

total care

**It can be hard to know how to best look after your pet.
Now you can get it right with PURINA TOTAL CARE.**

Like us, pets need many things to keep them happy and strong. Feeding them a complete diet is just the start – they also need to be exercised, played with, cleaned, treated for fleas and worms and groomed. It can be confusing to know where to begin, so Purina, a leader in pet health research and development has developed a comprehensive and exciting range of pet accessories that cater for all your pet needs. It includes:

- Flea and worming treatments to help keep your pet in top health
- Shampoos for all types of coats
- Toys specifically designed for agility, strength, dental and cardio health
- Grooming aids to keep your pet's coat and skin at its best
- Collars and leads with stylish patterns and functional designs
- Litter accessories to keep your cat and home clean and fresh
- Ergonomic Feeding bowls
- Fish food that is rich in protein and vitamins



Caring for your Pet:

How often can I wash my dog and do I have to use a dog shampoo?

It's best to wash your dog no more than once a fortnight. Washing too often removes the natural oils in their coats and can dry out the skin. As the pH level of your dog's skin is different to yours, you will need to use a dog shampoo. Using human shampoo will cause irritation to your dog's skin.

How do I get rid of fleas?

It's much easier to prevent fleas than to try to get rid of them once they have become infested. So, you need to treat both your pet and their surroundings, particularly their bedding, all year round. Regular use of flea collars, shampoos and spot-ons will keep your pet flea free while flea powders and sprays will treat the environment.

Which worming treatment do I use?

You need to treat your pet for both heartworm and intestinal worms. Heartworm can be treated by a yearly injection from your vet or by using tablets or liquids. Intestinal worms can be treated with Allwormer pastes, tablets or syrups. You can also find combined Heartworm and Allwormer treatments.



For any help or advice on caring for your pet, simply call the Purina Pet Advice Centre on 1800 738 238, or visit www.purinatotalcare.com.au
PURINA TOTAL CARE premium pet accessories can be found at Woolworths.



HELP WANTED

Animal Welfare League NSW cares for surrendered, neglected and abandoned animals and works to rehome dogs, cats, puppies and kittens and investigate allegations of animal cruelty.

A bequest to AWL will ensure the protection, care and rights of animals in our care continues well into the future. It will also ensure that animal welfare issues of the future are identified, researched and promoted throughout the community.

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What To Do If Your Pet Outlives You

Legal Advice

By Phil Dwyer

In our last issue, we had a story which outlined the problems that can happen if you do not have a plan with paper in place to care for your animals if you should pass away. But there's more!

The reaction was incredible! One of our vets had almost 20 patients question them on the procedures to follow for care. So we enlisted the aid of one of the most respected legal minds in the country—Phil Dwyer, a Melbourne attorney we've known and used for two decades—to finish what we had started and outline the legal side.

For the purpose of this article, which relates to the legal aspects concerning the care of and responsibility for pets, the heading is a little misleading. There are two critical stages which precede death and which are particularly appropriate to consider given Australia's ageing population. The first is when a pet owner is no longer capable of living independently and needs to move out of the family home. The second is when that person is unable to care for his or herself or a pet because of physical or mental incapacity.

The positive in the first situation is that the owner is still capable of making rational and legally binding decisions. It may be possible in very limited circumstances to take the pet into the new, more structured accommodation. However, generally owners of these premises are reluctant to accept the obvious legal ramifications of having a pet mingling with people of various states of physical or mental capacity. That is notwithstanding the proven and obvious benefits for the people involved of having a pet in these circumstances. Usually, then, the more appropriate option is to find a new owner for the pet. This is often easier than it sounds. The third option is to have the pet euthanized.

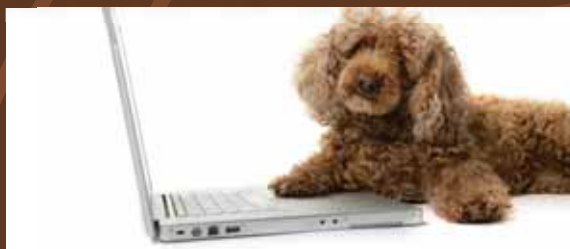


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This brings to mind a case I was involved in many years ago. A young male owner of a much loved and very loving ridgeback named Bruno was transferred interstate. He took the dog to the local vet to be euthanized. A year later the former owner noticed Bruno preening himself in a photo shoot in a fashion magazine. He sued the vet for failing to put the dog down. The result was a technical but somewhat pyrrhic victory for the former owner. The magistrate held that there was indeed a breach of contract in that the vet had contracted and accepted payment to put the dog down. However, he also held that the former owner had suffered no damage or loss in that, had his instructions been followed out, he would have had neither the fee nor the dog. Hence, no award of damages was made and each party was ordered to pay their own costs.

Had a complaint been made against the vet on ethical rather than legal grounds the result might have been different. The vet should not have accepted a fee for a task which was not carried out. Vets tend to sometimes confuse their role and think that their client is the pet rather than the pet owner. This happened to me recently. Our labrador, Floyd, who would eat paint off the wall, followed a tradesman under the house and proceeded to eat rat poison, \$2,500.00 later he returned from the emergency hospital alive and well. But 3 months later another accommodating plumber arrived and Floyd feasted again. I and my son-in-law, a vet, took him to the emergency hospital and after I parted with another \$2,000.00, Floyd was revived. A young and enthusiastic vet rang my son-in-law (not being aware that he was in fact my son-in-law) and advised him that they were concerned about me and the frequency with which my dog seemed to get poisoned. They had noted on my file that I was to be watched closely. If there were any more problems I was to be reported to the RSPCA as a serial pet poisoner. This was relayed to me by my son-in-law and I demanded to see the file. The vet refused that request on the grounds of confidentiality. It took me some time to convince her that I was the client, not Floyd, and to have the file duly amended.

The second stage occurs when people lose the capacity to make binding legal decisions. Prior to this stage it is important that decisions are made which make provision for the maintenance and upkeep of pets prior to and after the owner's death.

Broadly speaking this can be done in four ways. Perhaps the simplest is to give the pet to someone else and enter into a contractual arrangement whereby funds are provided to pay for the up keep and maintenance of the pet. No formal legal documentation is necessary although, for obvious reasons, it would be preferable if the cheque and the pet were accompanied by a letter setting out the terms upon which the money is provided.

A second and slightly more sophisticated legal arrangement is to appoint a trustee to look after the pet and to provide that trustee with money to carry out that function. Again, that can be done simply by writing out a cheque, accompanied by a letter containing words along the lines of 'I have also enclosed the sum of...to be held by you on trust and to be used for the maintenance, upkeep and welfare of Mitsy. If there is any residue on Mitsy's death then that is to be retained by you for your own use'. It is important to understand that a pet is not a "legal person" – ie it has no capacity to sue or be sued. Hence in the context of a trust it is a "purpose" rather than a "beneficiary" in the traditional sense.

The third arrangement, which is applicable to people with or without pets, is to appoint an attorney for the purpose of making legal decisions on your behalf. The power can be drafted such that it is enduring; that is, it continues to apply should the donor (the person who grants the power of attorney) become mentally incapacitated. Hence it is a useful tool to ensure that someone is available to make decisions such as financial decisions, which directly affect the donor and his or her assets. Of course, powers of attorney are granted long before the person is incapacitated. However, from the point of view of maintaining pets, incapacity of the owner is the real concern.

A power of attorney does not, however, survive the death of the donor. For that reason, consideration needs to be given to making provision for pets in a Will. It's important to understand that a Will only comes into effect on the death of the person who made the Will (the testator). The Will appoints an executor who is charged with the role of making decisions in relation to the assets of the deceased after the deceased's death. It is the primary role of an executor to make those decisions. However, for obvious reasons it is preferable if some guidance or direction is given to the executor in the context of the Will.

Of course, not everybody wants to wake up one morning and find a dog sitting on the door-step. Hence common sense dictates that if someone is going to leave a pet to a person then that should be preceded by discussion and understanding. It is possible to set up a simple trust under a Will whereby money is set aside for the maintenance, upkeep and welfare of a pet. However, again, the practical problem is that the executor, in particular professional executors such as lawyers, like to collect and distribute the assets and move on. So again it is necessary to find someone who would welcome the cat on the end of their bed.



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In the context of Wills over recent years in Australia, the rights and categories of people who can challenge a Will on the basis that they have an entitlement based on some concept of dependency have been broadened. There is little doubt that if a decision is made to leave the bulk of an estate for the maintenance of the cat and the dog or, for that matter, the particular society which looks after the welfare of cats and dogs, there would be a challenge by suitably 'qualified' persons. Most challenges of this kind are litigated in the superior courts and the heavy costs that are incurred are usually borne by the estate. In one reported case in which I was involved, a dispute over a \$750.00 Rick Lipp piano escalated to the Supreme Court and the costs incurred by the various parties exceeded \$100,000.00

So what is the solution? The problems associated with people challenging wills can be avoided by making arrangements for pets including financial arrangements prior to a person's death and outside the context of a Will. This involves finding someone with a genuine love of and interest in the pet and making a gift or providing money on trust, or subject to a contract, to that person to look after the animal either immediately or when a certain event such as death or incapacity occurs. The sad reality and probability is that if no such arrangements are made and decisions are left to professional executors, then the pet will probably be put down.

Phil Dwyer
Solicitor



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