After more than a decade, has pet guardianship changed anything?

Though the campaign to reclassify animal owners as guardians has lost momentum, the veterinary profession remains wary.

Boulder, Colo., made history in 2000 when the city added "guardian" to the section of its municipal code addressing animal ownership. It was the first instance of a city referring to the legal relationship between a person and a pet as something other than owner and
The city council reasoned that Boulderites who internalize the idea they are pet guardians and not just property owners may be more inclined to treat animals humanely and be responsible pet owners.

As explained by In Defense of Animals, the San Rafael, Calif.-based animal protection organization behind the national guardian campaign, a pet guardian doesn't buy a pet but adopts a homeless animal instead. She provides the pet with veterinary care, doesn't let it run loose, and trains the animal not to be aggressive. Such are the potential benefits of identifying the owner-pet relationship as guardianship, according to the IDA.

The campaign started tallying successes around the country, most notably in Rhode Island, where in 2001 the legislature added "guardian" to the state animal ownership statutes. Today, pet-owners in 17 cities, one state, and two counties in California can legally refer to themselves as animal guardians.

Pet guardianship was, and is still today, thought of as a force to potentially redefine society's relationship with companion animals, for better or for worse.

Yet in the years since Boulder became the first pet guardian city, what, if anything, has the campaign achieved? Are animals in guardian jurisdictions better off than those in nonguardian areas? What of concerns pet guardianship will be a basis for litigation redefining the legal relationship between people and at least some types of animals, namely, companion animals? In the common law tradition, a guardian is an individual appointed by a court to act in the interests of a person, such as a child or incompetent adult. Could not a court be convinced that a dog or cat is more like a dependent whose interests should be protected than a piece of property?

Apart from anecdotal accounts, there's no evidence a pet guardian treats animals more humanely than an owner. In 2009, the JAVMA published a study of dog owners in two California cities—Berkeley, a pet guardian city, and the nonguardian Hayward. Researchers reported owners classified as guardians were no more attached to their dogs than were owners in the city without such a designation (JAVMA 2009;234:896-900).

In pet guardian jurisdictions, the practice of veterinary medicine carries on as usual. "We don't believe the guardianship issue has changed our ability as veterinarians to practice..."
routine veterinary medicine," observed Dr. Marcia Aubin, president of the Rhode Island VMA, which thinks guardianship ordinances could take away an owner's right to make choices for an animal.

And as for the campaign's legal impact, animals are just as much personal property today as they were before the campaign and, as such, lack the necessary legal standing for courts to consider lawsuits filed on their behalf. Additionally, none of the lawyers or veterinarians interviewed by JAVMA News knew of any cases in a pet guardian city or state where the ordinance was used in litigation against a veterinarian, pet owner, or animal service provider.

**Winning hearts, changing minds**

The person who started the pet guardian campaign, Dr. Elliot Katz, didn't set out to redefine the property status of companion animals. "I am afraid that society is not ready for that," the In Defense of Animals president and founder acknowledged.

The city councils and Rhode Island legislature would not have adopted "guardian" if it would have altered the legal relationship between an owner and a pet, Dr. Katz said. In every pet guardian jurisdiction, he explained, the ordinances are clear that "owner" and "guardian" are interchangeable and that the responsibilities and liabilities of a guardian are no different from those of an owner.

A longtime veterinarian and activist in the animal protection movement, Dr. Katz believes much of the nation's animal welfare problems stem from a belief that animals are property instead of sentient beings deserving of respect. Efforts to protect animals from mistreatment are often little more than "Band-Aids" if the fundamental philosophic problem goes unaddressed, he said.

"Until the paradigm changes as to how society sees and treats other species, starting with the animal companions we bring into our homes, until the mindset (changes) that they are little more than pieces of property, the same cycle of exploitation, abandonment, and abuse will continue," Dr. Katz said.

The goal of the pet guardian campaign is to teach the public to use a word that encapsulates the idea people have a duty to provide their companion animals with "respect,
responsibility, kindness, and lifetime veterinary care."

— Dr. Elliot Katz,
Founder and President, In Defense of Animals

The goal of the pet guardian campaign, Dr. Katz says, is to change this attitude by teaching the public to use a word that encapsulates the idea that people have a duty to provide their companion animals with "respect, responsibility, kindness, and lifetime veterinary care." He chose "guardian" not because of the word's legal meaning, but rather, because a guardian is defined as a protector.

State and local lawmakers embraced the term out of an understanding the word can effect positive changes for animals, Dr. Katz said. Although he has no concrete data indicating "guardian" has, in fact, done this, Dr. Katz nevertheless believes the campaign is slowly but surely having an impact on how domesticated animals are seen and treated.

No city councils or state legislatures have added pet guardian wording to their statutes since Beverly Hills, Calif., in December 2008. Dr. Katz recognizes the campaign has lost momentum. The reason, he says, is he and IDA have had to spend more time rescuing and caring for the growing number of abused and abandoned animals caused by the current economic recession. He hopes to dedicate more time to the guardian campaign this year and the next.

David Favre, who teaches animal law at Michigan State University College of Law, believes the pet guardian campaign has succeeded in raising awareness about how the legal classification of animals as property undervalues the human-animal bond. Property laws don't distinguish between living beings and nonliving things, yet society and the legal system itself acknowledge a person has a duty to an animal that he doesn't to any other kind of property. "There are no anti-cruelty laws for pianos," Favre pointed out.

In January, a bill was introduced in the New York legislature that would authorize the awarding of damages for the loss of comfort and companionship of a pet in wrongful death and injury lawsuits. The justification portion of the legislation, which would also authorize the court to appoint a guardian to recover damages for an injured pet, criticized the legal system for treating animals as property, calling it "antiquated" and "scientifically obsolete."

While illustrating how society's high regard for pets isn't fully reflected in its laws, Favre said the guardianship campaign won't bring about any legal changes. "You can't just change a word and expect the whole legal system to change," said Favre, who advocates for reclassifying some types of animals in a new legal status he calls "living property." Under this framework, animals would still be property but owners would have a legal duty to care for the animal, and it would be enforced by the courts.

Dr. Katz is unsure whether pet guardianship is laying the groundwork for a legal challenge to the property status of animals. It is an eventuality he'd like to see take place, however, starting with dogs and cats. "I don't know when it will happen," Dr. Katz said, "but right
now, what is important is that individuals and society as a whole, see and treat animal companion animals as more than mere property, objects, commodities, and things to be exploited, mistreated, abandoned, and killed at an owner's whim."

What's in a word?
While Dr. Katz intends for guardianship to improve animal welfare by changing attitudes and behavior, many people see the campaign as a Trojan horse.

A guardian may indeed be a protector, but the veterinary community, breed associations, and other campaign critics point out the word also has a legal definition. In law, "guardianship" is a relationship in which a person is responsible for the care of a ward. If an ordinance or statute describes an animal owner as a "guardian," the argument goes, then can't a court be petitioned to apply to an animal at least some of the obligations owed to a human ward?

In such a scenario, an animal guardian wanting to euthanize his cat instead of paying for a costly lifesaving procedure could face legal action for not acting in the cat's best interest. Moreover, must the veterinarian in this scenario seek judicial guidance to be certain she is complying with the law?

The potential for these sorts of legal dilemmas motivated the AVMA in 2003 to adopt a policy statement that reads, in part: "Any change in terminology describing the relationship between animals and owners, including 'guardian,' does not strengthen this relationship and may, in fact, harm it."

Later, the Association convened the Task Force on the Legal Status of Animals, which in 2005 issued a detailed list of potential negative repercussions that guardianship could have on animal owners, service providers, society, and animals themselves.

"To lawyers, 'guardian' has a considerable amount of legal significance. Ownership and guardianship are not matters of semantics; they're not interchangeable terms."

— Gregory M. Dennis, Attorney

Lawmakers took notice, and a year after the AVMA denounced pet guardianship, the Council of State Governments passed a resolution opposing legislation reclassifying animal owners as guardians along with any measure to alter the property status of animals. In 2009, the Missouri legislature banned all government entities within the state from
Gregory M. Dennis is an attorney with an Overland Park, Kan., law firm who has followed the animal guardian campaign closely for many years. Dennis, who participated in writing the AVMA response to the initiative, says the appeal of guardianship is the suggestion it will somehow result in less animal abuse and neglect. The problem for Dennis is the word's legal implications. "To lawyers, 'guardian' has a considerable amount of legal significance," he said. "Ownership and guardianship are not matters of semantics; they're not interchangeable terms."

Guardianship is a fiduciary relationship—the highest civil relationship owed by one person to another—in which a guardian must always act in the best interest of the ward. If this relationship were applied to animals and their owners, Dennis says any number of legal dilemmas could unfold. In veterinary medicine, for instance, euthanasia could become far more problematic because how can ending an animal's life be in its best interest?

Dennis sees animal guardianship as a slippery slope—once society grants animals some of the same rights as people, where does it stop? Could animals one day even have the same legal right as people do to reproduce? "If so, then spaying and neutering of animals could be at an end," he said. "Now these things seem absurd when we say them," Dennis acknowledged, "but these are the repercussions of when you bring human guardianship law over and transplant it into veterinary medicine."

When he has spoken with lawyers wanting to change the property status of animals, Dennis has suggested they use a term with no legal significance, such as "caretaker," yet they insist on guardianship. "The reason it has to be guardianship is they want that body of law coming over and applying to the animal," Dennis explained.

**AVMA POLICY**

**Ownership vs Guardianship**
Terminology Describing the Relationship Between Animals and Their Owners

The American Veterinary Medical Association promotes the optimal health and welfare of animals. Further, the AVMA recognizes the role of responsible owners in providing for their animals’ care. Any change in terminology describing the relationship between animals and owners, including “guardian,” does not strengthen this relationship and may, in fact, harm it. Such changes in terminology may adversely affect the ability of society to obtain and deliver animal services and, ultimately, result in animal suffering.

Not everyone worries the guardian campaign will usher in a new era of jurisprudence where animals are granted new rights, however. Bonnie Lutz is a Santa Ana, Calif., attorney who has represented veterinarians in administrative actions and lawsuits since 2001. She sees two factions at work within the pet guardian campaign: those who believe calling pet owners "guardians" benefits animals and those wanting to use guardianship as grounds for providing animals with more rights. So far, the latter hasn't had any success, Lutz says, and likely won't.

"When you look at the actual code sections, it's very clear," Lutz said. "They have a statement in there that for all purposes 'owner' is 'guardian' and 'guardian' is 'owner.' Essentially, it was a distinction without a difference. It didn't change anything." For guardian codes to have any legal power, Lutz said, language is needed to clarify how a pet guardian is different from an owner, but such a distinction isn't made.

Lutz thinks the AVMA has made the public aware about the unintended consequences that could result from legally redefining the owner-pet relationship. "It was important that the AVMA and others came out strongly against this, just to give people a wake-up call so those who might be on the fence, thinking this sounds like a good idea, understand there could possibly be negative ramifications," she said.

Much ado about nothing?
So why hasn't there been a flood of lawsuits aimed at getting courts to declare that dogs and cats in guardian jurisdictions are entitled to at least some of the same considerations as human wards?

Joyce Tischler is founder and general counsel of the Animal Legal Defense Fund, an organization of lawyers headquartered in Cotati, Calif., who use the legal system to "protect the lives and advance the interests of animals." Tischler, like Lutz, regards the pet guardian ordinances as having little legal significance, since the lawmakers clearly intended "owner" and "guardian" to be used interchangeably.

"You can't just change a word and expect the whole legal system to change."

— David Favre, Professor,
Michigan State University College of Law

Favre, the Michigan State University law professor, doubts pet guardian ordinances will be
of any use to a plaintiff petitioning a court to recognize the ordinances as actually entitling pets to new rights. "If all it is is a word change, and no substantive provision has changed, then I don't see a court taking that word and transforming the law," he said.

The ALDF has paid little attention to the campaign, Tischler said, and she doubts it has had any meaningful success in improving the way animals are treated. Still, she can't categorically rule out the possibility of ALDF ever appealing for the use of pet guardianship in a lawsuit, though she was hard-pressed to envision a scenario in which the ordinance would be of value.

"If we were to do that, we would probably only go after some egregious harm that had been committed," she explained. "We would have to very carefully analyze whether that law gives us anything that we don't already have through another means."

Tischler estimates most members of the animal law community are, like herself, using existing laws for the benefit of pets, livestock, research animals, and wildlife, and are less focused on convincing a court or legislature to say a certain class of animals is entitled to protections beyond those already available.

"These are all things we can work toward gaining measurable improvement (on) and, hopefully, in some instances, eliminating some of the most egregious practices, like foie gras," Tischler said. "We don't need to address the property status in most of the litigation we handle. However, you can anticipate that it will be raised by certain attorneys in certain contexts in the coming years." ★