

## Elder Law: Have you taken care of Fido?

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By Julian Gray and Frank Petrich

Pets play an exceedingly important part in the lives of our older clients. Pet ownership can have positive impacts on an owner's life by lowering blood pressure, reducing stress and depression and providing much needed companionship, especially to an individual living alone. If you don't believe these benefits of having a pet, see the reaction of residents when a registered therapy dog spends time at a nursing facility.

And, unlike adult children, pets can't talk back (well, maybe some nasty parrots do). However, in the eyes of the law, pets are nothing more than personal property.

In this country, more adults have pets than they do children, with pets often being an integral part of the family. And, depending upon the pet -- especially certain birds that can have a life expectancy of more than 70 years -- providing for them in the event of an emergency, disability or death of the adult owner is often an overlooked consideration. (It should be noted that, for the adventurous, a tarantula can live 30 years.)

There is often a large disconnection between the passionate pet owner who will do anything for their pet (including spending vast sums of money to treat an illness) and failing to provide for the pet after the owner's disability or death.

Let's first talk about an owner who is ill or disabled to the extent of being unable to adequately care for the pet. Here is a good situation for the use of a power of attorney, either a general power of attorney or one limited to pet care.

Start by specifically identifying the pet or pets and the veterinarian who cares for the pet. As with a will or trust, name the person or persons whom you wish to take care of the pet. It does not necessarily have to be the same person who will handle your financial affairs if you are disabled. Once you've identified the pet, take pictures of the pet, implant a microchip into or take a DNA sample of the pet.

The pet's caregiver can be told in the document those things you wish them to do to take care of the pet. For example, should the caregiver have authority to find other caregivers if they, themselves, are unable to do so? What are the standards you want maintained for the pet? Should the caregiver have the power to dispose of the pet? Find an alternate home or shelter? Who is going to pay the pet's bills?

Give the pet caregiver access to your home along with the care instructions. And, most of all, make sure the caregiver understands and is willing to carry out your wishes. It's similar to naming a guardian for a minor child. And you'd better be sure they'll say "yes" when the time arises. Don't forget to have at least two backup individuals as caregivers in the event the first named person is unable to fulfill her/his role.

It also should be noted that pets can pose a hazard to an individual. A good example was a frail, elderly widow, living alone in a "typical" Pittsburgh home (two stories plus the cellar). Her pet, a cat, liked to rub up against her legs, which was fine except when the widow was at the top of the cellar stairs and, more than once, almost cascaded down the stairs from losing her balance due to the cat. Thus, a difficult decision had to be made to remove the cat from the house.

Pennsylvania, in 2006, became the 32nd state to enact a pet trust law. This law allows a trust to be created while the pet is alive during the trust creator's lifetime. The trust ends at the death of the pet -- or, if the trust were created to provide for more than one pet, at the death of the last surviving animal.

Property put into the trust can only be used for its intended use, except to the extent that a court may determine that the value of the trust property may exceed the amount needed for its intended use. This limitation most likely had something to do with the \$12 million left by billionaire Leona Helmsley to a pet trust for her poodle, which a New York court subsequently reduced to a paltry \$2 million.

Again, pay particular attention to whom the trustees (and that trustee's backups) are to be and what you want that trustee to do for your pet. Try to determine how much money should be put into the trust based upon the pet's life expectancy, particular needs and manner in which you wish for it to be cared.

If you want to be unconditionally loved, get a pet, especially a dog. If you want a dog, get a real dog -- a Brittany Spaniel. And, finally, plan for it and for you.

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