

OCTOBER 2010 NEWSLETTER

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ESTATE PLANNING FOR PET OWNERS



One of the most important considerations in making an estate plan is to provide for the welfare and security of your loved ones after your death. This is especially true when providing for young children and those individuals with special needs who, absent representation, do not have the independent capacity to provide for themselves or assert their rights in court.

One important family member who also shares these traits but is often overlooked-the family pet. The family dog or cat provides you with endless attention, love, and affection, but also depends on you for survival. However, unlike children, the family pet cannot assert his rights through a court appointed guardian or speak for himself if no one else will. Thus it is important to set up a plan to ensure he is not cast aside upon your death or disability. This newsletter provides a general overview of the options available so that this important member of your family does not get left behind.

Options available:

There are a number of options available ranging from simply gifting the pet and funds for support to a caretaker to setting up a trust with complex and detailed provisions. The appropriate mechanism depends on the amount of money given and your relationship with the potential caretaker. These options are: 1) a simple gift/bequest; 2) a conditional gift; and 3) a trust for the caretaker to provide for your pet.

Simple Gift/Bequest:

The simplest mechanism is to gift/bequest the pet to a caretaker. This is simple and beneficial if you can trust the caretaker to take proper care of your pet in addition with a modest amount of money to reduce any financial burden. On the downside, if greater amounts of money are given, this is not recommended as there is no way to ensure the caretaker actually takes care of your pet or uses the funds for that purpose as it is the caretaker's money free and clear.

Conditional Gift/Bequest:

The next option would be to establish a conditional gift/bequest that the caretaker receives your pet plus funds to support the pet on either the condition precedent that he actually cares for your pet or the condition subsequent that he provides proper care for your pet. This minimizes your risk in that the caretaker loses his legal right to the funds if your pet is not received or not cared for; otherwise, such funds can go to a taker in default, which would be an alternate caretaker. This creates a mechanism where the taker in default will help ensure the caretaker does not fall below the desired standard of care because if so, the alternate caretaker receives the funds. However, this is not as effective as a trust as the taker in default may not have the ability to actively enforce the condition and does not have the same level of control over the funds as a trustee.

Trust:

The last option would be to create a formal trust with a third party trustee and the caretaker as the beneficiary. This is the most protective measure and an excellent option if you have a trustee you could trust who is not the caretaker or willing to be a caretaker. The trustee would be given discretion on distributions to ensure the funds are not used improperly. The trustee can control the funds by simply distributing enough funds monthly to pay for the care of the pet and to provide additional payments for the caretaker. For example, proper funds should be set aside for medical care, animal sitters and walkers and the standard of living and care the owner wishes to provide the pet. Further, the pet owner trust should designate a remainder beneficiary who will receive the remaining funds after the death of the pet. Also, the owner may and

should require the Trustee to make regular, random inspections of the pet by the trustee himself or by a trained third party in order to determine that the physical and psychological condition of the pet are being met after his death. Both Pennsylvania and New Jersey have enacted a "Pet Trust Law" for the care of an animal alive during the testator/owner's lifetime.

There are a number of options available to provide for one's pet after your death to ensure he is taken care of when you are not around. The proper option depends on the amount of money and care required, the trustworthiness of any caretaker, and your own personal preference.

Other Considerations to Ensure Your Pet is Cared For in the Short Run and Long Run:

In addition to the type of instrument, the following issues should be considered to ensure your pet is properly cared for in both the short-term and the long-term. Proper care can mean something as simple as finding a proper loving family or as extreme as the pet receiving three gourmet meals every day while listening to his favorite rock music. It is important to consider the following so the trust, gift, or bequest is not made in vain.

Short-term Care:

In the short-run, the pet depends on you for his basic needs of food, water, and shelter. It is important to provide notice to general family and friends that you have a pet that needs to be taken care of and to have someone that can step in to provide for the pet.

This can be done by carrying around a card in your wallet alerting others that a pet is depending on you and having a document with your other estate planning instruments that can be found to alert people. Such card or document could provide an emergency contact number of someone who can be a short term caretaker. This ensures that someone can step in and provide for your pet until longer-term care can be arranged.

Further, another way to provide for the short-term care immediately after your disability or death is through an *inter vivos transfer* (transfer during your life) as opposed to a *testamentary transfer* (transfer established by will at death). Establishing an inter vivos transfer will mean that funds are already set aside and can be accessible for the pet's care immediately upon disability or death. The down side is that you may not want to part with such funds prior to your death if they are necessary for yourself. On the other hand, a testamentary trust may take a number of months until the trust is administered due to the estate administration process. This risks a period where no one will permanently care for your pet. Thus, setting up an inter vivos trust is an option to ensure your pet will be cared for immediately upon your disability or death.

Long-term Care:

For longer-term care, it is important to choose the proper caretaker, that the caretaker has the proper incentives to care for your pet, and that a proper amount of funds have been set aside. First, it is important to choose a caretaker that you believe will care for your pet as you did. This should be someone that enjoys the particular type of pet and someone that you can trust. If you cannot think of any particular caretaker, you can give the power to a group of family members or a veterinarian who can find the proper home for your pet.

Second, the caretaker has to have the proper incentives. Unless the caretaker is a devout lover of your pet, it is wise to make the burden of caring for a new pet as little as possible. This means funds should be provided to relieve the financial burden of a pet and to compensate and reward the caretaker for his time and commitment. Further, it is not wise to have the caretaker receive the remaining funds after the pet's death. This could give the caretaker the incentive to shorten the life of the pet, however cynical.

Last, it is important to place the proper amount of funds aside for both practical and enforceability considerations. It is important not to place more than necessary aside. If too much is set aside, you may run out of assets for yourself and a court is more likely to find the gift or bequest to the pet as unenforceable as unreasonable. It is necessary to look at the particular needs of your pet, the life expectancy, and inducement necessary for the caretaker to provide for and protect your pet.



Regardless of what instrument is used, it is important to have a proper caretaker and the right incentives to ensure that your trusted companion, who has provided unconditional love and loyalty, is well cared for after your death. Considering these steps can ensure your pet will be cared for in the event you cannot care for him anymore.

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UPCOMING SEMINARS

JOSEPH R. POZZUOLO, ESQUIRE WILL BE PRESENTING: **“THE BASICS OF ESTATE TAX PLANNING FOR ATTORNEYS, CPA’S AND GENERAL AND NEW PRACTITIONERS INCLUDING ETHICS”** A CONTINUING LEGAL EDUCATION/CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON FRIDAY, NOVEMBER 5, 2010 AT NEUMANN UNIVERSITY.

JOSEPH R. POZZUOLO, ESQUIRE WILL BE PRESENTING: **“THE FUNDAMENTALS OF ESTATE ADMINISTRATION INCLUDING A STEP BY STEP PREPARATION OF THE FEDERAL ESTATE TAX & PA INHERITANCE TAX RETURNS FOR THE SUBURBAN GENERAL PRACTITIONER AND CPA 2010”** A CONTINUING LEGAL EDUCATION/ CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON FRIDAY, DECEMBER 3, 2010 AT NEUMANN UNIVERSITY.

JUDITH P. RODDEN, ESQUIRE WILL BE PRESENTING: **“COMMERCIAL AND RESIDENTIAL REAL ESTATE PRACTICES TODAY: FROM AGREEMENT OF SALE TO CLOSING, WITH ETHICS”** A CONTINUING LEGAL EDUCATION/CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON THURSDAY DECEMBER 9, 2010 AT NEUMANN UNIVERSITY.

Publications

All of the following professional publications and past newsletters written by attorneys of this office are available here: <http://pozzuolo.com/Pubs Articles.shtml>

Corporate/Tax

Design Buy-Sell Agreements For Maximum Utility

Deferred Compensation Rewards And Retains Key Employees

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Money Purchase Pension Plan Falls Out Of Favor

Why An Employment Contract Is Mandatory

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A

Dividend

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

How To Look, Act And Sound Like A Professional Corporation

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How to Structure a Suitable Buy-Sell Agreement

Estate Planning

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Diversify Strategies For An Effective Estate Plan

Use Wills To Maximize Family Protection And Minimize Tax

Six Proven Estate Planning Techniques

Divorce Raises The Need For Performing An Estate Planning Review

Divorce and Estate Planning

Remarriage Situations Can Raise Special Estate Planning Considerations

College Funding Tool Offers Estate Planning Advantage

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Why Living Wills Advance Directives Are An Essential Part Of Estate Planning

Special Needs Trust - An Estate Planning Tool For The Disabled

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

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