

Theodore Roosevelt Inns of Court
Surrogate's Court: Pets and People
January 17, 2024
6:00pm – 8:00pm

- I. Introduction to Program and Guest Speaker Meg Reilly
 - Hon. Elizabeth Fox McDonough (3 minutes)
- II. Dos and Don'ts of Surrogates Practice
 - Hon. Margaret Reilly (20 minutes)
- III. Question and Answer (10 minutes)
- IV. Introduction – The Relevance of Pet Planning
 - Debora Nobel (3 minutes)
- V. Introduction of Guest Speaker Lenore S. Davis
 - Emily Franchina (2 minutes)
- VI. Pet Planning
 - Lenore S. Davis (20 minutes)
- VII. Introduction to Topic on EPTL 2-1.7(a) – Declaring a Missing Person Deceased and Introduction of student participants with special thank you to Richard Eisenberg for his work with the students
 - Emily Franchina (2 minutes)
- VIII. Student Presentation on EPTL 2-1.7(a) (10 minutes)
- IX. Skit (20 minutes)
 - Judge Fox-McDonough, Emily Franchina, Debora Nobel, Christopher Spinosa, Michael Vivanco
- X. Question and Answer (10 minutes)

Skit for Surrogates Court Program

Characters: Judge – Hon. Elizabeth Fox McDonough
Missing Person: Sonny Messing
Witness # 1 : Petitioner – Father of the Missing Person (Ben Messing)- Michael Vivanco
Attorney for Petitioner – Emily Franchina
Witness #2: Guardian Ad Litem – Christopher Spinosa
Attorney for GAL – Debora Nobel

Judge: The case before the Court is a Petition on the part of Ben Messing, father of Sonny Messing (absentee) seeking to declare Sonny Messing deceased pursuant to EPTL201.7(a) and for the granting of Letters of Administration. Counsel for the Petitioner, please call your first witness.

Emily F: Thank you Your Honor. As my first witness I wish to call Ben Messing.
Mr. Messing, do you swear or affirm that the testimony you give here today will be the truth?

Ben: I do.

Emily F: Please state your name and address for the record.

Ben: Ben Messing, 123 Maple Lane, Mineola, New York.

Emily F: Mr. Messing, are you the father of Sonny Messing and have you brought with you today documentary proof of this in the form of a birth certificate?

Ben: Yes, I am the father of Sonny Messing and I have here a certified copy of Sonny's birth certificate.

Emily F: Mr. Messing, when was your son born?

Ben: January 15, 1982.

Emily F: Can you summarize for the Court your association with Sonny from the time he was born up until the last time you saw him?

Ben: Sonny was a delightful playful child but when he reached adolescence, he became sullen and withdrawn. His grades in school were failing in high school and he began to see counselors through the school but they were not helpful. Eventually he was referred for psychiatric care. He was diagnosed with depression and bipolar disorder and was placed on medication. Unfortunately, he was not reliable when it came to taking the medication, even with the supervision of myself and his mother, and he developed substance abuse issues as well. After graduating high school, Sonny tried various jobs. At first, when he took his medication, he was able to function at work. Eventually, he was not stable enough to keep a job for more than a few weeks. Over the years he was hospitalized on multiple occasions for short term psychiatric treatment. When his condition deteriorated to the point that he was unable to work at all, he applied for Social Security Disability, which was deposited directly into a bank account in his name. In 2019 Sonny was living in a group home in Suffolk County. On January 2, 2019 I was told by the counselor at the home that Sonny became agitated and suicidal. I was told he had

delusions, paranoia and was unable to attend to his own basic needs. He was involuntarily committed to the Adult Psychiatric Unit at Stony Brook Hospital and was placed on suicide watch. A copy of his medical records have been submitted to the Court with this petition. After one month at Stony Brook, arrangements were made for Sonny to be transported to Pilgrim State Psychiatric Center for a hearing concerning his involuntary commitment. The last time I saw Sonny was a supervised visit at Stony Brook 2 days before he went missing, which would have been on February 3, 2019. On his arrival at Pilgrim State, on February 5, 2019, Sonny escaped and has not been seen or heard from since by anyone who knew him, including family members and his girlfriend. We reported him missing to the Suffolk County Police Department, which to this day has advised that they have no information on Sonny's disappearance or his current whereabouts. We did everything we could think of to try to find him and we believe that if he were alive, he would have contacted someone in the family or one of his friends, but no one has heard from him and we are convinced that he must no longer be alive.

Emily F.: Mr. Messing, what is the nature of your petition before this Court today?

Ben: I am asking that Sonny Messing be declared dead and that I be granted Letters of Administration so I can handle his estate, which includes his linked checking and savings accounts that now have \$70,000 on deposit.

Emily F.: Thank you Mr. Messing. Your witness Ms. Nobel.

Debora N.: No questions.

Judge: Mr. Messing, I have some questions for you.
Up until what age did your son live with you?

Ben: Until he was 35 which was in 2017.

Judge: During the time he lived with you, did you communicate with him on a daily basis?

Ben: Yes. He was working during most of that time, and we would have dinner together as a family most nights.

Judge: Did Ben take any vacations during the time he resided with you?

Ben: Yes, on occasion he would go away with his friends, and in particular, with his girlfriend.

Judge: Was it Sonny's custom and practice to call you or email or text you during the times he was away from home?

Ben: Generally he would keep in touch by text when he was away and let us know he was okay.

Judge: Did Sonny have a cellphone when he lived in the group home?

Ben: Yes.

Judge: Did Sonny communicate with you during the time he lived in the group home?

Ben: Yes, he would call around once a week and in between calls my wife or I would text him and he would answer.

Judge: Thank you Mr. Messing.

Ms. Nobel, you may call your witness.

Debora N.: Thank you, Your Honor. I call Christopher Spinosa, the Guardian Ad Litem who was appointed by the court to protect the interests of the Absentee.

Do you swear or affirm that the testimony you give here today will be the truth?

GAL: I do.

Debora N.: Please state your name and address for the record.

GAL:

Debora N.: Mr. Spinosa, as the Guardian Ad Litem appointed by the Court, what are your duties and responsibilities?

GAL: It is my responsibility to protect the interests of the Absentee and make sure that there is ample evidence to support the Petitioner's request before Sonny Messing is declared legally deceased.

Debora N.: Have you submitted to the Court a complete report you prepared regarding your investigation as to the disappearance of Sonny Messing?

GAL: Yes, I have.

Debora N.: Please tell the Court what attempts, if any, you made to ascertain the status of the Absentee, Sonny Messing, and what the investigation entailed.

GAL: First, I interviewed the Petitioner and father of the Absentee, Ben Messing. Mr. Messing provided me with the background information that he testified to today in court, and he provided various relevant documents including Sonny Messing's medical records concerning his psychiatric therapy, his hospitalization at Stony Brook and Group Home records. I also communicated with Petitioner's attorney, Ms. Franchina, and ascertained that the Court has jurisdiction over all necessary parties to this proceeding.

I interviewed Sonny Messing's girlfriend, Alona Gain, who advised that she had known Sonny since 2015. During the time they were seeing each other, she was aware that Sonny rarely carried more than \$35 or \$40 on his person. Ms. Gain knew Sonny had a bank account and on more than one occasion he withdrew money from an ATM when they were on a date and he needed money for dinner and a movie.

I researched the Absentee's Facebook account. It had photographs posted of Sonny and Alona, Sonny's housemates, Sonny at a family gathering with his mother and father and his brother and the brother's family, including a niece and nephew ages 4 and 6, all of which were taken and posted prior to January 2, 2019, when Sonny was involuntarily committed to Stony Brook Hospital Psychiatric Unit.

I conducted a search of a storage unit that was leased by Sonny Messing and contained some personal belongings, including a guitar, hockey skates, fishing gear and cartons of books and personal memorabilia. The contents of the storage unit were auctioned off and purchased by Sonny's brother.

I ascertained that Experian had no record of any credit card applications since the date the Absentee went missing.

I made an inquiry to the State Comptroller's Office regarding unclaimed funds. I also obtained statements from the Absentee's Citibank account and learned there has been no activity in the account since the day he went missing other than monthly deposits of Social Security Disability payments. Based on these findings, it was my conclusion that there is no credible evidence that the Absentee engaged in any traceable financial transaction as of the date he disappeared.

The Suffolk County Police Department has had a Missing Persons File on Sonny Messing since February 5, 2019 and from that date up to January 16, 2024 there have been no leads and no findings despite the Police Department having conducted a diligent and exhaustive search for the Absentee. Based on my interviews with the detective on the case, I am satisfied that the search by the Police Department was comprehensive and exhaustive.

I further ascertained that there were no filings of health insurance claims with Medicare or Medicaid reflecting care rendered after the date the Absentee disappeared.

I interviewed the supervisor in the Group Home where the Absentee resided before his involuntary psychiatric confinement. The supervisor, a psychiatric social worker, reported that immediately before he was taken to Stony Brook, the Absentee was verbalizing intent to commit suicide. It was the professional opinion of the supervisor that the Absentee suffered from paranoia, delusions and suicidal ideation, and was incapable of independently carrying out activities of daily living. It was further his opinion that the situation in which persons unknown to the Absentee were transporting him against his will to a hearing to determine his possibly indefinite involuntary confinement could easily have triggered his paranoia and led him to commit suicide.

Debora N.: Is it your conclusion that there is no credible evidence that the Absentee, Sonny Messing, has been alive since the time he went missing on February 5, 2019?

GAL: Yes, that is my conclusion.

Debora N.: And is it your recommendation to this Court that the Absentee should be declared deceased as of February 5, 2019, the date he went missing?

GAL: Yes, that is my recommendation.

Debora N. : Thank you, Mr. Spinosa, I have no further questions.

Judge: Mr. Spinosa, in the course of your investigation did you ascertain if Social Security was advised at any point of Sonny Messing's disappearance?

GAL: No, Your Honor, I did not.

Judge: And do I understand correctly that you ascertained that Social Security Disability monthly payments continued to be deposited into the Absentee's checking account after his disappearance and up until today?

GAL: Yes, Your Honor. On review of the Absentee's bank statements, it is clear that Social Security Disability payments are directly deposited to the Absentee's account monthly and that they continue to be paid up to this time.

Judge: Thank you, Mr. Spinosa for your testimony.

Emily F.: Your Honor, if it please the Court, on behalf of the Petitioner, we request that the Petition be granted and that Sonny Messing be declared deceased as of February 5, 2019 pursuant to EPTL 2-1.7(a), and that Petitioner be granted Letters of Administration of the Estate of Sonny Messing.

Judge: Based on the testimony heard today and the documentary evidence submitted, the Court finds that Petitioner has met his burden. The Petition is Granted to the extent that the Absentee is deemed deceased as of February 5, 2019, on the grounds that there is clear and convincing evidence that there have been no signs of life regarding Sonny Messing since his disappearance on February 5, 2019, and Letters of Administration will issue to the Petitioner, with the proviso that any and all Social Security Disability payments paid to the account of Sonny Messing after February 5, 2019 be repaid to the Social Security Administration. Ms. Franchina, as attorney for the Petitioner I will request that you make certain that the Estate makes restitution as ordered, and that this Court be provided with proof of payment.

**SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----x
Administration Proceeding, Estate of

DENNIS SHEPHERD,

Deceased.

-----x
PRESENT: HON MARGARET C. REILLY

DECISION & ORDER

File No. 2013-376822

Dec. No. 35594

The following papers were considered in the preparation of this decision:

Petition to Declare Dennis Shepherd Deceased, Affirmation, Affidavit & Exhibits	1
Interim Report Guardian ad Litem	2
Final Report Guardian ad Litem	3

Before the court in this administration proceeding is a petition brought by Joan Kiesow ("petitioner"), the mother of Dennis Shepherd ("Absentee"), seeking to declare the Absentee deceased. Petitioner in her original petition that was filed in 2013 sought both temporary letters of administration and full letters. Temporary letters have been granted and extended several times¹ and are currently expired. The petition for letters of administration continues to be part of this proceeding. Petitioner alleges that the Absentee has been missing since May 18, 2012; and was exposed to a specific peril by virtue of his mental health issues, tendency towards suicide, and lack of access to money, proper clothing, and other necessities for survival at the time of his disappearance. A Guardian ad Litem ("GAL") was appointed to appear for and protect the interests of the Absentee, and he has waived his fee.

¹ Temporary letters of administration were issued to the petitioner on October 11, 2013 giving the petitioner authority to prosecute a cause of action and collect personal property up to \$10,000.00. The petitioner pursued a claim against the State of New York. The State moved for summary judgment which was granted and affirmed in the Appellate Division.

In April 12, 2012, the Absentee (d.o.b. January 6, 1966) was involuntarily committed to the Adult Psychiatric Unit at Stony Brook Hospital, due to among other things, delusions, paranoia, and his inability to attend to his own basic needs, according to hospital records annexed to the GAL report. While at Stony Brook, the Absentee was placed on suicide watch according to the Clinical Summary, provided to the GAL by the petitioner. On May 18, 2012 the Absentee was being transported from Stony Brook Hospital to Pilgrim State Psychiatric Center for a hearing concerning his involuntary commitment, and escaped upon his arrival to Pilgrim State. The Absentee has not been seen since May 18, 2012, and the petitioner, his mother, seeks to have him declared deceased and seeks letters of administration in order to administer his estate.

The GAL filed an interim and final report. The GAL determined that the court had obtained jurisdiction over all necessary parties. The GAL conducted an extensive investigation in his attempts to determine the status of the Absentee; including interviewing the petitioner, and collecting documents from the petitioner related to the Absentee's treatment, condition, and confinement, communication with the petitioner's attorney, communications with the Absentee's girlfriend, researching the Absentee's Facebook account and storage unit, inquiring with the New York State Comptroller's Office regarding possible unclaimed funds, subpoenaing records from: the Suffolk County Police Department; Experian and; financial institutions. The GAL advises that from 2013-2017 the Suffolk County Police Department periodically reviewed the Absentee's case file and has not had any new leads on the case.

The GAL's investigation included obtaining statements from the Absentee's known bank accounts to check for activity. The GAL was advised by the petitioner's attorney that one of the reasons that the petitioner is pursuing this proceeding "is to gain access to approximately \$70,000.00 in funds" that are in a bank account of the Absentee.

Based on his investigation, the GAL is satisfied that there is no credible evidence that the Absentee engaged in financial transactions after the date he went missing. The contents of the Absentee's storage unit were auctioned off in October 2012, and purchased by his brother. The Absentee has not been heard from since the date he went missing. The GAL is also satisfied that the Suffolk County Police Department conducted a diligent and exhaustive search for the Absentee.

EPTL 2-1.7 (a) provides:

"A person who is absent for a continuous period of three years, during which, after diligent search, he or she has not been seen or heard of or from, and whose absence is not satisfactorily explained shall be presumed, in any action or proceeding involving any property of such person, contractual or property rights contingent upon his or her death or the administration of his or her estate, to have died three years after the date such unexplained absence commenced, or on such earlier date as clear and convincing evidence establishes is the most probable date of death."

The burden is on the party seeking the invocation of the presumption (*Matter of Klein*, NYLJ, Jan 22, 2015, at 33, col.1 [Sur CT, Suffolk County]). The petitioner has established through her affidavit, conversations with the GAL, and documents produced, a continuous absence for three years and that during that time there have been no communications from the Absentee. The GAL has set forth the details of the efforts made by the Suffolk County

Police Department to locate the Absentee. In addition, the GAL has outlined the lack of evidence that the Absentee engaged in financial transactions since the date he went missing.

The petitioner asserts a claim/prayer for relief that the Absentee was exposed to a specific peril of death, which pursuant to EPTL 2-1.7 (b) "may be a sufficient basis for determining at anytime after such exposure that he or she died less than three years after the date his or her absence commenced." She supports this claim by stating that the Absentee was suicidal and unprepared to survive in the elements. The court agrees with the GAL with respect to this claim, and is not persuaded to deem the Absentee's death less than three years from the date he went missing.

The petitioner has met her burden. The court agrees with the recommendation of the GAL and declares the Absentee deceased as of May 18, 2015, three years from the date he went missing.

The GAL has waived his fee.

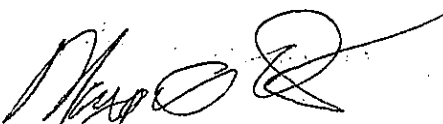
The petition is **GRANTED** to the extent that the Absentee is deemed deceased as of May 18, 2015 and letters of administration will issue to the petitioner upon qualifying.

This constitutes the decision and order of the court.

Submit decree.

Dated: March 15, 2019
Mineola, New York

ENTER:



HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Ray, Mitev & Associates
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Matter of McCormack

Supreme Court of New York, Appellate Division, First Department

May 24, 2018, Decided; May 24, 2018, Entered

6570, File 5053/82D

Reporter

161 A.D.3d 612 *; 77 N.Y.S.3d 389 **; 2018 N.Y. App. Div. LEXIS 3738 ***; 2018 NY Slip Op 03733 ****; 2018 WL 2339412

[***1] In the Matter of Ann C. McCormack, by her Special Guardian and Attorney-in-Fact Carol Bamonte, Concerning the Estate of Kathleen Durst, Absentee and Alleged Deceased. Carol M. Bamonte, Appellant. Robert Durst, Nonparty Respondent.

Subsequent History: Remanded by [Matter of McCormack](#), 168 A.D.3d 566, 92 N.Y.S.3d 234, 2019 N.Y. App. Div. LEXIS 399 (Jan. 22, 2019)

Related proceeding at [Abrams v. Durst](#), 2021 N.Y. Misc. LEXIS 2543 (N.Y. Sup. Ct., May 14, 2021)

Related proceeding at [Bamonte v. Charatan](#), 2023 U.S. Dist. LEXIS 57101 (S.D.N.Y., Mar. 31, 2023)

Counsel: [***1] Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara Wolf & Carone, LLP, New York (Robert Abrams of counsel), for appellant.

Kasowitz Benson Torres LLP, New York (Joshua A. Seigel of counsel), for respondent.
Davidoff Hutcher & Citron LLP, New York (Charles Capetanakis of counsel), for Charles Capetanakis, guardian ad litem for Kathleen Durst.

Judges: Richter, J.P., Andrias, Webber, Gesmer, Moulton, JJ.

Opinion

[**389] [*612] Order, Surrogate's Court, New York County (Nora S. Anderson, J.), entered on or about March 24, 2017, which, inter alia, denied petitioner's order to show cause seeking removal of the guardian ad litem, striking his report and staying the proceeding pending such determination, and determined the absentee's date of death to be January 31, 1987, unanimously modified, on the law, to determine absentee's date of death to be January 31, 1982 and, as so modified, affirmed, without costs.

This petition was brought by the estate of the mother of the absentee, Kathleen Durst (Kathleen), to declare her dead and determine her date of death.

The Surrogate's Court erred in finding that Kathleen died on January 31, 1987, the statutory default date under the applicable version of [EPTL 2-1.7](#). Clear and convincing evidence [***2] established that the date of Kathleen's disappearance was the [**390] most probable date of death under [EPTL 2-1.7 \(a\)](#).

Petitioner submitted evidence that Kathleen disappeared without explanation, and without her car and personal effects, on January 31, 1982. Kathleen has not been seen or heard from since that date. Kathleen's sisters submit affidavits in which they recite that they were close with her, and communicated with her several times a month, prior to her disappearance. They state that it is inconceivable that Kathleen would abruptly cease all communication with family and friends. Kathleen was also a medical student at Mt. Sinai Medical School at the time of her disappearance. She was two months away from graduation. According to her family it was Kathleen's dream to become a doctor and it would be incomprehensible that she would walk away from her studies when she was so close to her goal. Respondent Robert

Durst has not submitted an affidavit refuting or explaining this evidence.

We find that this evidence is sufficient to establish a "high[] probab[ility]" that Kathleen died on the date of her disappearance ([Matter of Philip, 50 AD3d 81, 83, 851 NYS2d 141 \[1st Dept 2008\]](#)).

The guardian ad litem's report (GAL), which is cited by Surrogate's Court in its decision, [***3] determined that lower court precedent was persuasive in finding that the statutory default period for determining death after disappearance under [EPTL 2-1.7](#) should apply to this case. This lower court precedent is not on point, at least insofar as it concerns setting an earlier date of death [****2] pursuant to [EPTL 2-1.7 \(a\)](#). In three cases cited by the GAL the petitioners sought the statutory default date of death, and not any earlier date (e.g. [Matter of Ferguson, NYLJ, Oct. 28, 2014 at 23, col 4, 2014 NYLJ LEXIS 3908 \[Sur Ct, Bronx County 2014\]](#); [Matter of Putterman, 38 Misc 3d 1219\[A\], 967 NYS2d 869, 2013 NY Slip Op 50157\[U\] \[Sur Ct, Nassau County 2013\]](#); [Matter of Emile, 2010 N.Y. Misc. LEXIS 6449, 2010 NY Slip Op 33543\(U\), 2010 WL 5553306 \[Sur Ct, Nassau County 2010\]](#)). [Matter of Diaz \(4 Misc 3d 1027\[A\], 798 NYS2d 344, 2004 NY Slip Op 51083\[U\] \[Sur Ct, Nassau County 2004\]](#)), incorrectly cited by the

GAL as *Matter of Gartner*, is decided under [EPTL 2-1.7 \(b\)](#), a section we need not consider here given our holding under [EPTL 2-1.7 \(a\)](#).*

In light of the above conclusions we need not reach the other issues on appeal. Concur—Richter, J.P., Andrias, Webber, Gesmer, Moulton, JJ.

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*The GAL distinguished [Matter of Cosentino \(177 Misc 2d 629, 676 NYS2d 856 \[Sur Ct, Bronx County 1998\]\)](#), which set a date of death earlier than the default date, as animated by equitable principles. In *Cosentino*, the court determined an earlier date of death where there was evidence that decedent's family would otherwise not qualify for certain benefits. The GAL also cited [Matter of Klein \(NYLJ, Jan. 22, 2015 at 33, col 1, 2015 NYLJ LEXIS 5843 \[Sur Ct, Suffolk County 2015\]\)](#) without distinguishing that case.

PITFALLS IN PET PLANNING

by

LENORE S. DAVIS, Esq.

Attorney at Law
Woodmere

Pitfalls in Pet Planning

By: Lenore S. Davis, Esq.

I read in the New York Times obituary section that Barbara Blum had passed away during the same time I was studying Pet Planning. How are they connected?

Barbara Blum was a woman who believed in civil rights. The City of New York used her to break open the doors of the horrific Willowbrook Institute, where the disabled and handicapped were hidden away until death freed them. The story of Willowbrook was revealed by Geraldo Rivera, a reporter who went undercover at Willowbrook and exposed the subhuman conditions endured by its inhabitants. It was the spark that ignited great strides in integration of the disabled and handicapped and others with mental and physical illnesses.

Barbara Blum's death reminded me that *Brown v. The Board of Education*¹ is just over 60-years old. The Willowbrook expose in 1972 is merely 40 years old. With human civil rights only recently addressed, it is no wonder that it should take further time for the rights of animals to be addressed. But the commonality of disabled humans and pets are that both will always be dependent on others to plan for their care.

At a casual glance, the area of planning for pets appeared to be a very small niche area because the majority of pet owners have someone in their home that could care for a pet, or at the very least, assume ownership and care of the pet if necessary. After initial research, it became clear that the need is much greater than realized: 63% of American households -- or over 100 million households -- own pets. They include 83 million dogs and over 96 million cats.² The assumption that most pet owners have a relative or friend who could assume the care of a family pet is clearly in error because a significant number of the 4 – 6 million animals euthanized in the United States annually are animals left without care when their owners died. In a 2005 study, 73% of dog owners and 65% of cat owners consider their pets to be akin to a child or other close family member. In 2016, \$60 billion was spent by Americans on pet supplies. The pet supply field is expected to continue its great growth.³

Presently, although pets are considered personal property, recent federal statutes afford pets greater rights.⁴ In addition, state laws contain anti-cruelty statutes and enforcement agencies

¹ 347 U.S. 483 (1954).

² The Humane Society of the United States, www.Humanesociety.org.

³ American Pet Products Association, www.Americanpetproducts.org.

⁴ Endangered Species Act of 1973, 16 U.S.C. 1531-1544, 87 Stat. 884 (1973), as amended – Public Law 93-205, approved December 28, 1973 (repealing the Endangered Species Conservation Act of December 5, 1969 (P.L. 91-135, 83 Stat. 275 (1969))). The 1969 Act had amended the Endangered Species Preservation Act of October 15,

which enforce these animal rights. The State of New York Department of Agriculture and Markets issued Circular 916, effective November 2013, entitled Article 26 of the Agriculture and Markets Law relating to CRUELTY TO ANIMALS, Article 25b, Abandoned Animals, Sections 601 and 602 of the Vehicle and Traffic Law.⁵

Though an evolution of the statutes and case law of animal rights could be a fascinating separate article, this will focus on the practical side of estate planning for pets.

I. Basic Estate Planning Tools

A. The Need For Pet Care Terms in a Will

Beginning with the first pet-planning gap, i.e., having no specific plan in place at all; most Americans do not have a will in place.⁶ As stated above, many Americans might assume that a family member or friend will care for the pet when they die. Millions of animals are euthanized as a result.

There is a planning gap when a will is drafted, and there is no specific reference to the pet. Pets are indeed considered personal property.⁷ Failure to provide specifically for pets would have them pass under a will's residuary clause. But what would happen if there are several residuary beneficiaries, certainly one cannot split a pet in the event more than one beneficiary desires the pet. Additionally, and more importantly, what if the residuary beneficiary/ies do not want the pet and there is no alternative disposition of the pet.

1966 (P.L. 89-669, 80 Stat. 926 (1966)); the Animal Welfare Act, 7 U.S.C. 54 (1966); and the Marine Mammal Protection Act. (16 U.S.C. Chapter 31 (1972)). See also, Animal Welfare Act, 7 U.S.C. 2143 and Pets Evacuation and Transportation Standards Act of 2006, 42 U.S.C.A. §§ 5196b, 5170b(a)(3)) (West 2008); 152 CONG. REC. H6807 (daily ed. Sept. 20, 2006) (statement by Rep. Shuster) (discussing how the aftermath of Hurricane Katrina uncovered the need to account for household pets and service animals in state and local emergency preparedness plans).

⁵ N.Y. AGRIC. & MKTS. LAW § 350, et seq.; N.Y. VAT. LAW §601 et seq.

⁶ www.Rocketlawyer.com

⁷ See, e.g., CAL. PENAL CODE § 491 (West 1997); MD. ANN. CODE art. 24, § 11-506 (2005); OHIO REV. CODE ANN. § 955.03 (West 1994); W. VA. CODE ANN. § 19-20-11 (LexisNexis 2007); *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151, 158 (S.D.N.Y. 1994) (holding there is no independent cause of action for loss of the companionship of a pet, which is personal property); *Mitchell v. Heinrichs*, 27 P.3d 309, 313–14 (Alaska 2001) (holding dogs have the legal status of personal property and recovery for the wrongful death of a dog is limited to its market value); *Pantelopoulos v. Pantelopoulos*, 869 A.2d 280, 284 (Conn. Super. Ct. 2005) (holding the owner of an intentionally killed animal could not recover for emotional distress); *Lockett v. Hill*, 51 P.3d 5, 7–8 (Or. Ct. App. 2002) (holding the owner of a negligently killed animal could not recover for emotional distress); *Carbasha v. Musulin*, 618 S.E.2d 368, 371 (W. Va. 2005) (holding sentimental value and emotional distress are not recoverable when a pet is killed because pets are personal property).

The second problem in not addressing the issue of a pet in a will is that there is no guidance provided to the new owner of the specifics of caring for the pet, e.g., which veterinarian the pet generally uses, what food brands the pet desires, how often and where it is groomed, as well as medical and other information personal to the testator's pet. Lastly, there is a question of what funds are to be used for the benefit of the pet.

Accordingly, the first step for drafting a will for a client with a pet is to include specifics on to whom the pet should be given. The client should be advised at the time of drafting the will to ask whether his intended beneficiary agrees to take the pet and care for it, the same as one might do for a nominated guardian of minor children. The attorney must make clear to the client that even though the beneficiary may acquiesce presently, that person is under no fiduciary obligation to take the pet upon the client's demise. Accordingly, the attorney and client should set forth terms for a successor caregiver in the will.

B. When There Are No Pet Provisions in a Power of Attorney

There is a clear distinction between a disabled human dependent and a pet, specifically in what happens when the client is not capable of caring for the dependent human or pet, either in the short term, long term, or, in the case of death, permanently. Think of a scenario where Emergency Medical Services is called to a scene and there is a child or a disabled adult at the scene. EMS will likely call the Department of Social Services to take custody of the child or dependent, and find a proper shelter for the child/dependent either temporarily or permanently, as required.

Now think of the above scenario when a pet is involved, assuming the client even has a will. When EMS comes in, they won't know or even care whether the pet owner has a will. Even if the will is taped to the door for all to see, a will only goes into effect upon a client's death. At that point in time, the patient might be very much alive; in fact, there may not even be an imminent threat of death, so any provisions for pet care in a will does not address any immediate need.

EMS or the police might take custody of a friendly pet, but only for a short period of time. First, the animal shelter will determine if there are friends or relatives prepared to step forward and care for the pet on behalf of the pet owner. If no one steps forward after the first few days, the animal shelter might have the ability to find someone else who would care for the pet either short term, long term or permanently. But, depending on the shelter's capacity, it is likely that after a few weeks, if no one claims the pet, the pet will be euthanized. So, if the client made no provisions for the pet in the event of disability, and he recovers weeks later, he could discover that his pet was euthanized during the term of his illness.

II. Filling in the Gaps: Power of Attorney and Inter-vivo Pet Trusts

Attorneys who address only the pet issue on a limited basis through wills have permitted a huge gap in coverage for their client's pets. Having only a testamentary pet trust, or a trust which is contained in a will, leaves a gaping hole in pet planning for it can take months, if not years, to probate or administer an estate, receive letters testamentary and letters of trusteeship, and during this period of pendency, the pet will be without coverage as to its physical care and money to cover its care. Without a representative of an estate to take possession of the pet, the pet's care will be in limbo.

How to fill these gaps? The one-two punch: a provision in power of attorney, and the drafting of an inter-vivos pet trust. A provision in a power of attorney that the agent should arrange for pet care and custody is the first step in ensuring that the pet is cared for when a client is alive but unable to care for his pet, or communicate to whom the pet should be given.

The power of attorney in and of itself is insufficient. It is an inappropriate place to set forth the details for the care and maintenance of the pet. The attorney in fact's job would purely be to transfer the pet to the caretaker of his choosing, or, if there is an inter vivos trust, custodian set forth in an inter vivos trust. The inter vivos pet trust is a fairly new estate-planning tool. The concept began as a so-called "honorary trust" because in old trusts there were no means to enforce the terms of the trust for the benefit of a pet, a "beneficiary" that obviously did not have access to the courts to enforce its rights against the trustees. The trustee was part of an honor system where he was trusted to carry out the terms of the trust for the benefit of the pet, but could not be legally forced to do so.

As the concept evolved through the legal system and state statutes, there are now provisions that may be placed in pet trusts for enforcers or those who have the ability to bring the custodian or trustee to court to force him to carry out the terms of the trust for the benefit of the pets.

New York has a pet trust statute. EPTL 7-8.1(a) provides that any individual may intervene for the benefit of the pet, and the court, *sua sponte*, may appoint someone to enforce the terms of the trust.⁸ This same section also creates an exception to the rule-against-perpetuities problem in estate planning, which would have forced the pet trust to terminate 21 years after the death of a life in being, . Under the EPTL, the trust shall terminate only when all animal beneficiaries of the trust are no longer alive.⁹ The trust names a trustee to manage the funds of the trust, a caretaker who has physical custody of the pet, and an enforcer.

⁸ N.Y. EPTL 7-8.1(a).

⁹ *Id.*

A pet trust, like any other trust, is a contract between the Grantor and the Trustee. The Grantor agrees to fund the trust and sets forth certain terms, and the Trustee agrees to carry out the terms set forth in the trust. Necessary Terms for a pet trust:

1. The Grantor;
2. The Trustee and successor trustee;
3. A description of the pets who are beneficiaries of the trust;
4. Name of alternate beneficiary/ies who take after all the pet/beneficiaries die;
5. Custodian of the pet, the person who has physical custody of the pet. It can be the trustee, or it may be someone else, and successor custodian of the pet.
6. Suggested terms for care of the pet:
 - a. Brand name of pet food and snacks, how often the pet is provided with food and snacks;
 - b. Any medical prohibitions or allergies;
 - c. Set forth any medical conditions the pet might have;
 - d. Name of vet, address and phone number;
 - e. Name of grooming company, address and phone number, how often the pet gets groomed;
 - f. Where the dog can board if the custodian goes on vacation.

Having the triumvirate of power of attorney, inter vivos trust and will with provisions for pets, the client will ensure a continuum of care for a pet for the term of its life.

What happens, though, if the client does not have an individual whom he can trust with his pet? In more recent years, there are veterinarian schools and other pet-oriented institutions that have pre-planning programs for pets. A pet owner contacts the organization and pays to have the pet picked up in the event the owner becomes disabled or dies. There is a better chance that an old organization in good standing will be available for a pet than one person, who can change his mind, or die or become disabled himself.

Some of the better organizations have a planned-giving department that customizes solutions for clients and charge accordingly. The most frequent solutions are ones where the organization is called when the client becomes disabled or dies, it arranges for the pet's transportation to a pet facility where either the pet lives for the remainder of its life, or is adopted out.

III. The Funding Gap/Tax Considerations of Pet Trusts

A. Funding an inter-vivos trust.

I must start off stating that one SHOULD NOT fund an inter vivos trust with death benefits, e.g.,

life insurance proceeds, pension proceeds or other funds that first become available after a person's death. An inter vivos trust should be funded with cash or cash equivalents, because it is an emergency standby account that needs to be operable at any given moment with very little notice.

For instance, if a pet owner has a heart attack or stroke, and is taken to the hospital, the attorney in fact under a power of attorney will transfer the pet to the custodian set forth in the pet trust. The custodian will have to immediately use those funds to purchase supplies for the pet and care for the pet. The care could be short term, long term or permanent as the case unfolds. Therefore, the inter-vivos fund has to be funded immediately upon creation.

B. Funding a testamentary trust

A testamentary trust may be funded with life insurance proceeds, for in all likelihood it takes very little time to get a life insurance company to pay death benefits. It generally takes a much longer time to probate a will. The problem with life insurance policies, is that many times an executor will not know where to find the insurance policy to make a claim. If the decedent/testator was older when he died, the insurance policy could have expired, or might have been a term insurance policy that expired. If the heirs are fighting, they might not focus on claiming the life insurance proceeds.

Real estate is not a reasonable asset for funding a pet trust, for it is not liquid and may some time to liquidate to gain the money necessary to care for the pet immediately. Once again, we are looking for cash or liquid assets, or assets that may easily be converted into cash.

Beware that, unlike any other trust, a pet trust may not be overfunded, i.e., a grantor may not fund a pet trust in excess of what it would reasonably take to care for the pet(s) covered.¹⁰

Lastly, estate planning is more complicated for pets because under tax laws, pet beneficiaries are treated differently than human beneficiaries. Starting with definition of person, which does not include pets.¹¹ To cite just two examples, one a trust specifically for the benefit of pets, and the other a charitable remainder trust (CRAT).

Pets are not considered “persons” under Rev. Rul. 76-486¹², which states:

IRS HEADING

Trust for care of pet animal.

In the absence of a state law to the contrary, a bequest in trust to provide for the care of a decedent's pet animal is void from its inception, and unless otherwise indicated in the will or specified by statute, the trust property passes to the residuary legatee and income earned on such property is includible in the income of such legatee.

¹⁰ N.Y. EPTL 7-8.1(d).

¹¹ IRC section 7701(a)(1)

¹² Rev. Rul. 76-486, 1976-2 C.B. 192

In jurisdictions where such a trust is not invalid, it is subject to the imposition of the tax of section 1(d) of the Code pursuant to section 641 and no deductions are allowable for distributions under sections 651 and 661.

This makes sense considering that trust income has to be taxed to a person or entity. A simple trust is one where all the income is currently distributed to beneficiaries. The beneficiaries are issued a K-1 and the beneficiaries include the income in their own income tax returns. The trust gets a deduction for distributions paid [and for which the beneficiary will pay income tax], otherwise the same income would be taxed twice.

A complex trust is one where there is no mandatory distribution of all the current income. As a result, if there is trust gross income greater than \$600 in one year, the trustee must file a 1041 and pay taxes on said income. The tax rates for trusts are compressed, i.e., the brackets of income require greater tax rates at lower income amounts.

Now we can understand why a pet trust cannot get a tax deduction for distributions made for the benefit of a pet, and why pet trusts are considered complex trusts. A pet is not an entity that pays taxes. A trust cannot issue a pet a K-1. Therefore, all income received by the trust must be paid by the trust, as a complex trust, at compressed tax rates.

Other examples of disadvantaged tax rules for pets are the rules and regulations governing charitable remainder trusts (CRATS). Often, a client would like to fund a trust for the benefit of his pet, and would like the remainder to go to charity. If the trust income were for the benefit of a human beneficiary, the grantor could count on some kind of charitable deduction; not so with trusts for the benefit of pets. Under Revenue Ruling 78-105: “no portion of the amount passing to a valid trust for the lifetime benefit of a pet qualifies for the charitable estate tax deduction, even if the remainder beneficiary is a qualifying charity” because pet is not a “person.”

It is important for attorneys to know that they must advise clients to plan for their pets. It is equally important for the estate-planning attorney to know where the hidden gaps and traps lie, and to help the client navigate the estate-planning course to ensure that all dependents, including pets, are cared for in the event of a client’s disability or death.

Lenore Davis has been a Trust and Estate/Elder Law attorney in New York and New Jersey for over twenty years. She has her L.L.M in Tax and is an adjunct professor at New York Law School’s Graduate Tax Program. She can be reached at Ldavis@lenoredavis.com

Until Death Do Us Part- Pets and Estate Planning

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Background

- Trusts 20 years ago, trusts today. Awareness.
- Pet Trusts Not Viable 20 years ago. Why now?
- Barbara Blum Willowbrook. Evolution of rights for slaves, minorities= human civil rights.
- Respect for pets
- Respect for the environment
- All fairly new concepts

Background continued

- 63% American households own pets.
- Over 100mm household have at least one indoor pet, including:
 - 65mm dogs and over 77mm cats
- People assume that a relative or friend will assume care of pet yet a significant number of the 4mm-6mm of the euthanized animals in the U.S. are animals left without care when their owners die.

Emotional Bond

- Bringing animals from outside utilitarian farm purposes to companion pets and service animals. They are responsive living beings, not mere personal property as other tangible personal property.
- Zander the husky as an example.

Legal Status

- Presently although pets are considered personal property, recent statutes afford pets greater rights as in the Federal statutes:
- Endangered Species Act;
- The Humane Care of Animals Act;
- Animal Welfare Act; and
- Marine Mammal Protection Act.
- State Laws contain anti-cruelty statutes and enforcement agencies which enforce these animal rights

Caring For Pets

- In 2015, over \$60bb was spent by Americans on pet supplies. Reveals closer ties between people and their pets and a desire by pet owners to ensure that a certain standard of care is maintained for the pet in the event of death or disability by pet owner.
- Before the awareness by the legal community, pet owners concerned with what would happen to their pets, felt they had no choice but to euthanize their pets for fear of their pets being held in inhumane conditions or used as pets for scientific experiments. In re Capers Estate

Planning For Pets

- Estate of Thelma L. Russell. Cant leave money outright to pets, they are not legal beneficiaries.
- Leona Helmsley: \$12mm for her maltese, excluding two of her grandchildren
- Estimated: Between 12-27% of pet owners provide for pets in their estate plans.
- Owners typically leave \$10k-\$35k for the care of their pets

Issues With Planning in Wills Alone

- Doesn't consider what happens to owner while still alive but unable to care for pet
- If terms are not set forth in detail, pet treated like other property in residuary with no details as to care of pet
- No idea if recipient agrees to care for pet or has enough resources to care for pet
- If there is a delay in probate of will, who cares for the pet in the interim

Will Issues Continued

- If provision to give pet to pet retirement home:
- What if home closes in the interim or at some point while caring for pet
- Less one-on-one pet interaction
- Once the estate has been administered and closed, there are no provisions to ensure pet properly cared for

Filling in the Gap for Will Planning

- Will takes effect on death, if there is disability, want to ensure there is a provision in power of attorney for the care of the pet, on a short term basis and long term basis
- Must ensure that attorney in fact has sufficient funds to care for the pet
- What happens between death and probate, a matter of weeks or months.
- Stop-gap contract between caregiver and client to care for pet, pending probate and complete transfer of “title” to pet.

Filling the Gap, continued

- Ensure that client's pet has tags on it which states the vet's name/number or that of attorney in fact
- Have client place on her refrigerator door a piece of paper with large lettering stating CARE FOR MY PETS so that EMS would know the name and number of attorney in fact
- Have paper in wallet with the name/number of attorney in fact or executor.

Honorary Trusts: First Evolutionary Step to Pet Trusts

- Honorary so called because pets cannot go to court to enforce their rights under the trust, no one else has standing
- If Trustee chooses not to effectuate the trust, the funds belong to said Trustee. I give \$\$ to Fred Smith to care for my pet. Language precatory, money goes to Fred.
- Rule against perpetuity problem, life in being plus 21 years, pets may not be used as a measuring life

Uniform Probate Code 2-907

- [Section 2-907. Honorary Trusts; Trusts for Pets.
-
- (a) [Honorary Trust.] Subject to subsection (c), if (i) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and (ii) there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for [21] years but no longer, whether or not the terms of the trust contemplate a longer duration.
- (b) [Trust for Pets.] Subject to this subsection and subsection (c), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.
- (c) [Additional Provisions Applicable to Honorary Trusts and Trusts for Pets.] In addition to the provisions of subsection (a) or (b), a trust covered by either of those subsections is subject to the following provisions:
 - (1) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.
 - (2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:
 - (i) as directed in the trust instrument;
 - (ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and (iii) if no taker is produced by the application of subparagraph (i) or (ii), to the transferor's heirs under Section 2-711.
 - (3) For the purposes of Section 2-707, the residuary clause is treated as creating a future interest under the terms of a trust.
 - (4) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.
 - (5) Except as ordered by the Court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.
 - (6) A Court may reduce the amount of the property transferred, if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c)(2).
 - (7) If no trustee is designated or no designated trustee is willing or able to serve, a Court shall name a trustee. A Court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A Court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.]

Uniform Trust Code

- **SECTION 408. TRUST FOR CARE OF ANIMAL.**
-
- (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
- (b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.
- (c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Compare UPC v. UTC

UPC

- Excess Funds: Trust, Will, Heirs
- Permits Honorary Trusts as well as pet trusts for states that have not enacted statutes.
- Interested parties may petition the court only if the trust is silent as to who has standing to enforce

UTC

- Settlor, Settlor's successors in interest
- Doesn't address Honorary Trusts
- Any person with an interest in the welfare of the pet may petition the court to enforce the trust or remove a person already appointed

EPTL 7-8.1 Pet Trusts

- (a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive.
-
- (b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of all covered animals.
-
- (c) Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such directions in the trust instrument, the property shall pass to the estate of the grantor.
-
- (d) A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property pursuant to paragraph (c) of this section.
-
- (e) If no trustee is designated or no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Federal Tax Provisions

- Rev. Rul. 76-486: “The term "**beneficiary**," for purposes of Part I, subchapter J, of the Code, is defined in section 643(c) to include heirs, legatees, and devisees. Heirs, legatees, and devisees are persons. See 96 C.J.S. *Wills*, section 1097 (1957). For purposes of the Code...the term "person" is construed to mean and include an individual, **trust**, estate, partnership, association, company or corporation. Section 7701(a). Since animals do not fall within this category, they cannot be **beneficiaries** for purposes of section 643(c).”
- Revenue Ruling 76-486: “an enforceable pet trust established under a state statute would be taxed on all of its income, regardless of any distributions made for the benefit of the pet beneficiary.” The pet trust is taxed as a complex trust that has not made any distributions.
- Revenue Ruling 78-105: “no portion of the amount passing to a valid trust for the lifetime benefit of a pet qualifies for the charitable estate tax deduction, even if the remainder beneficiary is a qualifying charity” because pet is not a “person.”
- No Annual Exclusion Allowance

Critique of Tax Provisions

- There is no annual exclusion allowance
- Income taxed at trust rates not individual rate, more compressed rates and starts at first cent
- No allowance deductions for distributions to pets
- Does it make sense to work around these negatives by merely giving the money to an individual together with the pet, trusting that he will care for the pet with the money provided: I give my cat to Sam together with the sum of \$25,000. Can't force Sam to care for cat, gets to keep the money regardless, but if inter vivos trust, can use annual exclusion, since the beneficiary is a person and not an animal.

Critique continued

- Paramount is the idea that the funding is generally de minimus [otherwise, court would ensure excess goes to contingent benef.]
- Assuming \$40k principal, generally, in this environment, 4% return = \$1,600/year, 15% tax is \$240/year. Litigation would not pay.
- Argument: Income which benefits a human being should be taxed to said person. The income used by caregiver is a benefit to caregiver in that the caregiver then does not have to take money out of his pocket to care for pet.
- Counter: Not a benefit to caregiver in that may not have taken pet but for the money which covers the pet's care. If caregiver not contingent beneficiary, then surely no personal benefit, benefit merely to beneficiary/pet.

Mandatory Provisions

- Settlor
- Beneficiaries
- Alternate/Successor Beneficiaries
- Trustee
- Custodian
- Funding provisions

Suggested Provisions

- Successor Beneficiaries
- Successor Trustees
- Successor Custodians
- Terms of care for your pet, specifics on vet care, favorite food, amount of exercise, usual habits, health condition/medication, boarding or pet-sitting
- Directions and circumstances for euthanizing the pet
- Provisions for the pet's remains

Funding Pet Trusts

- Major recurring error: funding with life insurance policy or annuity
- Over funding
- Ensuring sufficient funds for payment of accountant, commission and taxes

Finally, Capers Estate

"The best friend a man has in the world may turn against him and become his enemy. His son or daughter that he has reared with loving care may prove ungrateful. Those who are nearest and dearest to us, those whom we trust with our happiness and good name, may become traitors to their faith...

"The one absolutely unselfish friend that a man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous, is his dog.

"Gentlemen of the jury, a man's dog stands by him, in prosperity and poverty, in health and sickness. He will sleep on the cold ground, where the wintry wind blows and the snow drives fiercely if only he may be near his master's side. He will kiss the hand that has no food to offer; he will lick the wounds and sores that come in encounter with the roughness of the world. He guards the sleep of his pauper master as if he were a prince...

"... and when the last scene of all comes and death takes the master in its embrace and his body is laid away, there by his graveside will the noble dog be found, his head between his paws, his eyes sad but open in alert watchfulness, faithful and true even unto death."

TRUST AGREEMENT

Between

NAME OF OWNER,

as Settlor, and

NAME OF TRUSTEE,

as Trustee

Dated: AUTOMATIC

**LENORE S. DAVIS, PC
125 Linden Street
Woodmere, New York 11598
(516)569-4671**

PET TRUST

THIS AGREEMENT made and entered into this AUTOMATIC DATE , between NAME OF PET OWNER, Settlor, residing at PET OWNER'S ADDRESS, (hereinafter referred to as the "Settlor") and NAME OF TRUSTEE(S), residing at ADDRESS OF TRUSTEE (hereinafter sometimes referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Settlor desires to create a Trust to hold such property itemized and described in "Exhibit A" attached hereto and made a part hereof, together with such monies, securities and other assets as the Trustee may hereafter at any time hold or acquire hereunder (said monies, securities and other assets, being hereinafter referred to collectively as the "Trust Estate") for the purposes hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Settlor agrees to execute such further instruments as shall be necessary to transfer said property to the Trust and the Trustee agree to hold the Trust Estate for the following uses and purposes and subject to the terms and conditions hereinafter set forth:

ARTICLE I. GENERAL PROVISIONS

(1) ADDITIONS TO CORPUS

The Settlor with written notice to the Trustee may add from time to time to the Trust Estate any property outright, by deed or Will or otherwise. The Settlor further grants to other persons the power to add additional properties to this Trust, subject to acceptance by the Trustee.

(2) LAWS GOVERNING

The Settlor is currently a resident of the State of STATE OF OWNER'S RESIDENCE, and all questions pertaining to the validity, construction, effect and administration of this Agreement shall be determined by and in

accordance with the laws of STATE OF OWNER'S RESIDENCE. In the event STATE OF OWNER'S RESIDENCE does not recognize Pet Trusts, then the Trustee named herein shall do one of the following:

1. Move the situs of this Trust to a State that does provide for Pet Trusts, and have the Trust governed by said state; or
2. Terminate the Trust and hold the money for the benefit of my beneficiaries set forth in Schedule B. I understand that there will be no legal terms to govern the Trustees' actions, but trust that said Trustee will follow my wishes set forth herein.

The situs of the property of any Trust created hereunder may be maintained in any jurisdiction, in the absolute discretion of the Trustee, and thereafter transferred at any time to any other jurisdiction selected by the Trustee. Upon any such transfer of situs, the Trust Estate may thereafter, at the election of the Trustee of said Trust, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. Accordingly, if the Trustee of any Trust created hereunder elects to change the situs of any such Trust, the Trustee shall hereby be relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

(3) NAME OF TRUST

This Trust shall be known as the "NAME OF PET OWNER PET TRUST" and it shall be sufficient that it be referred to as such in any deed, assignment, bequest or devise.

(4) TRUST REVOCABLE

This Trust is hereby declared to be revocable and Settlor may at any time amended, alter or modify this Trust in any manner. Upon Settlor's death, this Trust shall become irrevocable.

(5) FAMILY PET MEMBERS/BENEFICIARIES

Schedule B attached hereto, contains the names and types of pets I presently have. It shall be amended from time to time as necessary to include all my pets. These pets shall be referred to herein as my Beneficiary/Beneficiaries.

ARTICLE II.

DISPOSITION OF TRUST ESTATE DURING SETTLOR'S LIFETIME

The Trustee shall hold, manage, invest and reinvest the Trust Estate, and shall pay or apply the income and principal of the Trust Estate in the following manner:

(1) DISTRIBUTION OF INCOME AND PRINCIPAL

(a) **INCOME DISTRIBUTIONS:** During the lifetime of the Settlor, the Trustee, in the Trustee's sole and absolute discretion, may (i) pay from time to time all or part of the net income from the Trust Estate, to or for the benefit of Settlor's beneficiaries (ii) accumulate said income as part of the Trust Estate.

(b) **PRINCIPAL DISTRIBUTIONS:** During the lifetime of the Settlor, the Trustee shall pay as much of the principal from the Trust Estate as the Trustee shall deem proper, in the Trustee's sole discretion, to or for the health, support or maintenance of Settlor's beneficiaries.

(c) **RESIDENTIAL REAL PROPERTY:** In the event that this Trust holds residential real property (including condominiums or the shares of a cooperative apartment) used by the Settlor, then Settlor shall have the exclusive right to occupy and use the said real property (including a cooperative apartment) for residential purposes. The Settlor shall not be required to pay rent for such property, but shall be responsible for and required to pay all of the expenses of the maintenance of the property, including taxes, insurance, utilities, mortgage payments and normal costs of maintenance and upkeep of the property.

Upon Settlor's death, Trustee shall have discretion as to whether to sell the residence or maintain the residence for the benefit of my beneficiaries. Upon the death of all of my beneficiaries, my residence shall be sold, and the net proceeds added to my residuary set forth below in Article IV.

(d) **NO PRINCIPAL OR INCOME TO THE TRUSTEE.** In no event shall income or principal of this trust pass to the Trustee of this Trust.

ARTICLE III. COORDINATION WITH THE ESTATE OF SETTLOR

The property herein shall not be used for estate expenses or taxes, to pay estate creditors or any other personal debts or expenses of the Settlor or her spouse.

ARTICLE IV.
DISPOSITION OF TRUST ESTATE UPON DEATH OF SETTLOR

(1) DISTRIBUTION UPON DEATH

Upon the death of the Settlor, the Trustee shall continue this Trust under the terms hereunder for the benefit of all my pets, as set forth in Schedule B.

The Trustee shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall, at any time and from time to time, apply for the benefit of the beneficiary, so much (even to the extent of the whole) of the net income and/or principal of this Trust as the Trustee shall deem advisable, in his/her/their sole and absolute discretion. The Trustee shall add to the principal of such Trust the balance of net income not so paid or applied.

Upon the death of my last pet, the corpus of this trust and any accumulated income shall pass to **ALTERNATE DISPOSITION**. In the event there is no alternate disposition, the corpus and accumulated income shall pass to my heirs at law.

(2) MISCELLANEOUS PROVISIONS (if any)

SPECIAL CARE INSTRUCTIONS

ARTICLE V.
PROVISIONS RELATING TO THE TRUST ESTATE

(1) ENFORCER

I hereby appoint **NAME OF ENFORCER** to be my enforcer herein. He/She shall have the right to enforce the terms of this trust in a Court of Law and ensure the safety, health and maintenance of my beneficiaries.

(2) CUSTODIAN

I hereby appoint NAME OF CUSTODIAN custody of my beneficiaries. He/She shall provide for the health, maintenance and support of my pets. She is to take them to a veterinarian at annually.

In the event NAME OF CUSTODIAN shall fail or cease to serve hereunder for any reason whatsoever, I hereby appoint NAME OF SUCCESSOR CUSTODIAN as my successor CUSTODIAN as though originally appointed by me.

ARTICLE VI. POWERS AND DUTIES OF TRUSTEE

(1) INVESTMENTS

(a) The Trustee hereunder (including any Successor Trustee) shall have the continuing, absolute and discretionary power to deal with any property, real or personal, held in such Trust(s). Such power may be exercised independently and without the prior or subsequent approval of any court or judicial authority, and no person dealing with such Trustee shall be required to inquire into the propriety of any of the actions of such Trustee. The Trustee shall not be limited to the type and character of investments in which he may invest the funds of this Trust, so long as the Trustee use reasonable prudence and judgment in the selection of investments. The Trustee shall have the following general powers, in addition to, and not by way of limitation of, the powers provided by Section 11-1.1 of the New York Estates, Powers and Trusts Law:

1. To retain any property contributed by the Settlor, so long as such retention appears advisable, and to exchange any such property for other properties and to retain such items received in exchange. The Trustee may presume that the Settlor has confidence in the property owned by the Settlor and added to the Trust Estate, and, therefore, no sale thereof shall be made solely in order to diversify investments or to convert said asset to income producing property.

2. To retain such property for any period, whether or not the same is of the character permissible for investments by fiduciaries under any applicable law, and without regard to any effect the retention may have upon the diversification of the investments.

3. To borrow monies with security upon such terms as to rate and maturity and in other respects as the Trustee may deem proper, and to secure the repayment of any and all amounts so borrowed by mortgage

or pledge of any property. All such payment(s), including any Trustee' fees incurred by reason of such payments, shall be charged generally against and made from the Trust Estate; provided, however, that no such payment shall be made from the proceeds of any qualified pension or profit sharing plan received by the Trustee.

4. To lease, with or without consideration, any such property beyond the period fixed by statute for leases made by a Trustee and beyond the duration of the Trust Estate or any Trust created hereunder.

5. To invest any part or the entire principal of the Trust Estate in any common trust fund, legal or discretionary, which may be established and operated by and under the control of the Trustee.

6. To improve real property and to pay the cost out of principal.

7. To permit any person having an interest in the income of the Trust to occupy real property upon such terms as the Trustee deem proper, whether rent free or for the payment of taxes, insurance, maintenance and ordinary repairs, or other expenses.

8. To sell, transfer, exchange, convert or otherwise dispose of, or grant options with respect to any security or property, real or personal, held in any Trust fund hereunder at public or private sale, with or without security, in such manner, at such time or times, for such purposes, for such prices and upon such terms, credits and conditions as the Trustee may deem advisable.

9. To allocate in the Trustee sole discretion, in whole or in part, to principal or income, all receipts and disbursements for which no express provision is made hereunder, which allocation shall fully protect the Trustee with respect to any action taken or payment made in reliance thereon.

Notwithstanding the above, in no event shall the Trustee adjust between income and principal if such adjustment would cause any public benefit program to consider the adjusted principal or income to be an available resource or available income or if such adjustment would otherwise supplant any governmental benefit that any beneficiary is entitled to receive.

The Trustee shall administer this Trust according to its terms even if such terms conflict with New York Estates Powers and Trusts Law §11-2.3(b)(5)(A) as amended.

10. A Trustee shall not have the power to elect the optional uni-trust provisions as created under New York Estates Powers and Trusts Law §11-2.4.

11. If the Settlor ceases to occupy and use real property as a residence under Article II for a period of ninety (90) consecutive days, the Trustee may, in the exercise of absolute discretion, either continue to hold such property or sell it. Notwithstanding, any purchaser of real property owned by the Trust will be entitled to rely upon the authority of the Trustee to sell such real property.

12. If there is more than one Trustee hereunder, they are empowered to act jointly or severally as to the above powers, including but not limited to transactions with financial institutions and banks.

**ARTICLE VII.
PROVISIONS RELATING TO TRUSTEE**

(1) COMPENSATION

The Trustee shall be entitled to receive a statutory commission for services rendered hereunder as provided for under New York law and shall also be reimbursed for all reasonable expenses incurred in the management and protection of the Trust Estate and travel and lodging expenses to and from the Trustee residence and the residence of the Settlor as frequently as the Trustee determine in the Trustee's sole discretion.

(2) BOND

No bond or other security shall be required of any non-corporate Trustee.

(3) HOLD HARMLESS

No Trustee shall be liable or responsible for any loss or damage arising by reason of any act or omission to or by the Trustee or in connection with any activities carried out under this Trust, except for the Trustee's own gross negligence, willful neglect or unlawful act.

ARTICLE VIII. TRUSTEES

(1) APPOINTMENT OF SUCCESSOR TRUSTEES

(a) The initial Trustee shall be NAME OF TRUSTEE. In the event NAME OF TRUSTEE shall fail or cease to serve hereunder for any reason whatsoever, NAME OF SUCCESSOR TRUSTEE shall be successor Trustee as if originally appointed hereunder.

ARTICLE IX. MISCELLANEOUS

(1) PERPETUITIES SAVINGS PROVISION

If NAME OF STATE has a provision for Rules Against Perpetuities, then this Trust shall terminate at the sooner of all my pets' deaths, or all Trusts created herein shall terminate no later than 21 years after the death of all of Settlor's descendants living on the date of this Agreement and, if any Trust shall so terminate, all property then belonging to the income or principal shall be distributed to the Trustee herein for the benefit of beneficiary(s) named herein free of Trust.

(2) HEADINGS AND USAGES

The paragraph headings used are for convenience only and shall not be resorted to for interpretation of this Trust. Wherever the context so requires, the masculine shall include the feminine and neuter and the singular shall include the plural.

(3) VALIDITY OF PROVISIONS

If any portion of this Trust is held to be void or unenforceable, the balance of this Trust shall nevertheless be carried into effect.

IN WITNESS WHEREOF, NAME OF PET OWNER, Settlor, and NAME OF TRUSTEE, Trustee, have signed and sealed this Trust Agreement.

NAME OF PET OWNER, Settlor

NAME OF TRUSEE, Trustee

STATE OF)
 : s.:
COUNTY OF)

On AUTOMATIC DATE, before me, the undersigned personally appeared NAME OF PET OWNER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF)
 : s.:
COUNTY OF)

On AUTOMATIC DATE, before me, the undersigned personally appeared NAME OF TRUSTEE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE A
TO THE NAME OF PET OWNER PET TRUST

DATED:

(Description of Assets Contributed to the Trust)

Receipt of the above listed items is hereby acknowledged by:

NAME OF TRUSTEE, Trustee

DATED: _____

WITNESS

SCHEDULE B
LIST OF BENEFICIARIES

(Please provide name of pet, what kind of animal and description)
(Should be updated every time you adopt a new pet or a pet passes away)

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two thick black horizontal bars. The top bar has a slight upward curve at its ends.

NEW YORK
CITY BAR

Providing For Your Pets
In The Event of
Your Death
or Hospitalization

COMMITTEE ON ANIMAL LAW

MAY 2016

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Providing For Your Pets

In The Event of Your Death or Hospitalization

Introduction

For many people, particularly the elderly, a pet is an important and comforting part of life, and the care and wellbeing of the pet is a primary concern. This is particularly so in the event of a pet owner's death or hospitalization. Below is a summary of measures that should be taken to plan for the care of a pet in the event of a pet owner's death or hospitalization.¹

Upon Death:

1. Include provisions in a Will to provide effectively for the comfort and care of the pet upon the death of the pet owner.
2. Make advance arrangements to protect the pet during the period of time between the owner's death and the admission of the Will to probate.

Too often this period is not considered. Although a Will can provide for the care of the pet, no action can be taken by the Executor to carry out these provisions until the Will has been admitted to probate and the Executor has received the authority to proceed by the issuance of letters testamentary. The time between death and the authority of the Executor to act can vary between several weeks and several months. Plans must be made to ensure care for the pet during this interim period.

Upon Hospitalization:

1. Make advance arrangements to ensure the care of the pet while the owner is hospitalized or incapacitated.

¹ This brochure and the accompanying sample Will and Trust provisions are not offered as legal advice and should not be relied upon without the independent advice of a qualified attorney concentrating in trust and estate matters.

Designating Caretakers

A pet owner should designate a friend or relative willing to take his or her animal and give the animal a good home upon the death of the pet owner (the "Caretaker"). The matter should be discussed in advance with the potential Caretaker to ensure that the animal will be cared for appropriately. A Caretaker who will receive an animal as the result of a bequest in a Will should understand *in advance* that he or she will become the animal's owner and, as such, will have all the rights and responsibilities of ownership.

The pet owner should then ask a qualified attorney to draft a Will leaving the animal to the particular Caretaker the pet owner has selected. It is best to name alternate Caretakers in the Will as well, in case the first-named person is unable or unwilling to take the animal when the time comes. An example of such a Will provision appears in Sample Will Provision I.

Another alternative is to give the Executor the discretion to select from among several caretakers prearranged and named by the pet owner in his or her Will. These potential Caretakers should be notified in advance that they may be selected. The Executor should also be equipped to best determine who of these choices is best suited to become the Caretaker. An example of this type of Will provision appears in Sample Will Provision II.

Providing Funds for Pet Care

Under the laws of all 50 states, a pet owner cannot leave any part of his or her estate outright to an animal. However, the owner may leave a sum of money to the person designated to care for the pet, along with a request (not a direction) that the money be used for the pet's care. It is important for the pet owner to select a Caretaker he or she trusts and who will be devoted to the pet, because the Caretaker has no legal obligation under such a provision to use the money for the purpose specified.

The owner should leave only a reasonable amount of money for the care of any pet. A large sum of money may prompt relatives to challenge the Will and the court may invalidate the bequest for pet care. The attorney may want to include an *in terrorem* clause in the pet owner's Will to reduce the chance of a challenge to the Will. This clause provides that if a person unsuccessfully challenges a provision in the Will, he or she cannot then receive property under any provision of the Will.

Designating a Shelter or Charitable Organization to Care for Pets

If no friend or relative can be found to take the pet, the pet owner should look for a charitable organization whose function is to care for or place companion animals in suitable homes. A humane society or shelter might accept the animal more willingly if such a request is accompanied by a cash bequest to cover expenses. An example of this type of Will provision appears in Sample Will Provision III.

The charity should agree to take care of the animal for his or her life or find an adoptive home for the animal. Before selecting a shelter, find out what kind of care animals receive at the shelter (for example, an animal should not have to stay for more than a short period in a cage), as well as the reputation of the shelter. If the organization is directed to find an adoptive home for the companion animal in its care, the pet owner should obtain detailed information about the adoption procedure.

Making A Conditional Bequest

New York and some other states allow the pet owners to make a "conditional bequest" in which both the animal and a sum of money are left to a beneficiary who must use the money for the care of the animal.

A conditional bequest has the advantage of *requiring* the recipient to care for the pet, but it also adds to the Executor's responsibility the task of ensuring that the person receiving the money fulfills his or her commitment. The pet owner, therefore, must select an Executor willing to undertake this added responsibility and provide this additional oversight. If a pet owner desires to make a conditional bequest, the attorney drafting the Will must consider the relevant law concerning such provisions since they can be invalidated by the courts and are, therefore, not recommended.

Establishing a Pet Trust

Under the law of most states, including New York, an animal can be the beneficiary of a trust created to care for the animal. New York's pet trust statute was enacted in 1996 and amended in 2010.² The statute enables persons to create trusts for their animals, and these trusts can be enforced by the courts. The trust can be (i) a testamentary trust created under a Will that takes effect upon the death of the pet owner, or (ii) an *inter vivos* trust created and effective while the pet owner is alive. (See Sample Testamentary Trust for the Care of Dogs and Cats and Sample Testamentary Trust for the Care of Horses and Farm Animals).

A trustee is named in the trust instrument to manage the trust and to use the funds in the trust to care for the animals. If the trustee cannot take physical

² NEW YORK ESTATES POWERS AND TRUSTS LAW (NY EPTL) § 7-8.1

possession of the animals, a different person can be named as the Caretaker. Alternate trustees and Caretakers should always be named in case the first-named person is not available to act when the pet owner dies.

Under the amended New York pet trust statute, a pet trust shall continue until no living animal is covered by the trust. This is a favorable change from previous law that subjected pet trusts to a 21-year limitation. The amended New York pet trust statute, which now follows the pet trust statutes of most states, helps ensure pet owners of parrots, horses, and other long-lived animals that all of their animal beneficiaries will be covered for the duration of their lives.

Providing for Euthanasia If Caretakers Cannot Be Found

Courts have invalidated provisions in a Will directing that an animal be euthanized upon the death of its owner. While a pet owner may feel it is important to protect a pet from subsequent mistreatment or a "bad home," it is questionable whether a healthy pet's life must end by euthanasia when his or her owner dies. Nevertheless, if a pet owner wishes to provide for euthanasia, it is preferable to specify in a Will that the pet be cared for by the Executor or a friend for a period of time and ask that this person attempt to find a good home for the pet. If no home is found after a specified reasonable period of time, the animal then may be taken for euthanasia. A court may be less likely to overturn such a provision. An example of this type of Will provision appears in Sample Will Provision IV.

As an alternative, the pet owner may write a letter to a friend or relative stating that upon the death of the pet owner, the animal should be euthanized. *A signed copy should be given in advance to the friend or relative and another signed copy should be held with the Will but not made part of the Will.* The letter is not legally binding, and the friend or relative is not obligated to carry out the instructions of the pet owner. It can, however, be a good indicator of the pet owner's wishes. Euthanasia performed pursuant to a letter from the pet owner is also subject to court challenge.

It is preferable that those relatives, other persons, or charities receiving the balance of the estate as the residuary beneficiaries give permission before any animals are euthanized, as the residuary beneficiaries could complain that the animal is part of the estate property and should pass to them. This is a rare scenario, but it has happened.

It should be noted that if you bequeath your animal to a friend or relative, that person becomes the owner and has all the rights and obligations of the pet's care, including the right to euthanize the animal.

Providing Funds for Pet Care During Transitional Period

Finally, a provision which should be included in all Wills where an animal is involved is one allowing the Executor to use estate funds to care for the animal for the period before the animal goes to the new home designated by the pet owner. The Will should state that the costs of food, veterinary care, transportation and other expenses incurred by the Executor in caring for the decedent's pet are to be paid from the estate as an estate administration expense, whether or not the expenses are deductible for estate tax purposes. An example of this type of Will provision appears in Sample Will Provision V.

Short-term arrangements for care of a pet are necessary to cover the period between the death of the pet owner and the issuance of letters testamentary or letters of administration. These letters give the Executor or Administrator authority to act but, depending on the jurisdiction, it may take from two weeks to two months to obtain them. Short-term arrangements are also necessary if the owner is hospitalized for a period of time.

Arranging For Friends/Relatives To Provide Short-Term Care

A pet owner should try to find a friend or relative who is willing to take care of his or her pet during these periods. The owner should leave word, preferably in writing, at home and with a neighbor, or with the building management and/or superintendent, for the friend or relative to be notified. The pet owner should arrange for access to his or her home to permit the care and feeding of the pet during such short-term periods. If an apartment is involved, the owner should consider leaving a key with the superintendent or a neighbor. If there is a relative or friend in the area, the owner should consider providing that individual with a key and with written permission to the building management to enter the apartment in the event of the death or hospitalization of the pet owner.

Arranging for a Shelter or Charitable Organization to Provide Short-Term Care

There may be an animal shelter or charitable organization with which arrangements can be made to care for a pet in the event of the death or hospitalization of the pet owner. Should the owner make such arrangements, shelter personnel would need written instructions addressed to the superintendent or building management and the key to permit them access. Similarly, the pet owner should leave written instructions in his or her home and with a relative or friend to notify the shelter (if a shelter is chosen) or the individual who has agreed to take care of the pet during this period.

Emergency Instructions

Once the pet owner has decided upon such arrangements for the short-term care and feeding of the pet in the event of the pet owner's hospitalization or death, the owner should carry a copy of the instructions as part of his or her identification papers in the event of sudden hospitalization or death due to an accident or illness. An example of the type of instructions to carry appears at the end of this document under Sample Note to Carry in Wallet Regarding Emergency Care of Pets.

Providing Copies of Instructions to An Executor

Finally, in the event of death, and to cover the interim period while letters testamentary are being obtained, the Executor named in your Will should also be given copies of all applicable instructions.

Conclusion

In conclusion, the best way to assure proper care for a pet under the circumstances described is to make both testamentary and short-term arrangements for the pet now and to have a Will drafted by a qualified attorney. Making such arrangements may entail a significant amount of effort on the part of the pet owner, but is important to ensure the pet is cared for in the event of the owner's hospitalization, incapacity, or death.

Sample Will Provisions

Sample Will Provision I

I give my [cat, Ginger], and any other animals, which I may own at the time of my death, to [Mary Smith], presently residing at [address], with the request that she treat them as companion animals. If she is unable or unwilling to accept my animals, I give such animals to [John Doe], presently residing at [address] with the request that he treat them as companion animals. If he is unable or unwilling to accept my animals, my Executor shall select an appropriate person to accept the animals and treat them as companion animals, and I give my animals to such person.

I direct my Executor to give [\$_] from my estate to the person who accepts my animals, and I request (but do not direct) that these funds be used for the care of my animals.

Sample Will Provision II

My Executor shall give [my dogs] to one or more of the following persons who agree to care for such [dogs] and to treat them as companion animals:

[Mary Smith], presently residing at [address]. [John Doe], presently residing at [address]. [James Smith], presently residing at [address].

My Executor shall have the discretion to select one or more of the persons named above to receive one or more of the [dogs]. If none of such persons are willing or able to take the [dogs], my Executor shall have the discretion to give the [dogs] to another person or persons who agree to care for such [dogs] and to treat them as companion animals.

My Executor shall give [\$_] to each person selected by my Executor and who accepts one or more of my [dogs].

Sample Will Provision III

I give all of my [dogs, cats, and other animals] to the [name of a shelter or rescue organization – for example, a humane shelter, the rescue organization from which the animals were adopted, a breed specific rescue organization, or any other animal shelter or rescue organization that holds itself out for this purpose (NOTE: For each, the testator should familiarize him or herself with the shelter or organization in order to ensure the ability of the shelter or organization to care for his or her animals in a manner that the testator find acceptable)], presently located at [address], with the following requests:

that the [name of the shelter or rescue organization identified above] take possession of and care for all my animals and search for good homes for them;

that until homes are found for my animals, the animals be placed in foster homes rather than in cages at the shelter;

that if it is necessary to keep some of the animals in cages while making arrangements to find permanent homes, in no event should any animal stay more than a total of 2 weeks in a cage;

that each animal should receive appropriate veterinary care, as needed;

that after attempts have been made for 3 months to place an animal, my [son], presently residing at [address], be contacted if it is not possible to place an animal so that he can assist with finding a home for the animal;

that the shelter make every effort to assure that none of my animals are ever used for medical research or product testing or experimentation under any circumstances or subjected to cosmetic or discretionary procedures that are not medically necessary;

that, after placement, shelter personnel make follow-up visits to assure that my animals are receiving proper care in their new homes.

If the [name of the shelter or rescue organization identified above] is in existence at the time of my death and is able to accept my animals, I give [\$_] to the [name of the shelter or rescue organization identified above]. If the [name of the shelter or rescue organization identified above] is unable to accept my animals, I give my animals and [\$_] to one or more similar charitable organizations as my Executor shall select, subject to the re-quests made above.

Sample Will Provision IV

My [cat, Ginger], shall be delivered to [Mary Smith or John Doe] for temporary holding. The Executor shall determine the amount from the estate to go with the animal for such temporary care and feeding. The Executor shall advertise and otherwise make diligent efforts to find a good home for the animal, taking a reasonable amount of money for these purposes from the estate. If no home can be found after [_] months, the animal shall be taken to [name and address of veterinarian] to be euthanized by the most humane method the veterinarian has competency to use.

Sample Will Provision V

I direct my Executor to pay, as an administration expense, all expenses associated with the feeding and care, including veterinary costs, of my [dogs and cats] until the animals are placed with the persons that I (or my Executor) have selected to care for the [dogs and cats] for the duration of their lives, whether or not these expenses are deductible for estate tax purposes.

Sample Testamentary Trust for the Care of Dogs and Cats

I give the sum of [____ Thousand Dollars] (\$_) and all of my dogs, cats, and any other animals of mine living at the time of my death to the trustee hereunder, IN TRUST, for the following purposes and subject to the following terms and conditions:

This trust is created pursuant to New York Estates, Powers and Trusts Law Section 7- 8.1 for the benefit of all of my dogs, cats, and any other animals of mine living at the time of my death (the “Beneficiaries” herein).

The trust shall terminate upon the death of the last to die of the Beneficiaries.

During the term of the trust, the trustee shall apply for the benefit of the Beneficiaries, any or all of the net income of the trust and however much or all of the principal of the trust from time to time, as the trustee shall in the trustee’s discretion determine to be advisable for the care, including veterinary care, of the Beneficiaries. Any income accrued but not distributed for the benefit of the Beneficiaries shall be added to the principal of the trust.

I appoint [name], presently residing at [address], to be the trustee of such trust. If such person has predeceased me or for any other reason is unable to act as such trustee, I appoint [name], presently residing at [address], to be the trustee of such trust.

I designate [name], presently residing at [address], to be the caretaker of the Beneficiaries. If such person has predeceased me or for any other reason is unable to act as such caretaker, I designate [name], presently residing at [address], to be the caretaker of the Beneficiaries. If such person has predeceased me or for any other reason is unable to act as such caretaker, the trustee shall select another person to act as caretaker of the Beneficiaries. The trustee, in the trustee’s discretion, may pay a stipend from the trust to the person acting as such caretaker.

I designate [name], presently residing at [address], as the person to enforce the trust, if necessary. If such person has predeceased me or for any other reason is unable to act in this capacity, I designate [name], presently residing at [address], as the person to enforce the trust, if necessary.

I am creating this trust to provide for the care of my animals and the trustee does not need to consider the interests of the remainderman when making distributions. The trustee, in the trustee’s discretion, may use all of the trust property for the benefit of my animals; even if the result is that nothing will pass to the remainderman.

Upon the termination of the trust, if any property remains in the trust at the time of termination, the trustee shall distribute any such income and/or principal to [name of trust remainderman—for example, a charity that rescues animals, such as the

rescue organization from which the animals were adopted, a breed specific rescue organization, or any other animal shelter or rescue organization that holds itself out for this purpose (NOTE: For each, the testator should familiarize him or herself with the shelter or organization in order to ensure the ability of the shelter or organization to care for his or her animals in a manner that the testator find acceptable)], located at [address]. If such charitable organization is not in existence at the time of termination, I give the trust remainder, if any, to a charitable organization that benefits animals described in Section 170(c) and 2055(a) of the Internal Revenue Code, to be selected by the trustee.

Sample Testamentary Trust for the Care of Horses and Farm Animals

I give my horses, farm animals, and any other animals which I may own or have in my possession at the time of my death, and the sum of [____ Thousand Dollars] (\$_), to my trustees named in Article (____) hereunder, IN TRUST, to hold and arrange for the care of such animals and to invest and reinvest such funds and to pay for the expenses of the care of such animals from such property as my trustees shall in their discretion determine. This trust is created pursuant to New York Estates, Powers and Trusts Law Section 7-8.1 for the benefit of my horses, farm animals and other domestic animals. My trustees may board my animals with a suitable boarding facility, or may rent a property where the animals can live and hire a caretaker to care for the animals. The trustees shall make appropriate arrangements for the proper care of my animals, including veterinary care, during their lives. The animals are not to be sold, but the trustees may place one or more of my animals with a [horse sanctuary or farm animal sanctuary], if the trustees, in their discretion, determine that it is in the best interests of such animals. The trustee may continue to pay for the care of such animals at such sanctuary, or make such other arrangements as may be beneficial to my animals. I designate [name], presently residing at [address], or if such person is unable or unwilling to act in such capacity, [alternate name], presently residing at [address], as the person to enforce the trust, if necessary.

This trust shall terminate upon the death of the last to die of my animals. Upon the termination of the trust, if any income and/or principal remains in the trust at the time of termination, the trustees shall distribute any such remaining income and/or principal to [name of trust remainderman—for example, a horse sanctuary or farm animal sanctuary]. If such sanctuary is not in existence at the time of termination, the trustees shall distribute any remaining income and/or principal to an animal sanctuary or sanctuaries, to be selected by my trustee, in his or her discretion.

Sample Note to Carry in Wallet Regarding Emergency Care of Pets

In any situation in which I am unable to return home to feed my pets, such as my hospitalization or death, please immediately contact [Mary Smith] at [address and phone] or [John Doe] at [address and phone], to arrange for the feeding of my [cats] located in my home at [address]. The superintendent of my apartment building [name, address and phone], my Executor [name, address and phone], and my neighbor [name, address and phone] each have a copy of this document.

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2013 New York Consolidated Laws

EPT - Estates, Powers & Trusts

Article 7 - TRUSTS

Part 8 - (7-8.1) HONORARY TRUSTS

FOR PETS

7-8.1 - Trusts for pets

Universal Citation: NY Est Pow & Trusts L § 7-8.1 (2012)

§ 7-8.1 Trusts for pets

(a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive.

(b) Except as expressly provided otherwise in the trust instrument,

no

portion of the principal or income may be converted to the use of the

trustee or to any use other than for the benefit of all covered animals.

(c) Upon termination, the trustee shall transfer the unexpended trust

property as directed in the trust instrument or, if there are no such

directions in the trust instrument, the property shall pass to the

estate of the grantor.

(d) A court may reduce the amount of the property transferred if it

determines that amount substantially exceeds the amount required for the

intended use. The amount of the reduction, if any, passes as unexpended

trust property pursuant to paragraph (c) of this section.

(e) If no trustee is designated or no designated trustee is willing or

able to serve, a court shall appoint a trustee and may make such other

orders and determinations as are advisable to carry out the intent of

the transferor and the purpose of this section.

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Presumption of Death: What Happens When an Individual Vanishes From Society?

New York Law Journal (Online)

September 6, 2018 Thursday

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New York Law Journal

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Body

Recently, there has been new attention placed on the decades old disappearance of Kathleen Durst who disappeared in 1982. At the time of her disappearance, there was speculation and suspicion surrounding her husband Robert Durst who was from a prominent New York family. No one has heard from Kathleen Durst in decades, yet she was still considered a missing person until recently. Earlier this year, the First Department issued a decision finding the date of Kathleen Durst's disappearance was the most probable date of her death. Finally determining that Kathleen Durst was dead, and identifying her date of death may have implications in contemplated and pending proceedings by her family.

According to FBI statistics, 750,000 people are reported missing each year in the United States. USA Today, "[*By The Numbers: Missing Person in the USA.*](#)" Some of these disappearances are linked to mass fatalities or national disasters, while others may be associated with possible foul play. Regardless of the reason, when an individual disappears and their death cannot be confirmed, the family usually needs a death certificate or something similarly to file insurance claims, settle accounts or receive other benefits.

This article will review what occurs when a person is missing for an extended period of time.

Origins of the Presumption of Death and EPTL 2-1.7

As explained in *In re Boerum St.*, 11 Bedell 321 (1903), under common law and civil law in many jurisdictions, a person was presumed to be living for a period of 100 years from the time of their birth. Some countries later modified this time period by statute. For example, one English statute exempted any person from penalty for bigamy if their spouse had been absent for a period of seven years. A similar English statute provided that parties to leases who were absent for more than seven years would be deemed deceased. Today, most jurisdictions have shortened the waiting period by statute and allow courts to dispense with the time period requirement all together if the missing person was exposed to a specific peril.

In New York, EPTL 2-1.7 governs presumption of death from absence. There are two routes that allow a court to presume death from a person's absence, which in turn permits the winding up and administration of the missing person's estate. Otherwise, one may have to resort to temporary administration proceedings for absentees pursuant to SCPA Article 9.

First, a court can declare an absentee legally dead if they were exposed to a specific peril. This concerns a disappearance under circumstances that strongly point to immediate death. A party must show that the absentee was exposed to a specific peril (and not just an unexplained absence), and that a thorough search was made for them. If these elements are satisfied, the absentee's date of death may be considered to be the date they disappeared.

If there is no specific peril linked to the absentee, a person can be declared legally dead if he or she has been absent for a continuous period of three years provided: a diligent search was made for the person during the three year period; the missing person has not been seen or heard from by anyone during that time period; and the missing person's absence is not otherwise satisfactorily explained. If these elements are satisfied, the absentee may be deemed to have died three years after the date such unexplained absence commenced or an earlier date if another probable date of death can be established by clear and convincing evidence. A

booklet issued by some courts titled "Guidelines for Guardian Ad Litem" provides helpful hints about how to satisfy the court that a diligent and thorough search was undertaken.

The person wishing to invoke the presumption of death from a period of absence bears the burden of establishing the facts that may give rise to the presumption by the heightened standard of clear and convincing evidence (meaning it is highly probable that the person is dead). It is not enough to assert that three years have passed. A person's absence can be explained by a variety of circumstances other than death, including a desire to conceal their identity, a rift with family members or within a community, or the fact that the absentee was a "fugitive from justice." See *Gardner v. Northeast Mutual Life Insurance*, 152 Misc 873 (Sup Ct Delaware Co 1934) aff'd 242 AD 886 (3d Dept 1934).

Even if an unexplained absence and unreasonable failure to communicate are sufficiently established, the presumption of death from absence will not arise unless the petitioner satisfactorily demonstrates that he or she has conducted a thorough and exhaustive search for the absentee in places and among individuals likely to have information about the missing person's whereabouts. For example, in *Cavanaugh v. Valentine*, the court found that a diligent and exhaustive search to find an absentee was made only after the petitioner made a report to the Bureau of Missing Persons, sought police aid, visited the morgue, searched in places the absentee frequented, and attempted to get information from the absentee's relatives and friends.

In the case involving Kathleen Durst, the petitioner submitted evidence that she disappeared without explanation, and without her car and personal effects, on Jan. 31, 1982, see *In re McCormack by Bamote*, 161 AD2d 612 (1st Dept 2018). The evidence showed that Kathleen Durst had previously been very close with her sisters and communicated frequently, and it was inconceivable that she would abruptly cease all communication with family and friends. The evidence also showed that Kathleen Durst was a medical student two months away from graduation at the time of her disappearance, and it would be incomprehensible that she would walk away from her studies when she was so close to her goal. Based upon the unrefuted

evidence, the First Department held that the clear and convincing evidence showed that Jan. 31, 1982, the date of her disappearance, was the most probable date of her death.

What Happens if an Absentee Is Located?

The presumption of death is only a presumption. If an absentee who was presumed dead later returns or is otherwise proven to be alive (the so-called "alleged decedent"), the presumption is nullified. Pursuant to SCPA 2226, if the "alleged decedent" returns, he or she has the right to any of her property that the fiduciary still has, as well as the right to compel an accounting and to enforce the decree made on the accounting. However, if the fiduciary accounted and the estate was fully distributed before the absentee returned, the absentee may not recover the property from the beneficiaries who received it. When the current version of SCPA 2226 was enacted in 1994, the Legislature noted that "[t]he distributees receiving the money after a final accounting are more entitled to protection than the missing person who shows up after a three- or five-year absence," see Second Report of the EPTL/SCPA Legislative Advisory Committee (App. 22A); see Turano, Margaret, McKinney's Cons Laws of NY, SCPA §2226. This now conforms with SCPA §911 concerning determination and distribution of an absentee's estate.

Raymond Radigan is a former Surrogate of Nassau County and of counsel to Ruskin Moscou Faltischek. He also chaired the Advisory Committee to the Legislature on Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act.

Jennifer F. Hillman is a partner at the firm where her practice focuses on trust and estate litigation. A special thank you to Gabriella Labita whose research paper was the basis for this article. She is a student at St. John's University School of Law.

Load-Date: May 18, 2019

Fed Up With Dating, They Find Comfort in Their Pets

Deep bonds that help some singles fill the relationship void without the drama or irritants.

By TAMMY LaGORCE

Alexandra Clayton has been single for two years, giving her ample time to reach a conclusion about dating: It's not really her thing, at least for now.

"I just don't have the energy to do it constantly," said Ms. Clayton, 36, a freelance filmmaker in Los Angeles. But she does have time for 100 kisses a day with Roo, her 8-year-old, 25-pound "super mutt." Her daily agenda also consists of leisurely walks and long cuddle sessions on the couch with her dog.

Recently, Ms. Clayton has spent little time on dating apps and instead has effectively settled down with Roo. The dating angst that consumed her for years is well in the past, she said, and life has never felt more complete. With Roo by her side, "I've grown into a place where I'm really secure and happy," she said.

Not everyone understands her current choice to quit pursuing a partner; family members have pointed out her age and her desire to have children. But Ms. Clayton is not alone. In an October survey sponsored by Rover, a pet-care company, nearly 250 out of 1,000 dog and cat owners in America said they had intentionally delayed dating or marriage because of their deep bonds with their pets.

When it comes to choosing a life partner, "we have three very basic brain systems," said Helen Fisher, an anthropologist who is a senior research fellow at the Kinsey Institute. "They're sex drive, feelings of deep romantic love and feelings of deep attachment," Ms. Fisher said. When pets show affection and you pet them, she said, it drives up "your oxytocin levels and you're feeling a sense of attachment."

Elizabeth Robinson, 54, has never been married and has not dated in more than 10 years. And that's fine with her because she shares an apartment with her rescue dog, Watson, and Legs, a cat she inherited when her neighbor died. "I know it's really cliché to say dogs are better than people," but sometimes it's true, said Ms. Robinson, a



JULIA BATAVIA

Above, Alexandra Clayton, a freelance filmmaker from Los Angeles with her dog, Roo, is taking a break from dating apps. At right is Elizabeth Robinson in Brooklyn with her dog, Watson. She said she had not dated in more than 10 years.



MAANSI SRIVASTAVA/THE NEW YORK TIMES

professional dog trainer and dog behavior consultant in Clinton Hill, Brooklyn.

She dated throughout her 30s and early 40s, engaging in romantic relationships with men she still considers "lovely." But she no longer wants to dip into the narrowing pool of available men for even a cursory

look, she said.

"I don't feel the need to keep trying relationship after relationship," Ms. Robinson said, in hopes of meeting a human partner who might have more to offer than Watson and Legs do.

Bonds with other people are important, she said, but dogs make them easy to form. Ms. Robinson has developed dozens of close friendships through regular walks around Fort Greene Park with Watson and his predecessor, Ed, who died last year. Ms. Clayton has found a similar network in Los Angeles.

For now, both Ms. Robinson and Ms. Clayton consider the lack of romantic intimacy worth the trade-off. "I'd love to find love again," Ms. Clayton said. "But I feel like I spent a lot of time contorting myself and my life for my relationships." With Roo, her pet for the last six years, there's no bending over backward. "He's a happy, optimistic sort," she said. "And there's never any fighting."

Ms. Robinson knows that even uncoupled, she is in good company. "A lot of people in my circle aren't partnered and aren't parents," she said, adding that missing out on child-rearing hasn't made her life feel less dimensional or unfulfilled. "We all love kids, but we don't happen to have them."

Coppy Holzman, 68, an owner of Boris & Horton, a dog-friendly cafe with locations in Williamsburg, Brooklyn, and the East Village in Manhattan, loves children, too. He has three grandchildren and three children, and he owns his business with his daughter, Logan Mikhly. (The cafes are named after their dogs.)

Mr. Holzman, who is divorced, has experienced the rewards of marrying and raising a family. But still, he understands why some pet owners choose to remain single, he said.

"Having been married and been involved in lots of relationships, I can say, Boris is great," said Mr. Holzman, who lives in the West Village with his 80-pound pit bull. "I love him to death and feel emotionally supported by him."

Boris's companionship has led Mr. Holzman to become more selective when it comes to human relationships. "I don't want to say I don't date at all, but I'm not

looking for anything," he said. "I'm not dating as actively as I would be without what we have seems to work."

He recognizes the obvious limitation of being in a primary relationship versus a transactional one. "We have loving conversations, but it's not like 'Are you hungry? Do you want to go for a walk?'" he said. "I'm not going to discuss the news with him or anything."

He also can't ask Boris for help with financial, health or domestic issues, which poses a challenge for people who turn to their pets for emotional support. "If there's a big decision to be made, I have no one to consult with," Ms. Robinson said. On the other hand, she said, there's a big decision to be made that she has to consult with somebody.

Loving Roo has been a revelation for Ms. Clayton. "You don't have to take the

'He's a happy, optimistic sort,' an owner says of her pet. 'And there's never any fighting.'

tional path in life that's been rammed down our throats, especially as women," she said. "It feels so nice not being in a needy

People who prioritize their pets over romantic partners may find themselves missing human companionship again because dogs and cats live shorter lives than people. With pets, "you get something that's calming you down and making you feel loved and appreciated," said Ms. Fisher, the anthropologist. But in terms of romance and intimacy, "you're only getting one of those three basic brain systems," she said. "The others evolve over time. Keeping us living long and happy lives, in my opinion, it's healthier to also get those brain systems triggered."

Tom Blake, a relationship advisor and columnist in Dana Point, Calif., said that one of the people he knows who are content with their pet companionships still secretly wish they'd like a human partner. "It encourages people to indulge that wish: 'Go out and meet people. Meet a pet when you come home.'"

Judge Elizabeth Fox-McDonough

Justice of the Supreme Court

In November 2021 Judge Elizabeth Fox-McDonough was elected to the position of Supreme Court Justice in the 10th Judicial District and currently presides in the Matrimonial Center in Supreme Court. Judge Fox-McDonough is also the presiding Justice of the Integrated Domestic Violence Part of the Supreme Court.

Judge Fox- McDonough began her judicial career in 2018 as a District Court Judge. In January of 2019, Judge Fox-McDonough was elevated to the position of Supervising Judge of District Court until her election to the Supreme Court.

Judge Fox-McDonough began her legal career in the Queens County District Attorney's Office where she went on to have a ten-year career as a prosecutor.

In 1997, Judge Fox-McDonough became a Principal Law Clerk to Justice Arthur Cooperman in the Criminal Term of the Queens Supreme Court. Judge Fox-McDonough went on to work for Judge Barry Kron of the Queens Supreme Court as a Principal Court Attorney.

In 2014, Judge Fox-McDonough served as the Principal Law Clerk to Deputy Chief Administrative Judge, Justice Norman St. George, who was then the Supervising Judge of the Nassau County District Court. In that role, she gained significant knowledge of all the aspects of the operation of District Court.

Judge Fox-McDonough attended St John's University and received a Bachelor of Arts Degree in 1984. Judge Fox-McDonough then attended St. John's University Law School graduating with a Juris Doctor in 1987.

HONORABLE MARGARET C. REILLY

Biography

Margaret (Meg) Reilly was appointed to the Nassau County District Court in May, 1998. In November 1998, she was elected to the District Court, representing the 4th District, which consists of the Town of Oyster Bay and the City of Glen Cove. She was re-elected as a Nassau County District Court Judge in 2004 and again in 2010. In December 2006, she was appointed as an acting Nassau County Court Judge. In November 2011, she was elected to the Nassau County Supreme Court. In November 2015, she was elected the Surrogate of Nassau County. On January 1, 2016, she began her term as Surrogate.

Meg graduated from Hamilton College with honors in Classical Studies and received her law degree from St. John's University School of Law.

After law school, she was appointed as Deputy County Attorney in the Litigation Bureau where she tried many cases, including civil rights and other tort matters. She then entered private practice and served as a trial attorney in all types of tort litigation, including medical, dental and legal malpractice. During this time, she served as the Prosecutor for the Village of Stewart Manor. In addition, she served as adjunct professor in Trial Advocacy at St. John's University School of Law.

Meg has served as the chairperson for the Nassau County Bar Association Defendant's Roundtable. She also served as an appointed member of the Nassau County Bar Association Judiciary Committee. She has lectured for the Nassau and Suffolk Academies of Law, Touro Law School and Hofstra University School of Law. She served as Co-Chair of the Nassau County Court's Women in the Courts Committee from 2004 to 2012. She served on the Irish Advisory Board of the Irish Institute at Molloy College. In addition, she is currently a member of the Board of Trustees of the Boys and Girls Club of Oyster Bay-East Norwich, a member of the Pastoral Council of St. Dominic's of Oyster Bay, the Immaculate Heart of Mary Guild and Ladies Ancient Order of Hibernians. She is the former Vice-President of the Parents Council of the Boys and Girls Club of Oyster Bay-East Norwich.

During her tenure as Judge, she has been the recipient of several awards, including the Fraternal Order of Police Fidelis Juri Award and the Court Officers Benevolent Association of Nassau County Fidelis Juri Award.

Emily F. Franchina, Esq.
Franchina Law Group, LLC

A graduate from the Maurice A. Deane School of Law at Hofstra University she has played leadership roles as the chair of the NYSBA Young Lawyers and the General Practice sections and served as Vice President of the 10th Judicial District. She is the Immediate past Chair of the Committee on Judicial nominations and served as Chair of the Fellows of the NY Bar Foundation, the charitable arm of the NYS Bar Association for many years.

As a member of the Nassau County Bar Association she served on the Executive Committee for seven years and was the fifth female President in the Association's 107 year history. Emily has served as Chair of the Elder Law, Social Services and Health Advocacy, Surrogate's Court Estates and Trusts committees. In 2006 Emily was honoured with the distinguished service award by the Association's WE CARE charitable fund.

Committed to the community as well, Emily was President of the Mineola-Garden City Rotary, is President of the Southold Rotary, a member of the board of East End Arts, Riverhead, served on the Advisory board of St. Johnland Nursing facility and the Long Island Alzheimer's foundation.

DEBORA G. NOBEL

Debora G. Nobel is a *Magna Cum Laude* graduate of Yeshiva University Stern College for Women, 1972. She attended the New York University Wagner School of Public Service and received a Master's Degree in Public Administration with a concentration in health administration in 1974.

While working as a Public Health Administrator and as Acting Director of the Office of Health Systems Management of the New York State Department of Health, she earned a J.D. at New York Law School in 1979 and was admitted to the New York State Bar in 1980. Ms. Nobel devoted her legal career to medical malpractice defense litigation.

LENORE S. DAVIS, ESQ., LLM
ATTORNEY AT LAW

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*Admitted in New Jersey

STATUS

- Attorney Admitted to practice in the Supreme Court of the State of New York, and the United States District Courts for the Southern and Eastern Districts of New York.
- Admitted to practice in the Superior Court of the State of New Jersey and the United States District Court for the District of New Jersey and Court of Appeals, Third District.
- Part 36 Eligible for Guardianships, Court Evaluators and Counsel for AIPs and IPs.
- Former General Securities Representative, Series 7.

PROFESSIONAL

LENORE S. DAVIS, P.C.

Private Practice, January 1990-Present

New York State Bar Association
Estate Seminar Co-Chair

Created program on Anatomy of Trusts, 7 ½ credit all-day seminars presented in Albany, Syracuse, New York City and Melville. Worked to find talented and experienced attorneys to author written materials and present classes on assorted different trusts. Authored material and presented class on Pitfalls of Pet Planning.

National Law Institute and Lawline.com
Author and Professor

Wrote materials on Estate Planning on varying levels of experience. Presented three hour/three credit classes on same.

New York Law School, Graduate Tax Program
Adjunct Professor, May 2011-2013

Trust and Estate Planning and Taxation Classes

Create course reading material resulting from continuously updated research on estate issues. Each class includes weekly updates in estate planning. Practical skills reinforced in weekly assignments drafting assorted estate practice and estate planning documents. Teaching hands on approach in interacting with clients and their real-life problems including family problems, health issues and the problems of capacity and undue influence. Lectures on DOMA, FHCDA, Medicaid Planning, and Tax Planning in unsure climates.

Trust and Estate Planning, Elder Law and Guardianships

Outline financial and estate plans for sophisticated clients. Develop plans to minimize taxation, including sophisticated multi-entity vehicles. Oversee the complete estate administration process through the final accounting. Guardianship Petitions.

Published Work

- Published article in The New York Law Journal: July 1, 2010, The Least Restrictive Alternative for the Mentally Ill, under DAI v. Paterson.
- Published article in The New York Law Journal: August 22, 2012,, Power of Attorney in Perosi v. LiGreci: How Broad is Broad?
- Published article in New York State Bar Association Trusts and Estates Law Section Newsletter Spring 2014, Pitfalls in Pet Planning
- Published article in NYSBA Elder and Special Needs Law Journal, Spring 2014, Vol. 24, No. 2, Least Restrictive Environment: The Integration Presumption 35 Years Later

EDUCATION

New York Law School, May 2011

LLM, Taxation

The Benjamin N. Cardozo School of Law

Juris Doctor, June 1989. Interned at the Commodity Futures Trading Commission. Offered associate position until Congress froze funding. Junior vice president at Cowen & Company as a series 7 general securities representative.

Yeshiva University/Stern College for Women

Bachelor of Arts in Business, June 1986

Honors: Dean's List

Financed college by working three days a week at Gerald Commodities and Balfour McLaine International.

RICHARD J. EISENBERG, ESQ.
(516) 698-3875 (cell)

CAREER SUMMARY

Transactional Practice

Mergers and acquisitions, corporate reorganizations, internal investigations, bankruptcy, asset-based financing, contracts, deferred compensation, insurance matters, intellectual property, employment and consulting agreements, environmental compliance, tax, anti-trust, non-profit governance and administration, land planning and zoning, commercial and retail leasing, purchases and sales of properties, mortgage lending, property management, and construction agreements.

Litigation and Appellate Practice

More than 50 jury and non-jury trials to verdict in State and Federal Courts throughout the New York Metropolitan area. Cases included contracts, securities fraud, RICO, anti-trust, land title matters, patent infringement, insurance coverage disputes, construction claims, corporate valuations and criminal matters. Briefs and oral arguments in the Appellate Division, Second Department; the New York State Court of Appeals; the Second Circuit Court of Appeals and the United States Supreme Court.

EXPERIENCE

Touro College, Jacob D. Fuchsberg Law Center, Central Islip, NY-----January 2019 – Present
Adjunct Professor

Teach Drafting Commercial Documents, which is an experiential learning course as well as Environmental Crimes. As Chairman of Touro Law School's Land Use Institute Advisory Board, create law school programs to advance the practice of sustainable development, environmental compliance and planning and zoning throughout Long Island.

Meyer, Suozzi, English & Klein, Garden City, New York-----January 2008 - Present
Of Counsel – Corporate and Real Estate Departments

Manage mergers and acquisitions. Negotiate and draft a wide variety of contracts and leases; counsel business and individual clients on corporate governance. Represent private equity investment funds in acquisitions. Represent court-appointed receivers of real estate. Counsel to non-profit corporations on corporate and real estate matters.

Intelligent Product Solutions, Inc.,* Hauppauge, New York-----January 2014 - Present
Division Counsel

Consulting firm providing software design, electrical and mechanical engineering and industrial design services.
Draft and negotiate non-disclosure, master services, joint venture, representatives and distributor agreements. Coordinate all transactional matters including, but not limited to employment, leasing, tax, intellectual property and mergers and acquisitions. Select and supervise all outside litigation counsel. ****Division of Forward Industries (NASDAQ: FORD)***

CAMBR Company, Inc., Lynbrook, New York-----1997 - 2013
Private Investment and Real Estate Development Corporation
Vice President and General Counsel

Advised \$100 million dollar private equity portfolio manager on legal issues, including due diligence, negotiation of private placements and partner contacts. Managed all business and legal aspects of \$100 million dollar private real estate investment portfolio consisting of retail, office, industrial and residential properties throughout the United States and Europe. Owner's representative or project executive on more than \$50 million of completed private construction projects. Selection and coordination of architects, engineers, environmental consultants and contractors.

Imrex Company, Inc., Great Neck, New York-----1984 - 1997

Privately held corporation with interests in military manufacturing, software consulting and sales of aeronautical parts and services

General Counsel

Managed mergers and acquisitions, corporate finance, government contracts, regulatory compliance; conducted and supervised litigation throughout the United States.

Shaw, Licitra, Esernio and Schwartz, Garden City, New York

Associate-----1979 - 1982

Partner-----1982 - 1984

All phases of Federal and State litigation from case inception through verdict and appeal.

Kings County District Attorney's Office, Brooklyn, New York-----1976 - 1979

Assistant District Attorney

Prosecuted felony cases to verdict, including homicide, narcotics and public corruption matters. Assigned to New York City Office of the Special Narcotics Prosecutor from 1977 to 1978.

REPRESENTATIVE LITIGATION

Gargiulo v. Oppenheim , 95 A.D. 2d 484, affirmed 63 NY 2d (Court of Appeals 1984)

The Bohack Corporation v. Iowa Beef Processors, Inc., 715 F. 2d 703 (2nd Circuit 1983)

Sedima, SPRL v. Imrex Co., Inc., 473 US 479, (U.S. Supreme Court, 1985)

EDUCATION

Boston University Law School, Boston, Massachusetts – Juris Doctor 1976

University of Rochester, Rochester, New York - BA, Political Science - 1973

BAR ADMISSIONS

New York State, 1977; United States District Courts, Southern and Eastern Districts of New York, 1980;

Second Circuit Court of Appeals, 1983; United States Supreme Court, 1984; United States Tax Court, 2000

OTHER ACTIVITIES

Court appointed mediator and arbitrator, United States District Court, EDNY-----1986 - Present

Cases include employment, construction and general contract matters.

Chairman, Advisory Board, Touro Law Center Institute for Land Use & Sustainable Development--2013-Present

Member, Theodore Roosevelt American Inn of Court -----2006 - Present

Presented Continuing Legal Education (CLE) programs to licensed attorneys on the following subjects: Collateral Consequences of Criminal Convictions; Real Estate Contracts and Litigation; Environmental Law Issues in Commercial Real Estate; Foreclosure Proceedings, the HARP Program and Short Sales in a Depressed Real Estate Market; Land Planning Issues-Environmental and Project Design; and Construction Law.

Member, Alexander Hamilton American Inn of Court-----2011 - 2015

Member, Valley Stream, NY Board of Education-----1984 - 2005

Public employer with annual budget in excess of \$100 million. Organized municipal bond issues for \$50 million renovation and expansion of seven public schools, and served as owner's representative during construction. Extensive work with school district counsel in conducting litigation, including environmental claims, employee disciplinary matters and internal investigations. Employer representative for negotiation of approximately \$1 billion of public employment contracts.

Executive Secretary, the CAMBR Foundation Charitable Trust-----1999 - 2013

Managed grant making, foundation governance, and administration of a major private trust.

Trustee, USDAN Center for the Creative and Performing Arts-----2013 – Present

Christopher C. Spinoso, Jr.

38 Foreston Circle, Manorville, NY 11949 ▪ 631-290-8172

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EDUCATION

Touro University Jacob D. Fuchsberg Law Center, Central Islip, NY

Juris Doctor Candidate, May 2024

GPA: 3.958

Honors: *Touro Law Review*, Editor-in-Chief; CALI Awards for Academic Excellence in Contracts I & II, Honors Trusts and Estates, Legal Process I & II, Sales, and Torts II; Honors Program Scholar; Dean's List (Fall 2021, Spring 2022 & Fall 2022); Siben Scholar; Evelyn Glickstein Klimpl Scholarship; Meltzer, Lippe, Goldstein & Breitstone, LLP Scholarship; 2022 Dell Family Public Interest Law Fellowship

Activities: Catholic Law Society; Federal Bar Association - E.D.N.Y. Law Student Division; Legal Education Access Program, Teaching Assistant (2022-2023); Justice for All: Courts and the Community Initiative, Mentor (July 2023)

University at Albany, State University of New York, Albany, NY

Bachelor of Science, *summa cum laude*, in Business Administration, May 2021

Concentrations in Finance and Management

GPA: 3.78

Honors: Dean's List (5 semesters)

Activities: Marching Band; Jazz Band; Suffolk County District Attorney's Office, Summer Seminar Program Intern

Capstone: Performance Analysis – *Ford Motor Company vs. General Motors* (April 2021)

LEGAL EXPERIENCE

New York State Supreme Court, Appellate Division, First Department, New York, NY

Judicial Extern

August 2023 – December 2023

Assisted an Appellate Court Attorney with drafting preliminary reports and confidential bench memoranda for the Justices of the Court. Conducted research on matters including personal injury and complex commercial litigation. Observed oral arguments.

Guercio & Guercio, LLP, Farmingdale, NY

Summer Associate

June 2023 – July 2023

Assisted attorneys with representing school district clients in litigation proceedings, including negligence and employment discrimination matters and advising clients regarding school board election procedures. Conducted legal research. Drafted internal memoranda, client memoranda, and a motion to dismiss, including an affirmation in support. Reviewed employment contracts.

Honorable James M. Wicks, United States District Court, Eastern District of New York, Central Islip, NY

Judicial Extern

August 2022 – December 2022

Assisted Judge Wicks and his law clerks with federal pre-trial litigation matters. Conducted legal research and drafted memoranda on matters including enforcing a subpoena on a distant non-party witness and the effect of an automatic bankruptcy stay on pending civil litigation proceedings. Drafted a report and recommendation on a motion to vacate a default judgment and a decision and order on an untimely motion to amend a complaint. Observed federal civil and criminal proceedings, including plea allocutions, status conferences, oral arguments, and a criminal trial.

United States Attorney's Office, Eastern District of New York, Central Islip, NY

Legal Intern, Civil Division

June 2022 – August 2022

Conducted legal research on civil matters including complex employment discrimination, medical malpractice, False Claims Act, and Federal Tort Claims Act cases. Drafted an objection to the report and recommendation of a Magistrate Judge. Participated in civil depositions and witness interviews. Observed various proceedings including arraignments and sentencing hearings.

Town Attorney's Office, Town of Brookhaven, Farmingville, NY

Intern

May 2018 – August 2018

Prepared spreadsheets of real property records. Assisted the Town Attorneys by performing various administrative tasks.

OTHER EXPERIENCE

Men's Wearhouse, Colonie, NY

Consultant

September 2020 – July 2021

Provided customer service, including showcasing merchandise, handling transactions, and facilitating tuxedo rental procedures.

OTHER

Volunteer: Kaitlyn's Garden (2008-2018)

Certifications: Westlaw & LexisNexis Certified

MICHAEL VIVANCO

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EDUCATION

Touro University Jacob D. Fuchsberg Law Center, Central Islip, NY
Juris Doctor Candidate, December 2024

CUNY John Jay College of Criminal Justice

Bachelor of Arts in Law and Society, minor in Philosophy, June 2019

Academic Honors/Awards: **Dean's List**

Thesis: "Crime Rates Across Cities as Affected by Diversity of Police Departments."

LEGAL EXPERIENCE

Bronx District Attorney's Office, Bronx, NY

Legal Intern, Domestic Violence Bureau

June 2023 – July 2023

Assisted in the drafting of criminal charges in the Domestic Violence Complaint Unit. Appeared on the record during calendar calls in the Arraignments and Domestic Violence Misdemeanors Parts of the Bronx County Criminal Court. Drafted a successful motion *in limine* to permit elicited testimony in an attempted murder case. Drafted a successful motion to consolidate multiple open dockets into one case. Drafted a successful motion in opposition to a defense challenge to the People's certificate of compliance with our discovery obligations. Prepared and researched legal memoranda expeditiously to meet the deadlines of the office.

Crime Victim Advocate, Crime Victim's Assistance Unit

July 2021 – January 2022

Made initial contact with crime victims and kept them apprised of their status and case disposition. Worked collaboratively with law enforcement to ensure the safety of witnesses. Accompanied testifying witnesses to court and explained the criminal justice procedure to victims of crimes.

Court Clerk, Child Abuse and Sex Crimes Bureau

December 2019 – July 2021

Served as a Spanish interpreter for case witnesses and victims. Prepared dockets of cases. Examined documents, submitted to the courts such as orders of protection, medical records, and HIPAA forms.

Law Office of Joseph G. Canepa, PLLC, Queens, NY

Paralegal

October 2019 – December 2019

Supported case preparation by managing client communication, scheduling appointments, and organizing visa applications. Conducted initial client interviews, maintained case files, and implemented calendar tracking to keep attorneys informed.

OTHER

Languages: Fluent in Spanish

Skills: Microsoft Office, Lexis+, Westlaw, eCourts

Interests: Performing; Music; Boxing

Volunteer: The Bronx District Attorney Mock Trial Team, Coach (2020)