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"We Make Business and Estate Planning Simple."

# ICS LAW BRIEF

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Note: The information contained in this newsletter is for general technical guidance and is not intended for specific application. This newsletter is not intended to be legal advice and should not be used as a substitute for legal consultation. If legal advice is needed, independent legal counsel should be sought.



The section 529 plan allows you to contribute more than the ESA and would be a good choice if you have a short time horizon.

As your child enters high school, you and your child should begin in earnest applying for the multitudes of scholarships and grants that are available. The FAFSA is the federal financial aid form upon which many institutions base their calculation of your financial need. You can visit their website at [www.fafsa.ed.gov](http://www.fafsa.ed.gov) and complete the practice worksheet.

If you have any questions and/or need additional information about how to start or effectively manage and maximize your kid's college funds please contact a CPA professional and/or a financial planner.

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## Providing For Your Pets When You Are Gone

By Gweyn Colaberdino

Pets play a significant role in the lives of many people, and they are frequently viewed as members of the family. As such, pet owners often want to make provisions for a beloved companion in their estate planning documents. Not everyone would consider leaving their pooch \$12 million in their will (think Leona Helmsley). Many want to identify a pet guardian and make monetary provisions for a pet's care in the estate plan.

Tennessee law specifically allows the use of pet trusts. They can be created either in an individual's will, or as part of a living trust. In this article, we'll assume that a will is being used.

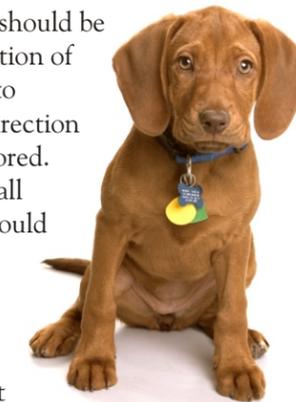
In the will, a human guardian is named for the pet. As with trusts created for human beneficiaries, alternate guardians and trustees should be named in the event the primary appointee is not able to serve. The appointed pet guardian and trustee may be the same person, although naming separate individuals provides a level of checks and balances.

The pet trust terms stipulate how the money should be spent on the pet's care. Standards should be established for the distribution of trust funds. The terms of the trust may specifically include the authority for certain types of expenditures. For example, the

terms may authorize the payment of insurance premiums for the pet's health care or for liability insurance if the type of pet introduces any potential liability.

The terms also may authorize distributions to provide or enhance accommodations for the pet, which may include anything from installing a new fence for a dog to purchasing property and a barn for a horse. The trust terms could authorize distributions for the burial or cremation of the pet, and could even include the purchase of a casket or urn and a gravesite at a pet cemetery.

Details regarding the pet's habits, diets, routines, etc. should be put in a separate letter and not included in the trust terms because the details may change. Because these details are in most cases not binding, care should be taken in the selection of the pet guardian to ensure that the direction given will be honored. Consideration of all the pet's needs should be taken when determining the amount of money allocated to the pet trust. The pet trust may be funded with an individual's



*Our firm aids those who are considering starting a business and assists existing business owners with their continuing legal needs, such as contract review, contract drafting, franchising agreements, and consultation. In addition, our firm specializes in estate planning and management. For additional information or to set up an appointment, please call our office at (615) 224-1290.*

## Providing For Your Pets When You Are Gone (Continued)

personal assets, or with life insurance. If using life insurance, the pet trust should be named the beneficiary of all or part of the policy proceeds.

If the trust runs out of money during the pet's life, the pet's care will be dependant on the generosity of the care giver. The pet trust should be adequately funded, and the trust terms should designate a remainder beneficiary to whom any remaining funds will be distributed at the pet's death. The funding must be reasonable, however. The court may reduce the amount allocated to the pet trust if

it is significantly over-funded and the human beneficiaries of the trust contest (again, think Leona Helmsley.)

Including a well drafted pet trust in your estate plan is a prudent way to provide for your much loved companion. If you would like to include a pet trust in your estate plan, or would like to discuss this topic further, please give our office a call.

## How to Fire an Employee: Employee Coaching and Termination

By Gaylord Gardner

Do you have an employee that just does not seem to be performing up to expected standards? Do you have an employee who has suddenly developed bad habits? If so, what is the best way to coach the employee in a way that fully expresses your expectations in a positive and effective manner?

Most business owners will eventually fire one of their employees, perhaps in the case of employee theft or violence. However, the majority of employee disciplinary decisions revolve around employee performance or behavior. These are problems that normally do not result in immediate termination. Therefore, it is in the best interest of every business to have a coaching process in place designed to improve employee performance and behavior. In the event the performance or behavior does not improve, the process should provide the business with plenty of documentation to support a termination.

This article provides a simple five step coaching process that business owners can use to coach an employee. It is not the only way to coach and fire, but it works for most.

### Step 1: General Feedback

The first step is more commonly referred to as an informal warning. Often, the employee may not realize that this is part of the disciplinary process. It provides a supervisor the chance to informally discuss with an employee a performance or behavior issue as it happens. It is important that this discussion be casual and non-confrontational.

Immediately after an undesired behavior occurs, a supervisor should approach the employee and do the following:

- Ask the employee if the supervisor can give feedback and wait for employee to say yes,
- Inform the employee that: "When you do "x" (or do not

do "x"), this (undesirable thing) is what happens,"

- Ask the employee what they are going to do to fix/change the behavior which is causing undesirable consequences,
- Suggest steps for the employee to improve behavior.

Despite this step being informal, it is important that the supervisor documents the date of the discussion and the nature of the discussion in the employee's file including any employee feedback.

### Step 2: One-on-one Performance Discussion

This step is sometimes referred to as the verbal warning and the employee should realize that this is part of the disciplinary process.

This step provides a supervisor the chance to formally discuss an employee's lack of improvement after receiving informal coaching. Because this step is intended to be a more frank discussion of an employee's performance or behavior, it should be held in private.

A supervisor should take the employee aside at a convenient time and do the following:

- Discuss the employee's lack of improvement and ask for input,
- Reconfirm the required standards,
- Ask the employee for comments of any nature that might explain the employee's performance or behavior issue,
- Ask the employee for ideas about how the employee can improve,
- Suggest steps to the employee for improvement, and
- Inform the employee that the meeting will be noted in the employee's file.

Once again, it is important that the supervisor document the date of the discussion and the nature of the discussion in the employee's file including any employee feedback.

## How to Fire and Employee: Employee Coaching and Termination (Cont.)

### Step 3: Supervisor Coaching

In the event that the employee fails to improve after the first two steps, the employee may need more direct oversight or guidance from a supervisor to improve. If this is the case, a supervisor should be assigned to help coach the employee.

It is important that coaching is consistent and occurs regularly. Therefore, the coaching supervisor should meet with the employee at least once a week for an extended period of time. It is important that the supervisor work together with the employee to improve the employee's performance.

As with the first two steps, documentation is important, and the coaching supervisor should document the results of each coaching session.

### Step 4: Formal Performance Discussion and Notification

This step is the written warning and is often the final warning before an employee is terminated. As with the verbal warning, this meeting should be held in private.

Prior to the meeting, the supervisor should prepare a warning document which includes the following:

- The date of meeting,
- The performance or behavior issue that needs to be resolved,
- How the employee is expected to improve,
- A specific date when improvement is expected,
- A space for the employee to respond, and
- A space for the employee and supervisor to sign.

During the meeting, the supervisor should discuss the warning document and allow the employee to respond. The supervisor conducting the meeting should make it clear to the employee that the employee's failure to correct the performance or behavior issue will result in termination. At the end of the meeting, the supervisor should ask the employee to sign the warning document and allow the employee to keep a copy.

### Step 5: Termination

When all else fails and the employee does not improve, termination of employment is necessary. The termination meeting should be conducted with the employee in person. Ideally, it should be conducted at the end of the day on the last day of the work week. It is usually a good idea to have a member of management witness the meeting.

During the meeting, the supervisor conducting the meeting should be specific and truthful. If the disciplinary process was done correctly, the employee should not be surprised.

Before the end of the meeting, inform the employee that all further communications will be by phone, mail, or email and collect all company property at that time. At the end of the meeting, escort the employee to the employee's desk to collect personal belongings and escort the employee out of the building.

### Avoid Discrimination Claims

The purpose of a coaching process is not only to help correct employee performance and behavior, but to lay the groundwork for termination in the event that termination becomes necessary. While no system is perfect, a well documented disciplinary process will help insulate a business from discrimination claims by terminated employees.

In order to avoid the possibility of discriminating against an employee during the disciplinary process, supervisors should:

- Treat all employees the same,
- Avoid subjective criteria when providing employees with feedback - such as attitude, initiative, work habits, and job knowledge, and
- Use objective criteria when providing employees with feedback such as performance of job functions, ability to meet deadlines, and attendance.

This process is meant as a suggestion or starting point and any business which chooses to implement this process should fine tune it to meet its specific needs.

## How to Fire an Employee

On October 2, 2008, at 12:30 PM, the ICS Law Group will present "How to Fire an Employee," an in depth discussion regarding employee coaching and termination, including example forms.

To sign up for the session please call our office at (615) 224-1290 or e-mail our office at [lindsey.vanbeusekom@icslawgroup.com](mailto:lindsey.vanbeusekom@icslawgroup.com).