



BEQUESTS FOR THE BENEFIT OF ANIMALS

Many people who support Animal Rights/Welfare during their lifetimes want to continue that support after their deaths through their wills. All too often their intentions are not realized. There is an extremely serious problem of *inter vivos* (during lifetime) and testamentary (in a will) gifts for the benefit of animals which either fail altogether or are substantially diminished. Unfortunately, recent years have provided too many examples of this phenomenon, with the cost to animals measured in the tens, if not hundreds, of millions of dollars. Here are only a few of those examples.

- A wealthy California man wanted his money to benefit animals after he was gone. So he had a will drawn up. By a lawyer familiar with the Animal Rights/Welfare Movement? Indeed, by any lawyer? No. The California multi-millionaire's last will and testament disposing of nearly \$50,000,000.00 was scissored-and-pasted together *by his accountant*. To whom did the millions go? To the "SPCA." But what "SPCA"? The one in the testator's city? There wasn't one. The one in the testator's county? There wasn't one there, either. As many people know - bur apparently the multi-millionaire testator and his will-drafting accountant did not -- there are hundreds, perhaps thousands, of "SPCAs" throughout the country and around the world. And so, the battle of the "SPCAs" began. The California Judge before whom the case came decided to give not only any "SPCA" that wanted money an opportunity to receive some, but he opened up the claims to virtually every Animal Rights/Welfare organization in the country. As a result, dozens, if not scores, of such organizations all sought funds from the estate. Did *the* "SPCA" get all that money (which seemed to be what the testator wanted)? How could it, when there was no *one* SPCA? After prolonged proceedings and the payment of substantial legal fees to many of the lawyers representing organizations that asserted claims, an allocation of the deceased's millions was made. *But not by him*. But by some judge who never knew the deceased, and who had to guess at what he really wanted to do with what, in the end, approached the sum of \$50,000,000.00.

- Some years ago, a woman died in upstate New York after a series of events which, once again, demonstrate how easy it is for the best of intentions to be thwarted. The deceased's will left the bulk of her \$3,000,000.00 estate to non-profit groups, Animal Rights/Welfare organizations among them. That will was followed by three codicils (amendments), *apparently made at the behest of her accountant*, which either entirely eliminated most of the non-profit groups' bequests, or substantially reduced them. Where,

then, was the money redirected? To the accountant, who was now to receive, not merely the \$145,000.00 which he was originally bequeathed, but instead the bulk of the estate. A settlement agreement between the accountant and the other beneficiaries was rejected by the probate judge who insisted that the "undue influence" charges against the accountant be tried in the bright light of an open courtroom. Shortly before the accountant was to give pre-trial testimony under oath, he hanged himself. In the end, Animal Rights/Welfare organizations did not receive all they were entitled to.

- Then there was the case of a multi-millionaire's widow in the Midwest who cared deeply for the welfare of animals. Despite her abiding and life-long interest in *animals*, she established a Foundation during her lifetime whose designated purposes were: "the prevention of cruelty to animals; programs that are either religious, charitable, scientific or literary; programs designated for the testing of public safety or programs for the prevention of cruelty to children." If the woman's sole concern was animals, where did the rest of the language come from? From the "boiler plate" language of the Internal Revenue Code, which states *all* of the purposes for which a tax-exempt organization can be formed. In other words, the multi-millionaire's advisor(s) indiscriminately copied *everything* out of the Code, lumping animals together with religion, charities of every conceivable kind, scientific endeavors, literary undertakings, police work and the welfare of children. This buckshot approach to what the widow seemed to have wanted - to help animals - would prove to be the Achilles heel which thwarted her wishes.

But it wasn't the only problem. Who were the Foundation's trustees? The widow, of course, and another person, who was neither a professional nor someone who knew much about Animal Rights/Welfare. Not surprisingly, the third and only other trustee was the widow's *accountant*. This arrangement was the second, fatal factor in thwarting her wishes. When she left the scene, the situation was this: her last will and testament provided that the tens of millions of dollars would pass from her personal estate to the Foundation; the stated goals of the Foundation included not only the welfare of animals, but also all of the other purposes stated above; and there were now only two trustees, neither of whom was a lawyer and neither of whom knew very much about Animal Rights/Welfare. When these two began fighting, the "Board of Trustees," such as it was, deadlocked. Little could be done. Attempted compromises failed, lawyers for each trustee got involved, the situation worsened, the state attorney general (who, in most jurisdictions, monitors charitable organizations) entered the fray, and eventually the court *itself* appointed a trustee. By that time, the accountant was on the ropes. The widow's original co-trustee, a couple of new trustees who had come aboard as part of the attempted compromises, and the court-appointed trustee, effectively had control of the multi-million dollar Foundation that the widow had intended to benefit animals. Since that time, because the trustees obtained an opinion of outside legal counsel that the Foundation's expressed purposes were not limited solely to benefiting animals, not all of the Foundation's grants have been to Animal Rights/Welfare organizations. To the extent that they have not, animals have suffered.

- Another tale concerns yet another wealthy woman, one who knew exactly what she wanted when it came to the disposition of her estate. However, her will was drawn not by

trusts and estates lawyers, but by a firm of attorneys whose principal practice consisted of litigation. Despite her *express* instructions that several millions of dollars were to be given outright to Animal Rights/Welfare causes, the estate's executor decided for himself, after she died, that another approach was preferable. He almost got away with it.

- Then there was the case of a woman who, during her lifetime, gave generously to help a humane organization build and operate a low-cost spay/neuter clinic and a new shelter. Her major interest was spaying and neutering because she knew that population control was the means of reducing and eventually ending the killing of homeless dogs and cats. The humane society built and operated a low-cost spay/neuter clinic which was having dramatic success. Although four veterinarians sued to close the clinic, alleging unfair competition, the court ruled in favor of the humane society, finding that preventing unwanted births of animals helped to prevent the need for killing. Despite this favorable ruling, the humane society fired the veterinarian and closed the clinic, which stands empty.

The decedent's will stated that 20% of the residuary of her estate go to the humane society "to further their work with *spay shelters* [emphasis added] and animal clinics; provided the organization is still in existence at my death and further being subject to cancellation in whole or part by my Executor if, in his sole and absolute judgment, he determines within one year of my death and prior to payment of the legacy that this organization is no longer serving the above stated purposes and advises the organization of such determination." There is no such thing as a "spay shelter." The organization that closed the spay/neuter clinic, despite the fact that the court ruled in favor of it, had a program whereby it referred animal owners to private veterinarians. In no way does this constitute the operation of a low-cost spay/neuter clinic, about which the decedent cared so deeply. (It is important for shelters to operate their own clinics, because the referral system lends itself to abuses, such as veterinarians persuading clients to have cats declawed, and recommending such cosmetic money-makers as tail docking and ear cropping.)

The lawyer who drew the will could easily have obtained correct terminology to ensure that the clinic remained in operation. However, because he or she was not constrained by accurate and iron-clad language, the Executor decided that, despite the fact that the spay/neuter clinic had long been closed, the humane society was to receive 20% of the residuary of the decedent's estate.

- In another example, a Florida woman who was well-known and respected for her concern for animals (including having them spayed and neutered) died early in 1994, leaving her entire estate, worth an estimated \$1,100,000.00 to pay for the spaying and neutering of dogs and cats. But she didn't tell the trustees (her four children, her lawyer, and her veterinarian) exactly where to spend it.

These stories, and too many more like them, demonstrate that there are, and over the years there probably have been, hundreds upon hundreds of millions of dollars intended for the benefit of animals that never reached their intended beneficiaries. *The tragedy is*

that none of this had to happen. There is no reason why *inter vivos* and testamentary gifts for the benefit of animals should not be fully effectuated -- as long as those who make those gifts are aware of a few simple principles:

1. First, and perhaps foremost, the donor must know exactly what he or she wants to accomplish. Unless this is crystal clear to the donor, there is no way it can be clear to those who are expected to implement the gift.

2. In order to crystallize the donor's wishes, and certainly to embody them in either a trust instrument or a last will and testament, it is indispensable that competent, knowledgeable counsel be obtained. There are two crucial points here. First, not only are accountants not lawyers and thus *not* sufficiently familiar with the *law* of foundations, exempt organizations, trusts, not-for-profit corporations, taxation, and the like, but accountants are not even permitted under their professional licenses to draft trusts, wills, corporate charters, or any other document which creates a legal entity. Second, there are lawyers, and there are lawyers. Today, in law as in medicine, *specialization* is the name of the game. Usually, the advice that a would-be benefactor of animals receives from a lawyer not specializing in trusts and estates is worse than worthless, it is *dangerous*, as the illustrations above demonstrate.

3. Any lawyer, any law firm, chosen to advise and represent the donor, cannot be personally interested in the gift or have any other conflict of interest--actual or potential. An entire essay could be written on this subject, but the main point is quite simple. The lawyer and/or his firm must act *solely* as a lawyer, without any agenda of his own except to fully and fairly advise the donor and see that the donor's wishes are fully implemented. It must be expressly ascertained, at the outset, that the lawyer neither has, nor will have, any other interest. If there is, or even *may* be, any other interest, another lawyer should be chosen immediately.

4. The requirement that the donor's lawyer be utterly conflict-free applies, as well, to the donor's fiduciaries: the trustee(s) of an *inter vivos* trust, the directors of a foundation, the executor of the estate. Because there are virtually an infinite number of ways in which one could have a personal conflict with one's fiduciary responsibilities, suffice to say that a thorough inquiry must be made by the donor to ascertain that the potential fiduciary is prepared, and able, to act solely in the latter capacity without any influence stemming from his personal interest.

5. Once the donor knows what she wants, has drawn the necessary documents, and has selected the appropriate fiduciaries, it is essential to inform those fiduciaries as well as the beneficiaries. Not everyone is willing to serve as a fiduciary, and if someone declines after the beneficiary dies, the probate judge will appoint someone else, too often a crony or political friend. Often, arrangements to benefit animals are made long before the donor dies, and during that time significant changes can occur. Organizations can change their names. They can relocate from one end of the country to the other. They can go out of existence. So it is essential that the donor's fiduciaries keep track of the beneficiaries, and that the beneficiaries keep in touch with the fiduciaries. Countless

bequests have been unrealized because an executor, for example, couldn't find a beneficiary when a donor died.

6. Finally, the donor must insist that her fiduciaries make at least the minimum effort to learn about the subject of Animal Rights/Welfare. While this point may seem self-evident, it is not. Instance after instance exists of fiduciaries charged with the disposition of huge sums of money on behalf of animals who lack even a rudimentary knowledge of the Movement, let alone the depth of knowledge that would enable them to do the best job possible for their client and for their beneficiaries.

In conclusion, only one more thing needs to be said on this subject.

Given the plight of animals today, it is nothing less than a tragedy that, when a donor wants to make material resources available to help them, those resources are squandered or stolen, especially when it is so easy to prevent the thwarting of the donor's intention.