

Lessons from Leona: Estate Planning

August 1, 2008 by AKC Gazette Breed Columnist • Categories: Breed Columns

When Leona Helmsley passed away last year she left a \$12 million trust for her Maltese, Trouble. And that's when the trouble really began, because as soon as word got out, Trouble began receiving death and dognapping threats. To make matters worse, Leona had bequeathed Trouble to her brother—who didn't really want Trouble and especially didn't want the mayhem. While most owners won't be leaving that kind of money for their cherished companions it's still important to consider their welfare in the event of death.

Frances Carlisle, Esq. is a Manhattan attorney who specializes in estate planning with a specialty niche in Pet Trusts. She recently gave a talk called Estate Planning with Your Pet in Mind at the Metropolitan Dog Club in New York City. Providing for your pets, she said, should be an important component of estate planning—a consideration that most people (and their attorneys) don't take into account. "It is still rare to find provisions in wills and trusts for the care of companion animals," she commented.

There are two different ways to provide for your Norwich. For owners who are confident that family members or friends can be relied upon to take good care of their surviving pets, a simple plan of leaving the animals to specified persons in the will (or revocable trust, which acts as a will substitute) may be satisfactory. Ms. Carlisle advises that it's best if the will refers to "all animals owned by the client at the time of death," rather than naming specific animals, as most people have a succession of animals during their lives.

The owner may wish to leave a bequest of cash or property to the person(s) taking the animals. This may be a token sum or a greater amount to cover projected expenses. It is crucial to name alternates as beneficiaries of the animals. Ms. Carlisle emphasized "it's your job to find the appropriate people and to also select an executor with the competency and the compassion to place each pet according to your wishes."

The second way to ensure your pet's future is by establishing a pet trust. Statutes have been enacted in many states, which permit owners to create enforceable trusts for the care of their animals. Since animals are still considered to be property, and thus cannot inherit directly, the animal can be placed in a trust along with funds for its care. A trust provides more protection than an outright bequest.

For example, New York state's statute, passed in 1996, (Estates, Powers and Trusts Law "EPTL" section 7-8.1) provides that the trust can be enforced in state courts. Ms. Carlisle advises, "When creating a trust under EPTL ... the client should name a trustee, a caretaker, and a court enforcer (and alternates). The trustee and the caretaker can be the same person, or if the client wants a system of checks and balances, two different people. The court enforcer should be a different person who would go to court to enforce the trust, if the trustee is not fulfilling his or her fiduciary duties."

There are various ways to fund a pet trust: through a cash bequest, through other assets or by a life insurance policy which would make the trust the beneficiary. Comments on care can be included in a side letter to the trustee.

It's also important to make short-term arrangements for care during the time the will is probated. Be sure to give someone authority to enter your home to either feed and care for your Norwich or to take the animals out of the house if need be. Carry a card specifying whom to contact. The elderly or those with health issues may wish to even post a sign on the inside of a door specifying whom to contact in the event of an emergency, otherwise animal control authorities may be called in.

Since there are different types of trusts and state laws vary, seek appropriate legal advice in providing for your pets. Go to estateplanning.org for lists of attorneys who are competent in establishing pet trusts or making provisions in a will for your beloved Norwich.

Meanwhile Trouble, the Maltese, lives comfortably at an undisclosed location with round-the-clock security costing \$200,000 a year. In Ms. Carlisle's opinion, Mrs. Helmsley over-funded Trouble's trust and that's where all the TROUBLE began.

— Leandra Little, AKC Gazette Breed Columnist

© AKC Gazette, August 2008 · Norwich & Norfolk Terrier Breed Column · Reprinted with permission.