

Don't forget about Fido: Strategies can help ensure pets are taken care

By Cailin Brown

The loyal family dog that daily greets her owner at the door at day's end often becomes a focal point when divorce disrupts a family unit.

But the bad energy that may turn Rover into a contested piece of property in a matrimonial matter can be made productive with the right strategies and some expertise in handling pet questions.

Practitioners at the Committee on Animals and the Law program shared their know-how on handling pets and the law in their session on "Practicing Animal Law: What Every Attorney Needs to Know About How Laws Impact Animals in Our Homes and Lives," during Annual Meeting on January 27.

Attendees heard about best practices for establishing different kinds of pet trusts, how to address animals that help people with disabilities and the best ways to negotiate pet custody when conflict arises.

Pets and ADR

The increased use of alternative dispute resolution (ADR) in the legal industry also applies when it comes to resolving disputes involving animals, said Debra Vey Voda-Hamilton, of Hamilton Law and Mediation.

Vey Voda-Hamilton's book, *Nipped in the Bud, Not in the Butt: How to Use Mediation to Resolve Conflicts Over Animals*, is one source lawyers can look to for tips on how to address the best methods for handling concerns about the family pet.

"Judges should send people to mediation, there is nothing monetary about that animal, it is emotional," Vey Voda-Hamilton said.

"Many people do not

use ADR because they do not want to take responsibility for the solution," she said. "Unfortunately, people who are divorcing, allow their egos to get in the way and they would rather not talk about what is in the best interest of the animal."

ADR in conflicts over

"It's really about the animal,"

— Rachel Hirschfeld

animals provides a platform for addressing parties' common goals and is one of the main reasons ADR works. The neutral mediator can keep the parties focused on what needs to be done for the pet, she said. When lawyers are involved they are more effective when they communicate in a way that does not create defensive responses.

This approach can work with assorted pet issues, Vey Voda-Hamilton said, from addressing neighbors concerned about barking dogs, to working with insurance companies affiliated with veterinary medicine.

Service and emotional support animals

For lawyer Sim Goldman of Disability Rights New York in Albany, who represents individuals with disabilities, this was his first presentation to the Committee on Animals and the Law. The "cross-pollination," he said, is positive.

Goldman recalled the case of a woman with a disability who had severe anxiety and expected to be evicted from her apartment in the late 1980s because of her emotional support dog. Goldman employed the newly amended Fair Housing Act to successfully fight her eviction,

but no such federal law existed to protect people with disabilities in the workplace or in areas open to the public.

Since the enactment of the Americans with Disabilities Act, service animals are treated differently in places of public accommodation, whether publicly or privately

owned, as well as in the workplace.

The range of services provided by animals, primarily dogs, to people with many types of disabilities has burgeoned. Service dogs are now used for individuals with wheelchairs, for those with diabetes and seizure disorders, and for assistance in many other instances.

If an individual with a service dog is in a restaurant and the dog is on a leash, and not a harness, the restaurant personnel may ask if the individual has a disability and

whether or not the animal performs disability-related tasks, period, Goldman said.

It is legitimate for an employer to ask for documentation from a treatment provider, unless the need is obvious, he added. However, the burden of proof would be on an employer to prove it would cause undue hardship or fundamentally alter the workplace if the use of a service animal in the workplace is denied.

Goldman noted that a place of public accommodation may not discriminate based on a breed, in the event, for instance, the service dog were a pit bull.

Finally, Goldman implored the audience and others who care about animals to avoid the temptation to exploit these laws to bring their pets to places where animals are generally prohibited. He explained that such instances undermine the credibility of people with disabilities who legitimately depend upon the assistance.

Estate planning

One other perspective the committee considered concerned the question of how owners may protect their pets after the owner dies.

"The goal is to make sure that the animal is safe; it's about the animal," said lawyer Rachel Hirschfeld, an estate, wills and trust attorney and author of *Patriarch: The Complete Guide to Financial and Legal Planning for a Pet's Continued Care*.

"It gives people peace of mind that they know if something happens to them—they go to hospital, get stuck somewhere, it is good for 'pet parents' to know that their animal will be cared for, legally, they have a document," Hirschfeld said. "It's really about the animal."

Lawyers want to make provisions so the future of the animal, said Hirschfeld, who created the Pet Protection Agreement and the Hirschfeld Pet Trust.

When a lawyer sits down for estate planning with a client, along with

asking about children and older parents, he or she should also ask about pets, which should be included in the estate plan. Hirschfeld said 65 percent of households in America have pets.

While pets walk and talk, breathe and eat, and need exercise and love, Hirschfeld said that in the law they are considered the same as "your grandmother's silver ladle."

"The purpose of a good pet trust is to keep it out of court, keep it away from judges," Hirschfeld said. Pet trusts are different than the laws for trusts for children, pet trusts are not attached to the will, she said. "One of the most important things to me is that an orphaned animal has continuation of care, and that judges are not involved."

"In an unattached pet trust, or pet protection agreement pet trust," Hirschfeld said, "the money stays with the pet, wherever the pet goes." ♦

Brown is an associate professor at The College of Saint Rose.



Pets and estate planning—Attorney Rachel Hirschfeld, speaking at the Committee on Animals and Law program at Annual Meeting on January 25, said that including pets in estate plans gives people piece of mind that their animals will be cared for after they are gone. [Photo by Richard A. Smith]