

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

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ELDER LAW TODAY

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It has been quite a year thus far! Although we have been keeping our office going “full bore” it truly is a challenging time for a lot of folks. I especially feel sorry for those people that are in nursing homes and assisted living facilities in terms of them being so restricted in being able to have contact with family and friends. That brings me to the unusual topic for this quarter’s newsletter: Pet Trusts. What prompted this is a friend of mine, Professor Gerry W. Beyer, a Texas Tech law professor who recently published an article entitled: “What If Your Parrot Outlives You? Preparing For Your Bird’s Future”. I want to summarize this article as best I can.

Gerry makes a few introductory comments that those of us who have pets can most certainly agree with: “90% of pet owners state that their animals are viewed as members of their families”.

“Pet owners are extremely devoted to their animal companions with 80% bragging about their pets to others, 79% allowing their pets to sleep in bed with them, 37% carrying pictures of their pets in their wallets, and 31% taking off work to be with their sick pets”.

Pet statistics in the U.S. of owners: dogs – 63.4 million; cats-42.7 million; fish – 13.1 million; birds-5.7 million; other small animals (eg: hamsters, rabbits) -5 million; reptiles- 4.5 million. According to American Pet Products Manufacturing Association, Inc. Americans spend over \$75 billion per year on their pets!!

The stories of the “rich and famous” who left assets for their pets include billionaire Leona Helmsley who left \$12M in her Will in trust for her Maltese named “Trouble” (the court reduced the trust to \$2M). But what about this idea of taking care of our pets when we are unable to take care of them? As Professor Beyer observes: “some types of parrots may live for 75 years or more and parrot owners often have special long-term attachment to those birds”.

After my father died in 1989, my mother was living alone on the family farm in Bell County. I bought her a German shepherd puppy from Burkburnett and Toni (she named after her sister of all people) became her constant companion –where ever Mama went, Toni was right with her and slept on the floor next to her bed. One of the funniest stories she told me was when the butane deliveryman came to the house and he pulled a prank—making a lunge at Mama when Toni was present. Huge mistake! Toni ran him back to his truck! Beyer recommends important steps to assure the animal will receive proper care immediately upon the owner

being unable to look after the animal: the owner should (1) carry in his or her wallet an “animal card” giving the owners name; pet’s name; type of animal; emergency contact name & Phone #; and veterinarian name & Phone #.

Beyer says “the animal card will help assure the animal survives until the owner’s plans for the pet’s long term care takes effect”. (2) prepare an “animal document” to be kept with your regular estate planning documents (i.e.: Will; financial power of attorney; medical power of attorney; HIPAA Release; Directive to Physicians). He also recommends giving a copy of the “animal document” to the potential caregiver. The purpose is to enhance likelihood that the owner’s desires regarding the pet will be made known to the appropriate person in a timely manner. I have copies of both the “card” and the “document” if anyone would like one – just call and we will get you one.

The Pet Trust. A legal document to make sure your pet receives proper care after you die or become disabled and no longer able to care for it. You (called the Settlor) give your pet and enough money or other property to a trusted person or a bank (called the trustee) that is under a duty to make arrangements for the proper care of your pet according to your instructions. The trustee will deliver the pet to the designated caregiver (called the beneficiary) and the beneficiary will use the money to pay for your pet’s expenses. There are two ways to create a “pet trust” –you can create it while you are alive (called a “living trust”) or you can create one under your Will (called a “testamentary trust”). If you want to do one under your Will, a codicil could be prepared to “implant” the Pet Trust unto your Will with its trust provisions without having to re-do the Will. While the testamentary trust created under your Will is the simpler of the two, there is the drawback that the Will is not effective immediately—it must be probated and who will take care of the animal during the time it will take to probate the Will and get the trust funded? Or if you should become incapacitated and unable to make decisions about your property, the “living trust” seems to me to be the more desirable one in terms of immediately providing for the animal upon death or disability.

If I want a trust, how much should I put into the trust? You have to ask yourself: (1) the life expectancy of the pet? (2) what standard of living do you want to provide for it? (3) how much will it cost to board the

animal if the caregiver is out of town on business or vacation? (4) how much do you project for Vet bills? How to decide on who should be the caregiver? This is extremely important – key considerations:

1. his or her willingness to assume responsibilities of caring for pet
2. his or her ability to provide a stable home for the pet
3. a harmonious relationship between the caregiver’s family members and the pet
4. Beyer concludes: “Finally it’s important to think about whom your pet would enjoy living with and where the pet would live its happiest life”. Texas Property Code Section 112.037 entitled “Trust for Care of Animal” unequivocally authorizes the use of “pet trusts” in our state!

***Join us for a FREE online webinar.**

“The Five Essential Estate Planning Documents + 1?”

Thursday, November 12, 2020

6:00 PM (Q&A to follow)

Visit our website at cdancampbell.com and click on the “Event Registration” tab to register.

There is limited space available so register now to reserve your spot!

****FREE Office or telephone conference for webinar participants.**

Well, that’s it for now! Enjoy the cool fall weather!!



Sadie Campbell

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