



LIFE BEGINS

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Senior Lawyers Section

Volume 13

Spring 2011

Number 2

Save the Date! Friday, May 13, 2011

Senior Lawyers Section 2011 Annual Meeting & CLE Seminar Marriott Sea-Tac Airport

by Carole Grayson

Another informative and entertaining seminar is coming your way. You can bank CLE credits, meet old friends, and enjoy the day at our Section's CLE on May 13 at the Marriott SeaTac Hotel.

Despite rising costs, we have held the cost to \$150 for Section members and \$170 to join the Senior Lawyers Section and attend the seminar. Non-members can register for \$225. For attendees at all price levels, this remains one of the best CLE bargains anywhere. The cost includes the seminar, written materials, an excellent lunch, parking, and a social hour at the end of the session.

See page 2 for the agenda (and further descriptions of the CLE topics) and page 3 for the registration form. Fill out and send WSBA the registration form on page 3 or register on-line at

<http://www.mywsba.org/Default.aspx?tabid=90&action=MTGProductDetails&args=6086>

We have arranged a lineup of exceptionally distinguished presenters.

The morning's lineup:

Egil Krogh will lead off on *"Integrity: Good People, Bad Choices, and Life Lessons from the White House."* **Justice Debra Stephens** will offer *"Reflections on Judicial Selection and the Independence of Judges."* The morning will be capped off with a stimulating panel on *"Police and the Community,"* as **Thomas J. Greenan** serves as moderator to **Lembhard G. Howell, Michael D. McKay, and Kathryn B. Olson.**

The afternoon's lineup:

UW Professor of Law **Karen Boxx** starts with *"Will Death Become Uncertain, Too? What We Know and Don't Know about the Federal Estate and Gift Tax after Congress' Most Recent Actions."* WSBA president-elect **Steve Crossland**, of Cashmere will tackle *"Obligations for Planning Ahead: Death, Disability, Impairment or Incapacity of an Attorney."* **David Allen** wraps up the day with a look at *"Both Sides of the Table."*

Please mark your calendar for May 13. The Section looks forward to seeing you!

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WSBA-CLE • The Innovator in Legal Education®

Join your colleagues for the WSBA-CLE:
Annual Senior Lawyers Conference:
ISSUES AFFECTING THE PROFESSION

Co-sponsored by the WSBA Senior Lawyers Section

Friday, May 13, 2011
Seattle Airport Marriott, SeaTac
Seattle, WA 98188



Approved for 6.0 CLE Credits for Washington Attorneys, including 4.25 General Credits and 1.75 Ethics Credits

Programs

7:30 a.m.

Check-in • Walk-in Registrations • Distribution of Course Materials • Coffee and Pastry Service

8:25 a.m.

Welcome and Introductions by Program Chair

Stephen DeForest — Chair, Senior Lawyers Section, Riddell Williams, Seattle

8:30 a.m.

Integrity: Good People, Bad Choices, and Life Lessons From the White House

Mr. Krogh's work on President Nixon's White House Staff involved law enforcement, narcotics control, and protecting national security information. In this latter work, he authorized an illegal covert operation. Now a national teacher and writer, he will pose and discuss three questions that relate specifically to performing consistently under ethical rules, and identify the threats to ethical behavior faced by lawyers in their practice of the law.
Egil (Bud) Krogh — Center for the Study of the President & Congress, Washington D.C.

9:30 a.m.

Reflections on Judicial Selection and the Independence of Judges

Justice Stephens discusses how both the methods of appointing and electing judges each serves the goal of securing a competent, fair and independent judiciary.

Hon. Debra L. Stephens — Justice, Washington State Supreme Court, Olympia

10:30 a.m.

Break

10:45 a.m.

Police and the Community

This panel will discuss the community relations between police and the citizenry, focusing on issues arising at confluence of police officers' professional responsibilities and the civil rights of citizens.

Moderator: Thomas J. Greenan — Gordon Thomas Honeywell Malanca Peterson, Seattle

Lembhard G. Howell — Law Offices of Lembhard G. Howell PS, Seattle

Michael D. McKay — McKay Chadwell, Seattle

Kathryn B. Olson — Director, Office of Public Accountability, Seattle Police Department

12:00 Noon

Lunch included with tuition

1:25 p.m.

Annual business meeting

1:30 p.m.

Will Death Become Uncertain, Too? What We Know and Don't Know about the Federal Estate and Gift Tax after Congress' Most Recent Actions

The reinstated federal estate tax answered some questions about the 2010 "gap" year, and created some new opportunities. However, the provisions of the new law are set to expire in two years. Ms. Boxx will summarize the provisions of the law, the uncertainty that remains, and the law's effect on the Washington estate tax.

Karen E. Boxx — Associate Professor of Law, UW School of Law, Seattle

2:30 p.m.

Break

2:45 p.m.

Obligations for Planning Ahead: Death, Disability, Impairment or Incapacity of an Attorney

What should a lawyer do to meet his or her ethical obligation to act with reasonable diligence to arrange for the protection of the clients' interests in the event of the lawyer's death, disability, impairment, or incapacity?

Stephen R. Crossland — WSBA President-elect, Board of Governors; Crossland Law Offices, Cashmere

3:30 p.m.

Both Sides of the Table

David Allen, noted criminal defense lawyer, will discuss representing defendants on both sides: law enforcement officers who injured or kill civilians in the line of duty, and civilians who allegedly assault law enforcement officers. Allen will use examples of his cases, including an Everett officer acquitted after shooting and killing a DUI suspect, contrasted with a civilian charged with attempting to murder a WSP Trooper who had given his wife a traffic ticket.

David Allen — Allen Hansen & Maybrown PS, Seattle

4:30 p.m. Complete Evaluation Forms and Adjourn

4:40 – 7:00 No-host Reception

Lodging Information

For your convenience, we have made a lodging reservation block for May 12th at the Seattle Airport Marriott. We encourage you to make your reservations now, since space is limited. Contact the Seattle Airport Marriott directly at **(800) 314-0925** and indicate you are attending the WSBA Annual Senior Lawyers Conference. Act quickly. The room block will be held until **April 12th**.

Annual Senior Lawyers Conference: ISSUES AFFECTING THE PROFESSION

Co-sponsored by the WSBA Senior Lawyers Section

Friday, May 13, 2011 • 8:25 a.m. – 4:30 p.m. with reception following
Seattle Airport Marriott • Seattle, WA



Please fill out the enclosed registration form and mail or fax to WSBA

First Name _____ M.I. _____ Last Name _____

WSBA No. _____ Firm/Company Name: _____

Street Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

Email _____

We encourage early registration. On-site registration is on a space-available basis.

11860STC • WSBA Annual Senior Lawyers Conference CLE • 5/13/11 • Lunch, parking and no-host reception included in the tuition fee.

To register online, go to www.wsba.org/seminars and enter seminar # 11860STC

- Standard Tuition • \$225**
- Senior Lawyers Section Member Tuition • \$150**
- I am enrolling as a Senior Lawyers Section Member for \$20 (membership good through September 2011) which qualifies me for the CLE registration fee of \$150 • \$170 Tuition and Senior Lawyers Section membership fee**

Total: \$ _____

- Please omit my name from the list available to exhibitors**

If special accommodations are needed, please contact Heather Kistner at 206-727-8258 or e-mail: heatherk@wsba.org or call toll-free at 1-800-945-WSBA.

Payment Information:

Sorry, the WSBA-CLE PowerPass may not be used to register for this program

- Check enclosed payable to WSBA

- Visa MasterCard

Card No. _____ Exp. Date _____

Cardholder Name (print) _____

Authorized Signature _____

Registrations received less than 48 hours before a seminar are not guaranteed a coursebook or other presentation materials on site.

Register:

- **Mail:** WSBA, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539.
- **Internet:** Register online at www.wsba.org/seminars • Order products online at www.wsba.org.
- **Phone:** 800-945-WSBA or 206-443-WSBA with credit card and Registration/Order Form in hand.
- **Fax:** 206-727-8324 Include credit card information.

Payment Policies:

Payment: Individual registrants must use a separate form, however, payment may be made with a single check or credit card for multiple parties.

Note: Please keep a copy of this brochure for your records.

Refunds • Registration fees may be refunded, less \$25 for handling, for written cancellations postmarked, emailed, or faxed by 5 p.m., up to 3 business days before the seminar. No refunds after that date, but you will receive the coursebook. Canceled registrations may not be transferred to other seminars. You may send a substitute (e.g., someone from your firm) in lieu of canceling.

office use only

Date _____ Check # _____ Total \$ _____

Editor's note: This article originally appeared in the Winter 2010-2011 newsletter of the WSBA Real Property, Probate & Trust Section. It appears with the permission of the author.

Estate Planning for Clients with Pets

by Megan J. Ballard¹

Introduction

Estate planning may now be for the dogs – literally. A confluence of factors has led many Americans to seek to include their pets in their estate plans. For example, the trend to provide for pets is logical in light of demographic data. The percentage of U.S. households owning pets is increasing;² the amount of money pet owners are spending on their pets is increasing, despite the recession;³ and the general U.S. population is aging.⁴

In addition, there is growing media attention to pet owners who provide for the care of pets after death. While the cases reported in the media involve multimillionaires, such news coverage does let people know that it is possible to plan for the care of their pets after they die. Most recently, Gail Posner, daughter of leveraged buyout pioneer Victor Posner, died in March 2010 with a trust characterized as providing \$3 million for her dogs.⁵ The trust gave her dogs the right to live in her Miami Beach mansion and provided her trustees with up to \$3 million to pay “all of the carrying costs of the Residence.”⁶ The trust, however, provides Posner’s son and only living child, Bret Carr, with \$1 million in trust. Carr filed a suit with the Dade County Probate Court June 11, 2010, challenging Posner’s trust and will.⁷ Perhaps more well-known, hotel heiress Leona Helmsley died in August 2007 leaving \$12 million in her will to her dog, Trouble. A judge later knocked this down to \$2 million after agreeing to a settlement between the trustees and the grandchildren Helmsley tried to disinherit.⁸

Finally, courts have become more willing to uphold reasonable bequests and trusts to care for pets. Judges previously thwarted testators’ attempts to care for their pets after their deaths, finding that animals could not be trust beneficiaries, in part, because the law considers them as personal property – property cannot own property. Statutory developments that authorize pet trusts and social acceptance have significantly changed courts’ approaches.

Planning for pets after a client’s death is no longer an extraordinary measure taken on behalf of pampered pets of the rich and famous. Even clients with modest means have pets that they care about deeply. Low-cost planning techniques are available to set these clients’ minds at ease.

To help estate planners meet the needs of their clients with pets, this article first reviews trusts for animals, focusing on Washington’s Animal Trust statutes. It reviews various provisions to include in an animal trust, as well as the potential tax implications of trusts for pets. The article also briefly mentions the additional planning techniques of an outright gift to care for a pet, as well as a power of at-

torney and an “Animal Document” detailing elements of care for a pet.

Animal Trusts

An animal trust will allow a pet owner to provide detailed instructions for the care of an animal and to direct the management and distribution of funds throughout the pet’s life. Thirty-nine states, including Washington, have adopted animal trust statutes and an additional three states have approved statutes authorizing honorary or purpose trusts that allow for animal trusts.⁹ The Washington legislature adopted the Animal Trust provisions in RCW 11.118 in 2001, allowing an animal to be the beneficiary of a trust.

While distinct, Washington’s statute does draw some provisions from both the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC). The National Conference of Commissioners on Uniform State Laws amended the UPC in 1990 to allow for pet trusts.¹⁰ Approximately 10 states have enacted the UPC pet trust provision or a statute based on this UPC section.¹¹ The UTC, completed in 2000, also provides for trusts for the care of animals.¹² Approximately 19 states plus the District of Columbia have adopted a pet trust statute based on the UTC’s pet trust provision.¹³ While no Washington case addresses the RCW Animal Trust provisions, states with similar language from the UTC or UPC may have case law to help resolve disputes or ambiguities.

One of the advantages of a statute authorizing an animal trust is that the statute sets forth a number of default parameters for the trust, theoretically simplifying the drafting process. In Washington, for example, the statute establishes defaults for: termination of the trust; use of principal and income; distribution of unexpended property upon termination; court appointment of a person to enforce trust provisions; trustee accounting; appointment and termination of a trustee; and trustee powers and duties. However, because these defaults may not serve your clients’ needs, drafters should pay careful attention to a number of considerations discussed below.

The Trust Vehicle

An animal trust may be established as an *inter vivos* or testamentary trust. There are advantages and drawbacks to both approaches.

One of the most significant advantages to an *inter vivos* animal trust is that it can work to provide care for a pet during the owner’s life if he or she becomes unable to care

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for the animal. In addition, an *inter vivos* trust is effective at the time the owner dies, unlike a testamentary trust. In other words, an *inter vivos* trust involves no delay between death and the subsequent probate of the estate that funds the trust. This, of course, is important because a pet's needs cannot wait for the conclusion of probate. Finally, it may be easier for a pet owner to change an *inter vivos* trust, rather than having to go through will execution formalities to amend a testamentary trust.

The downside to an *inter vivos* animal trust is that it might cost more to create and administer than a testamentary trust. This is, in part, because an *inter vivos* trust requires a separate trust document, not a trust provision incorporated into a will. In addition, an *inter vivos* trust has to be funded during the owner's life. This, however, can be done with a minimal amount. There also may be costs related to the administration of an *inter vivos* trust during an owner's life.

The potential disadvantages of an *inter vivos* trust highlight the likely advantages of a testamentary trust. A testamentary trust might be somewhat less costly to create and will not involve administrative costs during the owner's life because it does not become operational until after the owner's estate is probated.

The People

Estate planners will also need to help clients choose an appropriate caregiver for the animal and a trustee. These should be different people so that both can ensure that the other is acting in the pet's best interest.

The trust should convey the pet and funds to a trustee with instructions that the trustee deliver custody of the pet to a designated caregiver. Clients should select a trustee willing to distribute funds to the caregiver for the benefit of the pet. As with any trust, pet owners should first talk to the proposed trustee to determine his or her willingness to fill this role, and should be willing to pay fees to the trustee. The trust should also name a successor trustee in the event that the first trustee is unwilling or unable to serve.

A trustee's duties in administering an animal trust are different than with a trust benefiting a person. The trust should require the trustee to check on the pet and its new home periodically. Some trusts authorize a trustee to employ a person to make unannounced spot checks on the caregiver to be certain that the pet is cared for properly. The trust should require the trustee to file periodic accountings with the caregiver so that the caregiver knows how the trust assets are being managed.

An appropriate caregiver is central to the success of an animal trust. Because taking care of an animal is a personal favor in many respects, the client should discuss the

responsibility first with the caregivers to be named. The client should be willing to pay fees to the caregiver. For those who are willing to serve, the trust should name a primary caregiver but also alternate caregivers if the first choice is unable or unwilling to serve for the pet's entire life. The trust should also authorize the trustee to name a caregiver if none of the individuals named are able to accept the animal.

A significant fear of many clients is that their trustee will not be able to secure an appropriate caregiver and the animal will eventually be put down. Drafters can assuage this fear in a number of ways. The trust could name an animal rescue or placement group to find a home for the animal. With this approach, it would be wise to leave a bequest to the group in the event they do find a home for the animal. Alternatively, the trust could identify a group of people to serve as a panel to locate a suitable caregiver. This group might include the animal's veterinarian, and the settlor's family members and friends. A final option is to name a pet retirement home or sanctuary if all previously named caregivers are unable or unwilling to take care of the animal.

In addition to a trustee and a caregiver, the client should consider designating a separate trust protector to enforce the purpose of the trust. Be certain to designate at least one alternate trust protector as well. Under RCW 11.118.050, the pet caregiver can serve as a trust protector and enforce the trust. But if that person tires of caring for the pet, he or she may not effectively ensure that the trustee is acting in the animal's best interest.

A trust protector is particularly important in Washington in light of the Trust and Estate Dispute Resolution Act (TEDRA).¹⁴ TEDRA facilitates nonjudicial resolution of disputes related to trusts and estates. Under TEDRA, all parties with an interest in the matter can agree to disregard the trust, as long as they do so with unanimity. This means that disgruntled heirs can frustrate the intentions of a pet owner to care for their pet. A trust protector designated in the trust can prevent subversion of the owner's wishes under TEDRA by simply withholding consent to alter or disregard the trust.

The Animals

Washington will allow an animal to be the beneficiary of a trust if it is "a non-human animal with vertebrae."¹⁵ The animal trust provisions further require that the beneficiary animals be identified either individually or "in such other manner that they can be readily identified."¹⁶

There are at least two schools of thought on the detail with which a trust should identify an animal. The approach

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preferred by most estate planners is to clearly identify the animal to be cared for under the trust. Adequate identification can thwart the unscrupulous caregiver who fraudulently substitutes a second or third "black cat" to continue to receive trust funds. In addition to a detailed description of the animal in the trust instrument, pet owners should provide photographs to the trustee. A pet owner may also wish to tattoo an animal or implant a microchip, although some experts suggest that this might encourage the not-so-caring caregiver to mutilate an animal to remove the microchip or tattoo.

The other approach is to use a general description, such as "any animals living at the time of my [trustor's] death." This general identification allows for the possibility that an original animal might die, but the owner replaces it with another pet that the owner wishes to benefit from the trust. While the general pet description obviates the need for amending the trust if an original pet dies, it does give rise to potential abuse by the unscrupulous caregiver.

A middle-ground approach is to draft a trust that benefits a pet identified in a separate pet identification memorandum. The memorandum can be modified easily and can specifically identify the intended beneficiary animals. Such a memorandum, however, will not be binding on the trustee or caregiver. To make a separate memorandum binding, a testator could draft it as a list to dispose of tangible personal property, under RCW 11.12.260. In doing so, the list would not only need to describe the pet "with reasonable certainty," but it also must identify the recipient of the pet "with reasonable certainty." Moreover, the trust must refer to this list and the list must either be in the testator's handwriting, or it must be signed by the testator.

Funding and Distributions

It is wise to calculate carefully the estimated amount necessary to provide for the animal and pay fees, if any, to the caregiver, trustee and trust protector. For clients with more limited resources, knowing they have accurately set aside a sufficient amount for the care of their pet will provide solace. For clients with substantial resources, calculating an amount that is reasonable may help avoid a challenge. As the amount of the funds set aside for the animal trust increases, so might the irritation level of disgruntled heirs. An unreasonably large sum transferred for the care of an animal might encourage heirs and remainder beneficiaries to contest the arrangement. Moreover, in at least two cases, large bequests to pets have prompted death threats against the pet beneficiaries, requiring extra security measures at extra cost to the trust.¹⁷

The following factors should be taken into consideration to appropriately fund a trust to care for a pet: the

animal's life expectancy; the need for medical treatment; amounts to cover pet-sitting services when the caregiver is on vacation; and burial or cremation expenses. In addition, if the pet may introduce potential liability to the caregiver, funds should be available for insurance premiums. You may wish to include in the trust instrument the computation of the amount so that a court will better understand the basis for the amount set aside. Finally, be sure to name as trust property other items that should accompany the pet such as a cage or bed.

The trust should also specify the method of disbursing funds to the caregiver. The simplest method is a fixed monthly sum for the care of the animal regardless of the actual expenses. To ensure the caregiver is adequately reimbursed, the trust can also give the trustee qualified discretion to make additional distributions "as needed" or authorizing the trustee to reimburse the caregiver when actual expenses exceed the normal distributions.

Alternatively, the trust could authorize the trustee to reimburse the caregiver only for actual expenses. This distribution method would impose additional administrative costs for the trustee and burdens on the caregiver.

Termination and Remainder Beneficiaries

The animal trust statutes state "Unless otherwise provided in the trust instrument or in this chapter, the trust will terminate when no animal that is designated as a beneficiary of the trust remains living."¹⁸ Rather than terminating the trust at the death of the animal, however, drafters should consider keeping it active until all post-death expenditures are paid. Final veterinary bills and burial or cremation costs can be considerable.

The trust should name remainder beneficiaries to take trust funds remaining at the animal's death. Use caution when making this designation because these beneficiaries have a financial interest in the trust that conflicts with the interest of the pet. It may not be wise to name the caregiver of the animal as a remainder beneficiary because this gives the caregiver a motive to hasten the pet's death. Some trusts, however, authorize a trustee to distribute remainder assets to a caregiver if the trustee determines, in the trustee's sole discretion, that the caregiver performed his or her duties exceptionally well. This approach should provide the trustee with a way of assessing care that is executed "exceptionally well."

Finally, drafters should consider adding a provision to the trust instructing the trustee to prioritize the interest of the pet over the interests of the remainder beneficiaries. Otherwise, the trustee's default duty to treat all beneficiaries impartially may cause the trustee to be stingy with the pet

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if funds begin to dwindle in order to leave something for the remainder beneficiaries.

Additional Terms

The terms of the trust should include general information about the pet's care, such as feeding and medical care instructions. Specific information, given that it might change, can be left to a side letter to which the trust refers. Again, however, such a letter will not be binding on the trustee or caregiver.

Some experts advise including a spendthrift clause in the trust that prohibits the caregiver from voluntarily or involuntarily alienating any interest in the trust funds.

A pet owner may also direct the trust to dispose of pet remains in a particular manner. Use caution, however, with burial provisions because many human cemeteries do not allow pet remains.¹⁹ A designated pet cemetery might be the safest option.

Tax Implications

Income earned on the funds held in trust for the care of the pet is subject to federal income tax. To whom it is taxed depends on the type of animal trust constructed.

In a Washington statutory animal trust, the animal is the beneficiary. Regardless of whether income is distributed or not, income from an irrevocable animal trust is likely taxed to the trust under 26 U.S.C. § 1(e).²⁰ The trust is not credited for distributions made to a pet beneficiary because the animal does not file its own return on the income it receives.²¹ The caregiver is an agent of the trust. Distributions sent to the caregiver for the benefit of the animal are not treated as the caregiver's income.

An animal trust, however, can be established under traditional trust principles rather than pursuant to an Animal Trust statute. In a traditional trust, the caregiver is the beneficiary, not the animal; the trust provides funds and the animal to the caregiver. Distributions of income to the caregiver under a traditional trust are taxed to the caregiver and deducted from the trust's income.

Whether a traditional trust or a statutory trust is preferable for income tax minimization depends on the caregiver's tax bracket, the amount of income a trust earns, the amount of income from the trust that is distributed, and the cost difference, if any, of drafting a traditional trust compared to a statutory trust.

Drafters should also be aware of possible federal gift and estate tax implications of an animal trust. While there is no authority directly on point, it is unlikely that a grantor's contributions to an irrevocable *inter vivos* statutory pet trust (where the animal is the beneficiary) would qualify for the annual gift tax exclusion. Furthermore, the IRS does not allow an animal trust for the lifetime benefit of the animal,

followed by a remainder in a qualified charity, to benefit from a charitable deduction.²²

Additional Planning Approaches

Outright Conditional Gift

As an alternative to a trust, a pet owner could gift the animal to a beneficiary who will serve as the animal's caregiver, along with a reasonable sum to care for the pet. The gift should be conveyed to the caregiver as a life estate, in case the caregiver predeceases the pet, and it also should be conditioned on the beneficiary taking proper care of the animal. The deed of gift should designate another beneficiary to hold the executory interest – someone who can step in to take over the animal and funds if the first caregiver fails to meet the condition of taking proper care of the animal. The deed of gift should also name an alternate beneficiary to care for the pet should the initial caregiver predecease the animal or disclaim the gift. In addition, because the deed of gift should be delivered to the caregiver during the pet owner's life, the owner should retain a life estate in the animal and the funds.

Planning for the care of a pet in this manner is less costly than using a trust. Fees for drafting a deed of gift and costs of administration, if any, will be less than those for drafting and administering a trust. Nonetheless, this is the least protective means of caring for the pet because no one is held to a duty of ensuring that the animal is receiving proper care. The holder of the executory interest will have the ability to determine if the primary beneficiary is adhering to the condition of caring for the pet, but only if motivated to do so.

Power of Attorney

Regardless of whether a pet owner has a trust, a pet owner's durable financial power of attorney should authorize an agent to care for a pet and spend the owner's funds to provide for the pet. If the pet owner has established an *inter vivos* animal trust, the power of attorney should also give the agent the ability to convey funds to the trust.²³

"Animal Document"

Minimally, a pet owner should prepare a document that contains information about his or her pets in the event that the owner can no longer provide care. This document should include: the pet's name, type of animal, location where housed, care instructions, possible emergency caregivers for the pet, veterinarian contact information, medical history, and comments on the pet's behavior or personality. A pet owner should keep this document with estate planning documents.

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Conclusion

Helping a client plan for the care of his or her pet is usually straightforward and can bring significant solace to pet owners of even very moderate means. To get started, simply include a question about pets on an estate planning intake questionnaire.

For additional resources, consult:

Websites:

<http://www.professorbeyer.com/Articles/Animals.htm> (website of Gerry W. Beyer, professor at Texas Tech University School of Law. Includes links to articles on estate planning for pets and sample language).

http://www.professorbeyer.com/Articles/Animal_Statutes.htm (Professor Beyer's site also includes this page with links to state pet trust statutes, identifying those based on the UPC or the UTC).

<http://www.animallaw.info/articles/armpuspettrusts.htm> (map of the United States with links to the states with pet trust statutes).

http://www.humanesociety.org/assets/pdfs/pets/pets_in_wills_factsheet.pdf (Humane Society resources, including sample will language directing an executor to find a proper caregiver for an animal.)

<http://www.wsba.org/lawyers/groups/animallaw/default.htm> (Animal Law Section of the Washington State Bar Association).

Books & Articles:

Ashley Glassman, Comment, *Making Pet Trusts Instruments of Settlers and Not of Courts*, 89 OR. L. REV. 385 (2010).

Gerry W. Beyer & Jonathan P. Wilkerson, *Max's Taxes: A Tax-Based Analysis of Pet Trusts*, 43 U. RICH. LAW REV. 1219 (2009).

Jonathan P. Wilkerson, Comment, *A "Purr"fect Amendment: Why Congress Should Amend the Internal Revenue Code to Apply the Charitable Remainder Exception to Pet Trusts*, 41 TEX. TECH LAW REV. 587 (2009).

Cheryl C. Mitchell & Ferd H. Mitchell, *Planning For Care Of Pets And Service Animals: Preparing Trust Documents*, 26 WASH. PRAC., ELDER LAW AND PRACTICE § 2.84.

Cheryl C. Mitchell & Ferd H. Mitchell, *Trust Administration: Pet Trusts*, 26B WASH. PRAC., PROBATE LAW AND PRACTICE § 8.15.

Breahn Vokolek, *America Gets What it Wants: Pet Trusts and a Future for Its Companion Animals*, 76 UMKC LAW REV. 1109 (2008).

Stephanie B. Casteel, *Estate Planning for Pets*, PROBATE & PROP. 9 Nov/Dec 2007.

Rachel Hirschfeld, *Ensure Your Pet's Future: Estate Planning for Owners and Their Animal Companions*, 9 MARQ. ELDER'S ADVISOR 155 (2007).

- 1 Megan J. Ballard is an Associate Professor at Gonzaga University Law School. She teaches Property, Wills and Trusts, and Animal Law, among other courses.
- 2 The number of U.S. households with pets is approximately 71.4 million (62% of all homes), an increase from 56% in 1988. The American Pet Products Association, *Industry Statistics and Trends*, at http://www.americanpetproducts.org/press_industrytrends.asp (reporting on a 2009/2010 National Pet Owners Survey).
- 3 The American Pet Products Association estimates that the pet industry grew by 5.4% in 2009, with spending on food, supplies, veterinary care, animal purchases and services growing from \$43.2 billion in 2008 to over \$45.5 billion in 2009. American Pet Products Association, *Pet Industry Grows More Than 5% in 2009 and Anticipates Nearly 5% Growth Again This Year*, Feb. 8, 2010, at <http://media.americanpetproducts.org/press.php?include=141525>.
- 4 U.S. Census Bureau, *THE NEXT FOUR DECADES: THE OLDER POPULATION IN THE UNITED STATES: 2010 TO 2050* (May 2010) (finding that "Between 2010 and 2050, the United States is projected to experience rapid growth in its older population") at <http://www.census.gov/prod/2010pubs/p25-1138.pdf>.
- 5 The Miami Herald reported that "Miami Beach's newest socialite, Conchita, lives in an \$8.3 million Sunset Island mansion, owns a Cartier diamond necklace and has a \$3 million trust fund to support a lifestyle of designer duds, massages and pedicures," referring to Posner's pet Chihuahua. Elaine Walker, *Posner Family Dogged by Lawsuits Over Inheritance*, Miami Herald, June 2, 2010, at <http://www.miamiherald.com/2010/06/20/1690416/posner-family-dogged-by-lawsuits.html#ixzz0wt599nAW>.
- 6 Amendment and Restatement Dated December 18, 2008 of the Gail S. Posner 2008 Revocable Trust dated July 22, 2008, Third Article, Paragraph A.1. The trust is linked to an online Wall Street Journal Article: Mark Maremont &

continued on next page

Estate Planning for Clients with Pets from previous page

- Leslie Scism, *Little Dog, Large Estate: Chihuahua at Center of Fight over Heiress's Will*, *THE WALL ST. J.*, June 17, 2010 at http://online.wsj.com/article/SB10001424052748703513604575311020555877854.html?mod=wsj_india_main. The Trust also allows a housekeeper and personal assistant to receive \$5 million and to live in the mansion rent free if she takes care of the dogs "with the same degree of care that the Settlor provided." *Id.* at Article Three, Paragraph A.2. and A.3.
- 7 Mark Maremont & Leslie Scism, *Little Dog, Large Estate: Chihuahua at Center of Fight Over Posner Heiress's Will*, *WALL ST. J.* June 17, 2010 at http://online.wsj.com/article/SB10001424052748703513604575311020555877854.html?mod=wsj_india_main.
 - 8 Herbert E. Nass, *Oh Leona!* *TRUSTS & ESTATES*, 62 August 2008. Also notable, Majel Roddenberry, actress and wife of Star Trek creator Gene Roddenberry, died in December 2008. An *inter vivos* trust provided her dogs with a mansion to live in and \$4 million for their care. An E! Online web article has a link to Ms. Roddenberry's trust document, but pages 9 and 10 are missing. Natalie Finn, *No Dog-Eat-Dog World for Star Trek's Canine Heirs*, *Apr. 22, 2009* at http://www.eonline.com/uberblog/b120199_No_Dog_Eat_Dog_World_for_It_i_gt_Star_Trek_It_i_gt_s_Canine_Heirs.html.
 - 9 See, e.g. Idaho Code § 15-7-601. Purpose trusts.
 - 10 UPC § 2-907.
 - 11 State Pet Trust Statutes at http://www.professorbeyer.com/Articles/Animal_Statutes.htm.
 - 12 UTC § 408.
 - 13 State Pet Trust Statutes at http://www.professorbeyer.com/Articles/Animal_Statutes.htm.
UTC § 408.
 - 14 R.C.W. chapter 11.96A; I.C. chapter 15-8.
 - 15 R.C.W. 11.118.010.
 - 16 R.C.W. 11.118.020.
 - 17 A \$226,000 testamentary trust establish in England in 2003 for the benefit of Tinker the cat resulted in death threats against Tinker, who had to be moved to a safe house. <http://www.dailymail.co.uk/news/article-479153/>
The-pet-rich-list-worlds-millionaire-mutts-moggies.html. Leona Helmsley's dog, Trouble, also received death and kidnap threats after news of Trouble's trust became public. Security for Trouble costs an estimated \$100,000 each year. Jeffrey Toobin, *Rich Bitch*, *THE NEW YORKER* (Sept. 29, 2008).
 - 18 R.C.W. 11.118.020.
 - 19 Leona Helmsley's will directed that her dog be buried next to her remains in the family mausoleum, but the cemetery refused to comply. In January 2009, Washington State Senator Jacobsen introduced a bill that would have required all cemeteries to allow pet burials, either in a special section of the cemetery or in an area "designated solely for the comingling and burial of pet remains and human remains." The bill died in committee. <http://apps.leg.wa.gov/billinfo/summary.aspx?year=2009&bill=5063>.
 - 20 See Gerry W. Beyer & Jonathan P. Wilkerson, *Max's Taxes: A Tax-Based Analysis of Pet Trusts*, 43 *U. Rich. Law Rev.* 1219 (2009) (pointing out that some uncertainty exists as to whether income earned is taxed under § 1(d) or § 1(e), in light of Rev. Ruling 76-486, but concluding that taxation under § 1(e) is more likely). Taxation of income earned on revocable inter vivos animal trusts follows traditional trust income taxation rules.
 - 21 See Rev. Ruling 76-486.
 - 22 Rev. Ruling 78-105. For more information on taxation of animal trusts, see Gerry W. Beyer & Jonathan P. Wilkerson, *Max's Taxes: A Tax-Based Analysis of Pet Trusts*, 43 *U. RICH. LAW REV.* 1219 (2009); Jonathan P. Wilkerson, Comment, *A Purrfect Amendment: Why Congress Should Amend the Internal Revenue Code to Apply the Charitable Remainder Exception to Pet Trusts*, 41 *TEX. TECH LAW REV.* 587 (2009); and Rachel Hirschfeld, *Ensure Your Pet's Future: Estate Planning for Owners and Their Animal Companions*, 9 *MARQ. ELDER'S ADVISOR* 155, 169-172 (2007).
 - 23 For power of attorney language, see Rachel Hirschfeld, *Ensure Your Pet's Future: Estate Planning for Owners and Their Animal Companions*, 9 *MARQ. ELDER'S ADVISOR* 155, 169-172 (2007).

**RIDDELL WILLIAMS P.S.**

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January 3, 2011

Mr. J. Richard Manning
President, Law Fund
500 Union Street, Suite 925
Seattle WA 98101

Dear Dick:

As chair of the WSBA Senior Lawyers Section, it is my privilege to forward to you the enclosed check for \$5,000 as a contribution to the 2010 Campaign for Equal Justice. At the time the Section's Executive Committee approved the contribution at its November meeting, it asked that to the extent feasible, the money be allocated to services for the elderly.

Sincerely,

Stephen E. DeForest
of
RIDDELL WILLIAMS P.S.

SED/sm
Our File: 99999-99999
Enclosure

Senior Lawyers Bill of Rights

by Steve DeForest, Section Chair

1. The right to pay WSBA dues at the same rate as when admitted to practice.
2. The right to claim kinship with Frank Weaver, Joseph Mallory, Charles Donworth, Richard Ott, Robert Hunter, Matthew Hill, Robert Finley, Hugh Rosellini, and Harry Foster.
3. The right to forego IPODs, I-Pads, I-Phones, Wi-fi, Blackberries, cell phones, and other electronic devices without being considered a Neanderthal.
4. The right to have parking spots in garages designated for seniors only next to the handicap spaces near the elevator. Let those who can walk farther, walk farther.
5. The right to be marginalized at your own pace.
6. The right to forget that which you should have remembered.
7. The right to receive and use an embedded chip that unlocks or releases tamper-proof containers.
8. The right to enjoy being superannuated.
9. The right to determine the order in which the senses (sight, hearing, taste, touch and smell) disappear from your own body.
10. The right to burp, belch and break wind without shame or censure.
11. The right to demand and obtain bladder relief stops whenever and wherever.
12. The right to be respected for what you were and not for what you are now.
13. The right to be understood for what you meant to say and not for what you actually said.
14. The right to be free of the requirement to multi-task.
15. The right to call 3 billable hours a solid day's work.
16. The right to turn off your hearing aid if the conversation gets too tiresome.
17. The right to say that when you started in the practice, you used carbon paper, a mimeograph machine, and a wet paper copier, without being laughed at or ridiculed.

Readers are invited to contribute their additions to the list. As the author notes, the Founding Fathers didn't come up with their Bill of Rights overnight, either.

Attendees at the WSBA 50-Year luncheon on November 10, 2010, received this handout. Life Begins staff thought other Senior Lawyers would enjoy it, as well to catch up on memory lane.

1960: A Moment in Time

The year is 1960. The average salary is \$5,315, but unemployment is 6.8 percent. The average house costs \$16,500; a postage stamp is 4 cents; a loaf of bread costs 20 cents; and a gallon of gas is still just a quarter.

In February, four African-American students stage a civil rights sit-in at a Woolworth's counter in Greensboro, North Carolina (now the International Civil Rights Center and Museum.) By the fifth day, the protest includes more than 300 students from local schools. While not the first sit-in of the civil rights movement, it creates general awareness of the movement and leads to similar protests in other cities in the South.

In May, the U.S. Food and Drug Administration approves the birth control pill, to be used only by a doctor's prescription. In an article in the *Seattle Post-Intelligencer* the following day, a FDA official says that "approval was based on the question of safety....When the data convinced our experts that the drug meets the requirements of the new drug provisions, our own ideas of morality had nothing to do with the case." The cost of a month's supply is \$10.80.

In an effort to improve the quality and completeness of the data, the eighteenth federal census is the first to mail preliminary census forms to all United States households, to be filled out in preparation for personal interviews by census takers. The final count of the 1960 census illustrates the effects of suburbs and urban sprawl and the continuing trend of relocation from rural to urban areas. The effects of the post-war "baby boom" are also clear, with a 42 percent increase from 1950 in the number of persons aged 0-14, compared to a 20 percent increase in overall population. The data also shows that the median income of women and minorities lags significantly behind that of white males. The total population of Washington state in 1960 is 2,853,214.

In August, the space race continues as the Russian craft *Sputnik 5* carries two dogs and several rats and mice into orbit. It is the first spaceflight to send animals into orbit and return them safely back to Earth, paving the way for the first human orbital flight the following year. 1960 also sees the first successful weather satellite, the American craft *Tiros I*.

John F. Kennedy and Richard Nixon meet in the first televised presidential debate; in November, Kennedy wins the presidential election.

The Pulitzer Prize in fiction is awarded to *Advise and Consent*, by Allen Drury. Other popular books published this year include *Hawaii*, by James Michener; *The Leopard*, by Giuseppe di Lampedusa; and *To Kill a Mockingbird*, by Harper Lee, which would win the 1961 Pulitzer Prize.

Popular shows on TV this year include *The Flintstones*, *Candid Camera*, and *The Twilight Zone*. Lucille Ball files for

divorce from Desi Arnaz, and Elvis Presley ends his two-year stint in the U.S. Army.

At the Academy Awards, *The Apartment* wins Best Picture. Burt Lancaster wins Best Actor for his performance in *Elmer Gantry*; Greer Garson wins Best Actress for *Sunrise at Campobello*. Other notable movies this year include *Psycho*, *Spartacus*, and *The Alamo*.

At the Grammy Awards, the Record of the Year is "Theme From a Summer Place" by Percy Faith. The Album of the Year is *The Button-Down Mind of Bob Newhart*. Ella Fitzgerald wins Best Female Vocal Performance for "Mack the Knife," and Ray Charles wins Best Male Vocal Performance for "Georgia on My Mind." Also this year, the Beatles give their first public performance in Hamburg, Germany.

In sports, the Pittsburgh Pirates win the World Series against the NY Yankees. Although the Super Bowl does not yet exist, the 1960 National Football League Championship Game pits the Green Bay Packers against the victorious Philadelphia Eagles.

The 1960 Winter Olympics are held at Squaw Valley, in California. The 1960 Summer Olympics are held in Rome, Italy. Cassius Clay, later known as Muhammad Ali, wins boxing's light-heavyweight gold medal. American swimmer Jeff Farrell wins two gold medals in swimming after undergoing an emergency appendectomy six days before the Olympic trials. The United States takes a total of 71 medals: 34 gold medals, 21 silver, and 16 bronze. It is the first Summer Olympics in which the athletes march under the present United States flag, as Hawaii was admitted to the Union in 1959.

Notable inventions in 1960 include the first functioning LASER, constructed by American physicist Theodore Maiman in California, which is only capable of operating in short pulses. (Later that year, Iranian physicist Ali Javan, with William R. Bennett and Donald Herriot, constructs the first gas laser, which is capable of continuous operation.) The first automatic telephone answering machine, invented by Dr. Kazuo Hashimoto, goes on sale in the United States this year.

In Washington...

On November 8, Washington voters choose Richard Nixon for U.S. president (though John F. Kennedy wins the election) and Albert Rosellini for governor, and vote to retain the "Alien Land Law" provision of the Washington State Constitution, which bars Asians from owning property. Senator John F. Kennedy wins the national election by a slim 119,000 votes after campaigning on the issue of an alleged "missile gap."

continued on next page

Gonzaga University School of Law Reunion Weekend

August 12 and 13, 2011

by Nancy Fike, Director of Alumni Relations, Gonzaga School of Law

Gonzaga University School of Law will celebrate reunion weekend on August 12 and 13, 2011. Reunion weekend will honor our Gold Members, those alumni celebrating their 50 year anniversary. Those alumni who graduated 1961 are: Tom Baker, Jr, Phillip Becker, Don Brockett, Ben Brunner, Carson Eller, Laurantz Falk, Gerald Gates, Gene Godderis, Robert Gunovick, J. M. Haggarty, Fred Halverson, John Hughes, John Krall, Joseph Meagher, Frank Powell, David Rhoten, John Schultheis and Don Shaw. A Gold Club luncheon will be held at noon on Friday, August 12, honoring those members.

Gonzaga Law School reunion will also celebrate the following alumni years: 55 year – 1954, 45 year – 1961, 40 year – 1971, 35 year – 1976, 30 year – 1981, 25 year – 1986, 20 year – 1991, 15 year – 1996, 10 year – 2001 and 5 year – 2006. The weekend will be filled with an all class barbeque on Friday evening, golf, wine tasting and family fun at Riverfront Park on Saturday. Concluding the events will be a dinner cruise on Lake Coeur d' Alene. For more information visit www.law.gonzaga.edu/alumni or call Nancy Fike, Director of Alumni Relations and Development, at 509-313-3605.

1960: A Moment in Time from previous page

Seattle dedicates its new downtown central library, located between 4th and 5th avenues and Madison and Spring streets. The modern, functional-looking building, which replaced a classical Beaux Arts building, is designed by Leonard Bindon and John L. Wright, and is one of Seattle's first and finest examples of the International Style. Its modern innovations include a drive-through book-return window, escalators, air conditioning, and abstract modern art, including George Tsutakawa's *Fountain of Wisdom*, his first public commission. Soon to come are photocopying machines, micro-card readers, and, later, computerized databases.

Stanley Ann Dunham, mother of President Barack Obama, graduates from Mercer Island High School. Dunham lived in the Seattle area for five years when she was a teenager; she and her family arrived in Seattle in 1955 and relocated to Mercer Island in 1956. After graduation, Dunham will move to Hawaii, returning briefly to Seattle with the newborn Barack in 1961 before settling in Hawaii in 1962.

In 1960, researchers at the University of Washington invent several important improvements to kidney dialysis equipment and technology, helping to make home dialysis practical and prolonging the lives of thousands of patients whose kidneys have failed. No patents are taken out on these improvements, allowing them to be used quickly and economically throughout the world.

In October, Seattle welcomes Crown Prince Akihito and Crown Princess Michiko of Japan during their tour of the United States, commemorating the centennial of the first trade and friendship treaty between the two countries.

Also in October, former U.S. President Harry S. Truman urges voters in Seattle to vote for Senator John F. Kennedy in the upcoming presidential election. Before a breakfast meeting with a group of labor leaders, Truman walks the streets of Seattle to speak with the public.

During fall 1960, Nobel Prize-winning author John Steinbeck, along with his poodle, Charley, visits Seattle in his pickup truck. Steinbeck, on a journey across the country, records his experiences in *Travels with Charley*, published in 1961.

And at the WSBA...

In January 1960, 40 people pass the bar exam. Compare that to February 2010, when 355 candidates passed the bar exam. In July 1960, 87 people pass the bar exam. In July 2010, 625 passed the bar exam.

Dues increased from \$20 to \$25 for WSBA members in practice five years or more; dues for members in their first five years of practice rise from \$10 to \$15. Dues for inactive members hold steady at just \$2.

Since 1960, like 2010, is an election year, a *Bar News* item entitled "When Political Items Are Not News" explains the editors' stand on *not* taking a political stance. "[T]he *Bar News* must adopt an attitude of disdain as to such items," they note. "Such a policy forecloses an easy source of page-filling material. However, the hazards of welcoming political news contributions are obvious....in short, members are requested not to send material based on politics, or if sent, not to expect publication."

Today, November 10, 2010, we honor you...

You, the members of the WSBA class of '60, have seen many changes – cultural, political, and societal – during your years in the legal profession. We hope you enjoy celebrating your 50 years of membership in the Washington State Bar Association, as you gather here today with friends and colleagues to share stories and memories. Your achievements and dedication are an inspiration. You have served our profession and our community for 50 years, and have made us all proud to be lawyers. We salute you and we thank you.

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CLE CREDITS FOR PRO BONO WORK?

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Yes, it's possible!

Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six (6) hours of credit annually for providing pro bono direct representation under the auspices of a qualified legal services provider.

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For further information contact Sharlene Steele, WSBA Access to Justice Liaison, at 206-727-8262 or sharlene@wsba.org.

Information for Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

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Each topic is sold separately. Pamphlets are \$9 for 25, \$15 for 50, \$20 for 75, and \$25 for 100. Pricing for larger quantities is available on request.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.

Article Ideas? Your Input Is Needed!

Life Begins, the Senior Lawyers Section newsletter which you are reading at this very moment, works best when section members actively participate. We welcome your articles and suggestion regarding *your lives in or out of the law*.

Please contact Carole Grayson, editor, to submit an article, or if you'd like to write an article, or if you have ideas for article topics. Here's how to reach her: phone (206) 543-6486, email cag8@uw.edu, fax (206) 543-3808, or snail mail at UW Student Legal Services, Box 352236, Seattle, WA 98195.

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- Join a WSBA section.
- Register for a CLE seminar.
- Shop at the WSBA store (order CLE recorded seminars, deskbooks, *Resources*, etc.).
- Access Casemaker free legal research.
- Sign up to volunteer for the Home Foreclosure Legal Assistance Project.
- Sign up for the Moderate Means Program.

2010-2011 Senior Lawyers Section

wsba.org/lawyers/groups/seniorlawyers

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