

Trusts for Companion Animals

By: Lin Hanson

Pets are a very important part of the lives of many people. Companion animals significantly improve the lives of individuals with disabilities, such as “seeing eye” dogs for the visually impaired, and dogs used to “fetch” for physically challenged and chair bound people. Medical studies have demonstrated improved health status of persons with pets. Many senior housing complexes today permit or encourage pet visits. Others have cats, dogs and birds in residence.

Some individuals are so attached to their companion animals that they wish to provide for their care and well being even after the owners have died. Sadly, until now, that has not been possible in Illinois, as animals are regarded in law as property, and the law has not recognized trusts for the benefit of animals. Thus, a concerned pet owner who wanted to ensure that his companion animal would be well cared for after his death had to rely on the cooperation of animal-loving family or friends. Some Universities with Vet Schools, such as Purdue and Texas A & M created programs to provide care for pets in return for bequests.

Over the last 40 years, I’ve encountered several pet owners who didn’t have family or friends that they could count on to care for their pets or who were simply not satisfied to rely on the generosity of others to provide the treatment that they felt their pets deserved. I was part of a group of lawyers discussing this problem in an Illinois State Bar Association internet discussion group about two years ago, and decided to do something about it.

I researched the laws of the 19 other states that have pet Trust laws, and

then drafted a proposal for the Illinois Legislature. I contacted Rep. Terry Parke, (R) Schaumburg, knowing of his interest in animal welfare, and asked him if he would be willing to sponsor such legislation. He readily agreed, and submitted what ultimately became HB1017 to the legislature. Nothing is ever easy in Springfield, but Terry Parke hung tough, shepherding the bill



through both House and Senate. Ultimately it passed both houses unanimously, and was recently signed by Governor Blagojevich.

What the New Law Will and Won't Do

The new law, effective January 1, 2005, permits people in Illinois, for the first time, to create trusts for the benefit of one or more of their pet animals. They can designate a trustee to manage a fund for the care, support and medical needs of their pet. They can name the trustee, or another caretaker to have physical custody of the pet. They can name a third party to oversee the administration of the fund and look out for the interests of the pet.

Sometimes we hear news of eccentric

people who leave millions for the care of a dog or cat. The law seeks to prevent this, by providing that the supervising judge having jurisdiction over the trust can reduce the amount of the gift to what is reasonably required for the care of the designated animal or animals.

At the death of the pet, the law provides for disposition of the property held in the trust in one of three ways. First, if the person creating the trust directs who is to receive the fund when the pet dies, that direction will be followed. Second, if no such provision is made, but the person’s will has a general or “residuary” beneficiary who takes the remainder of his estate, that person will receive the remainder of the pet trust. Finally, if there is no other beneficiary, the property in the pet trust will go to the heirs of the person who set up the trust, determined according to Illinois law.

If you have further questions about the new Pet Trust Act, or would like to discuss creating a trust for one or more companion animals, please email me at: lhanson27@aol.com.

Auto Accident - What Should You Do?

By: Chester A. Lizak

Almost all individuals, at some time during their lifetime, will be involved in an automobile accident. The following article discusses some of the issues that will arise in most automobile accident cases.

AT THE SCENE

A driver of any vehicle involved in a motor vehicle accident should imme-

diately stop at the scene or as close as possible without obstructing traffic. Each driver should give the driver's name, address, registration number, insurance information and name of the owner of the vehicle the driver is operating and should show the driver's license to the person who was struck.

If no police officer comes to the scene, each driver, after rendering reasonable assistance and the exchange of information, shall immediately report such motor vehicle accident to the nearest office of a duly authorized police authority.

INJURIES — DO NOT EXAGGERATE OR MINIMIZE YOUR INJURIES

An ambulance will be called to the scene if someone has been injured. Statements will be taken by the investigating police officers and the ambulance personnel about the injuries that may or may not have been suffered. It is important that you neither exaggerate nor minimize your injuries. Most individuals, who are not seriously injured, do not want to be inconvenienced by a trip in an ambulance to the emergency room. The paramedics will help you decide whether or not you should go to the emergency room, if you accurately report your condition.

In some accidents, you will be stunned or shook up by the accident, but you will not feel significant pain at that time. You should honestly report your condition.

In many accidents, the injured person does not begin to experience pain until a day or two after the accident. If you simply report that you are "fine" the insurance company for the other driver will take the position that you were not injured.

REPORT ACCIDENT TO YOUR INSURANCE COMPANY

After you have left the scene (or after you have left the hospital) you should report the accident to your auto insurer.

Call your insurance agent and ascertain the correct procedure for reporting the accident.

In some cases, you might be inclined not to report the accident because the other party was not injured or the damages were very small. Sometimes you will receive this suggestion from your insurance agent. If any person has been injured, you should report the accident, unless you have secured a full release in return for payment made by you. You should contact your attorney for an appropriate release form if that is your intention.



Failure to report the claim will jeopardize the insurance coverage that you paid for when you purchased the policy. Sometimes an injury that appears to be very minor at the scene, develops into a serious injury. You don't want to place yourself in a position where someone is suing you for a substantial amount, and your insurance company is advising you that your failure to report the accident causes you to lose your coverage.

You have the obligation to cooperate with your insurance company and provide them with the information they request. You do not have the obligation to provide information to the insurance company for the other driver. In the case of any accident with serious damage issues, you can simply tell the insurance investigator that you do not wish to make a statement, and that the investigator can contact your attorney. A good investigator will try to secure statements from you where you admit

some responsibility for the accident or admit that you had not been seriously injured.

RELEASE OF INFORMATION FORM

The insurance company for the other driver will ask you to sign a release form authorizing hospitals, doctors and employers to provide information about your medical treatment and employment history. They will tell you that they need this information in order to evaluate your claim. They often leave you with the impression that they are going to pay your medical bills. However, in about 99% of the cases, they do not pay medical bills until such time as the case is settled for an agreed lump sum payment.

DO I NEED AN ATTORNEY?

If the damage that you suffered was for your car alone, and you did not experience any personal injuries, you can settle your claim with the insurance company by having them pay for the repair of the automobile plus a reasonable amount for rental car insurance while your car is being repaired.

If you suffered very minor injuries, which were completely resolved within a short period of time, you may decide that you are willing to settle your case directly with the other driver's insurance company in return for a payment equal to the cost of repairing your car, car rental expenses, repayment of your medical bills, and a small amount for your pain, suffering, and inconvenience. However, before you agree to settle your claim, you should be absolutely certain that you will not be suffering from any future injuries or medical problems as a result of the accident. If you are in doubt, give us a call.

If, as a result of the accident, you suffered some significant injuries you should retain an attorney to negotiate a settlement on your behalf. The attorney will know how most insurance companies will value your claim. An

Using Medicaid to Finance Nursing Home Care and Preserving Assets — Don't Let An Inheritance Be Lost

By: Jane Kaminski Simers

The cost of long-term nursing home care is expensive and can rapidly deplete the estate of persons with modest resources, leaving very little for the spouse of the nursing home resident and nothing for the children. Long-term care insurance is an option that might be appropriate to finance long-term nursing home care. A second option is Medicaid.

Medicaid, a federal assistance program, will pay for long-term nursing home care, provided the nursing home resident's available resources are \$2,000 or less, or in the case of a married couple where both are nursing home residents, the couple's available resources are \$3,000 or less.

Giving away assets or putting assets in trust in order to meet these very limited resource allowances may disqualify the nursing home resident for immediate Medicaid eligibility. Medicaid will impose a penalty for certain transfers that it deems unpermitted for purposes of Medicaid eligibility. The horrible result is that Medicaid will not pay for nursing home care, the nursing home resident, who has given away or otherwise tied up his or her assets, has insufficient assets to pay for care, and the recipient of the gift has no obligation to return the gift or pay for the donor's care.

Generally, if a transfer is made by the nursing home resident that Medicaid deems "unpermitted" within 36 months of the application for Medicaid, a penalty based on the amount of the transfer divided by the State's average monthly cost of private nursing facility care will be imposed. This 36-month period is called the "look back period". In the event that the transfer is made from a revocable trust, the look back period is 60 months. Transfers made before the look back period are not considered by Medicaid in determining eligibility.

In certain circumstances, a nursing home resident applying for Medicaid can make transfers or make trust arrangements during the look back period, known as *permitted transfers*, that will allow assets to be sheltered or protected and not disqualify the applicant from Medicaid eligibility. These permitted transfers include, subject to limitations, transfers to the spouse or certain children, paying debt, using the community spouse allowance and monthly maintenance needs allowance, establishing self-settled Special Needs and OBRA pay-back trusts, and revising testamentary dispositions and testamentary substitutes.

In addition, certain inheritances received, or deemed to have been received, by recipients of Medicaid benefits and other need based assistance programs such as Supplemental Security Income (SSI), even if disclaimed by the recipient, could disqualify the intended beneficiary from receiving benefits until the inheritance is spent. In order to avoid the loss of benefits until the inheritance is used up, such a beneficiary may establish a self-settled OBRA Trust which will hold the inheritance for his benefit.

You may wish to review your own estate plan to determine if any of your intended beneficiaries are receiving Medicaid, SSI or other need based benefits and whether those benefits may be disrupted if an inheritance is received from you. A Special Needs Trust created by you may protect the inheritance and the beneficiaries' benefits.

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experienced attorney will also know the value that juries place on cases like your own in the county where the accident occurred. The experienced attorney will know how to accumulate the information concerning your injury, and how to handle subrogation and medical liens.

If you are injured as a result of an automobile accident, please feel free to call your attorney at Di Monte & Lizak for advice. In most cases, we will be happy to give you initial advice over the phone at no charge. If you decide to retain us as your attorneys for the presentation

of your claim, we will be happy to do so on a contingent fee basis. In other words, we will charge no fee unless a recovery is made on your behalf.

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