

LEGAL EASE



Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

May 15, 2007

Pet trusts go beyond a will's scope

Pets are important to their owners. In the United States, more adults have pets than have children. Many pet owners consider their pets *as* children. During the month of May, on PCTV *Legal Talk*, attorneys at O'Donnell, Weiss & Mattei discuss how to protect your pets if you die or become incapacitated through establishment of a Pet Trust. *Legal Talk* airs on Tuesdays at 8:30 pm on channel 27 and Thursdays at 9:30 pm on Channel 98.

A recent issue of *The Elder Law Report* discussed how Pet Trusts offer elderly clients peace of mind. However, clients of any age can benefit from the ability to protect a treasured pet. Mentioning your pet in your Will offers only limited protection for the pet, even though you might consider the pet as part of the family. However, in Pennsylvania, until the recent passage of the Uniform Trust Act, pet owners could only rely on provisions in their Wills, or by naming a trusted person and hoping that that person would follow through on the owner's wishes. Pet Trusts, on the other hand, are enforceable by a Court both during the owner's lifetime and after the owner dies.

There are several steps necessary to protect pets through a Pet Trust. The first is to establish the trust. The trust should contain very specific instructions about all aspects of the pet's care, including the provision that multiple pets should remain together, and that any new pets who join the family should be included. Persons who become incapacitated and are unable to remain in their homes can indicate that the named caretaker should bring the pet for visits with the owner.

The elements of the actual trust include naming a caretaker who will be willing and able to assume care for the pet. A substitute caretaker should be named, along with a not-for-profit, no-kill shelter or sanctuary to insure that a suitable caretaker will be found if all named caretakers fail to assume responsibility. A trustee must be named to manage the funds set aside for the pet's care. The trust can be funded through the Will, but it is recommended that the trust be capable of being funded during the owner's lifetime, in the event that the owner becomes incapacitated. It is possible to fund a Pet Trust with some or all of the proceeds of a life insurance policy, retirement funds, or any other property. The amount needed depends upon the special needs of the animal, but a dog or cat will require between \$200 and \$2,000 per year for care. Finally, a trust protector should be appointed, as Fido or Kitty will be unable to protest if the caretaker and trustee are failing in their caretaking and fiduciary duties.

There are drawbacks to Pet Trusts. Dishonest trustees could extend the life of the trust for their personal benefit. Caretakers can fail to care for the pet adequately, and the pet cannot go to court to complain. But your best friend who has given you nothing but love and loyalty deserves to have his or her care provided for when you no longer can do so.