dog. Another owner may want the pet guardian to act because she has difficulty remembering whether or not she fed her cat. Neither of these examples should generate a court appointed guardian.

3. Details

It's imperative that the pet owner distinguishes the pet. Color, size, shape, breed or mix, markings, any other salient physical characteristics, habits and personality are some important features. Detailed instructions, based on the pet's routine and preferences, and information about all aspects of the pet's care, such as food brands and specific flavors; amounts and feeding times; housing; grooming; medical care; toys; boarding; walks; exercise; and socialization should all be included in a pet document. Owners should provide contact information for groomers, walkers and other service providers and determine who should receive veterinarian reports. It is

recommended that pets who have bonded with each other be kept together. Finally, instructions concerning the pet's eventual cremation or burial, and memorial might be considered.

4. Funds

Determine how much it costs the owner to maintain the pet. The amount placed in trust can be large or small. Consider including the following: type of pet; age; health; lifespan (especially significant for some birds or reptiles with long lifetimes); lifestyle (including food, grooming, boarding, kennel fees, sitters, walkers, toys and travel); number of pets; inflation; and possible reimbursement for extraordinary expenses.

Because disgruntled heirs may challenge a trust or will which leaves a sizeable amount for the pet's benefit and because some states permit the court to reduce how much is left in a pet trust if that sum substantially exceeds the amount required for the pet's use, it is important to take time to explain why the amount left for the pet's care is reasonable. Examples of past expenses are always helpful to explain to the court, if necessary, why that amount was left.

5. Trustees

Since the trustee's role is to distribute funds to the pet guardian for use for the care of the pet, it is important that the trustee be an animal lover who agrees with the owner's spending habits. Ultimately, the trustee, in his fiduciary capacity, has a legal obligation to carry out the terms of the trust.

Trustee powers could include the right to: choose a guardian for the pet in the event that all designated pet guardians are unavailable; purchase a residence for the pet and its guardian; and remove the pet guardian and replace him with the successor guardian, without the necessity of court intervention.

Sadly, some states permit the trust to exist only up to 21 years and pets could outlive their trusts. Thus, the guardian and trustee should be permitted to create additional pet protection documents consistent with the owner's intent, in order to continue to protect the pets.

6. Pet Guardian

The guardian has a dual role. Initially, he may be called in to partially care for the pet during an owner's inability to do so. Ultimately, the full time care of the pet may be his responsibility. It would be best for the owner to choose an individual who knows and likes the pet. Conversely, the guardian should be someone who the pet likes. It is important to allow the pet guardian to exercise discretion when faced with new circumstances, as long as that discretion is exercised in the pet's best interests. In case prior pet guardians are unwilling or unable to act, it is wise to name as many alternate pet guardians as possible,

7. Pet Retirement

The owner should name a retirement home and a back-up to care for the pet regardless of how many pet guardians are named. The organization should act in either a temporary or permanent pet guardian in the event all previously named role are unavailable. Alternatively, the retirement home can assist in finding a new family for the pet.

8. Incentive

Compliance with the pet owner's wishes is the goal of pet protection documents. To encourage facilities to keep the owner and pet together during the owner's disability and/or until the owner's death, pet owners should consider naming as *pro rata* beneficiaries of the trust remainder facility that helped make their hopes and wishes come true.

9. Plans

The pet owner should be allowed to trigger the enforcement of the pet trust or pet protection agreement at any time.

10. Signatures

All pet documents should be signed by the owner, the guardians and, if there are trustees, by them as well. This will confirm awareness by all responsible named parties.

We are Family- No Matter What Happens

Pet owners are the majority population in the United States. According to recent statistics, an astounding 65% of all American households have at least one pet and in many of these homes, their pets are considered part of the family. Pet trusts and pet protection agreements are ideal tools to use to help owners and their pets remain together, to ensure that pets are well-cared for, and to establish procedures for legally transitioning pet ownership.

Rachel Hirschfeld is a nationally recognized expert on pet protection documents whose mission is to ensure that every companion animal has a secure future and that no pet who has found a loving home will ever be abandoned again. You can contact her through her websites, www.mypetprotection.com and www.pettrustlawyer.com toll free at 1-877-7PET TRUST (1-877-773-8878)



The Soupbone Angel