

Planning for pets

Estate planning for our **most valuable assets**

Pet planning documents can help ensure that your wishes regarding the care of your non-human family members are actually carried out.

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The estate planning process presents an opportunity to address ongoing pet care.

Trust beneficiary T. Helmsley (she went by “Trouble”) lived a life of luxury. The 12 million dollar inheritance provided by her life companion (reduced to \$2 million by a judge who found it excessive) allowed her to get about New York in a chauffeured limousine. She ate the finest foods and flew in a private jet between homes in New York and Florida.

Following her companion’s death Trouble went off her rich diet of crab cakes, cream cheese and steamed vegetables with chicken and began a much healthier diet: dog food from a can. This was a much healthier diet because Trouble was a dog, a Maltese to be exact, who had been owned by billionaire hotelier Leona Helmsley.

Although the numbers are excessive, the story is a good one...Mrs. Helmsley cared for her precious pup in life and planned for her ongoing care following her death in 2007. All humans who truly care for their non-human family members—whether dog, cat, bird, tortoise, snake, monkey, koi, etc., can make provisions to do the same in their own estate planning documents.

In the eyes of the law pets are considered personal property. But to their owners they often mean more than a sofa or chair—they are best friends, companions, and even family. The estate planning process presents an opportunity to address ongoing pet care. Sadly, the opportunity is often overlooked and a considerable number of domestic pets suffer because their owners did not know and were not advised to make arrangements for them.

Knowing that pets usually have shorter lifespans than humans means that we tend to plan for our animals’ passing prior to our own. That is not always the case! Responsible pet owners may want to ensure that non-human family members will continue to receive ongoing care and feeding. This article is a guide to pet planning documents; the basic elements and provisions that can help ensure that your wishes regarding pets are actually carried out.

Informal arrangements

Begin with a list of expectations regarding a pet’s ongoing care. Such a list, possibly in writing, is the beginning of a plan for the care of a pet in the event of unanticipated absence, incapacity or death. Pets need care daily and will need immediate attention in the event of their owner’s death or incapacity. Formal, legally enforceable agreements (discussed later in this article), can take time to discover, verify and implement. As a result, the importance of making a list of informal arrangements for temporary caregiving cannot be overemphasized.

- Find two or more responsible friends or relatives who agree to serve as temporary emergency caregivers in the event that something unexpected happens to you. Provide them with keys to your home; feeding and care instructions; the name of your veterinarian; and information about the permanent care provisions you have made for your pet.
- Look into documenting this informal arrangement by writing it down to memorialize all parties’ understanding. However, since these informal arrangements are generally legally unenforceable agreements made with family members or friends, you are relying entirely upon the integrity of the person or organization chosen. It is important to choose wisely!

A pet owner can provide for the distribution of funds over time with a free-standing traditional pet trust or pet protection agreement.

Additional considerations for ensuring the ongoing, uninterrupted care of your pet:

- Do not assume that the caretakers you have chosen, including rescue organizations, will accept the responsibility of care. Speak with each individual and/or organization about this commitment in order to ensure they are willing and able to act as a potential guardian for your pet.
- Make sure your neighbors, friends, and relatives know how many pets you have and the names and contact numbers of the individuals who have agreed to serve as emergency caregivers. Emergency caregivers should also know how to contact each other.
- Carry a wallet “alert card” that lists the names and phone numbers of your emergency pet caregivers.
- Hang removable “in case of emergency” notices on your doors or windows specifying how many and what types of pets you have. These notices will alert emergency-response personnel during a fire or other home emergency. Don’t use stickers; hard-to-remove stickers are often left behind by former residents, so firefighters may assume that the sticker is outdated or, worse, risk their lives trying to find a pet no longer in the house.
- Post to the inside of your front and back doors a removable notice listing emergency contact names and phone numbers. Because pets need care daily and will need immediate attention should you die or become incapacitated, the importance of making these informal arrangements for temporary caregiving cannot be overemphasized.

Formal arrangements

A comprehensive plan for pets also includes formal (or legally enforceable) arrangements that specifically cover pet care. In many cases it’s not enough that long ago your friend verbally promised to take in your animal or even that you’ve decided to leave money to your friend for that purpose. You can work with an attorney to draw up a special will, trust, or other document to provide for the care and ownership of your pet as well as the money necessary for that care.

Wills. Wills are legal documents that provide directions to a probate court regarding a decedent’s wishes. They nominate an executor and provide direction regarding property distribution. The actual time of the typical probate administration is relatively short...maybe a year or two. The belief that pets can be adequately protected if they are merely mentioned in a will is incorrect. Consider the following pitfalls of planning for pets with merely a will:

- Wills are typically neither accessible nor enacted immediately. There will be a waiting period before the will is located, filed and verified. It can then be many months before the property actually changes hands. Clearly additional arrangements must be made for pet care while the will is probated.
- Wills do not allow disbursement over a pet’s lifetime. In a will, the owner cannot distribute funds over time, which can be achieved with a free-standing traditional pet trust or pet protection agreement. Such a trust can be created by a will, but such ongoing arrangements must be included at the time the will is drafted.
- Changes to the will are in the court’s discretion. Who do you want deciding the fate of your pets: you or a judge?

Pet trusts and pet protection agreements can help ensure that the owner and pet will remain together in the event the owner moves to a long-term care facility.

- Wills are effective and enforceable only upon death. They make no provisions for incapacity. A will cannot address the possibility that the pet may need to be cared for during the owner’s lifetime.
- General provisions in a will loosely linking a monetary gift with the gift of a pet may be treated as “honorary.” The person who receives the funds is responsible for deciding whether or not to use them for the pet’s care. There is nothing to prohibit the recipient from leaving the pet at the pound and using the money for other things.

The presence of these limitations does not mean that wills should not include provisions for pets. Rather, it means that such provisions should be supplemented by a pet trust and/or pet protection agreement.

Pet trusts. Pet trusts stipulate that in the event of a grantor’s disability or death a trustee will hold property (cash, for example) “in trust” for the benefit of the grantor’s pets. The “grantor” (also called a settlor or trustor in some states) is the person who creates the trust, which may take effect during a person’s lifetime or at death. Payments to a designated caregiver are made on a regular basis.

State law determines the trust’s term limits. These trusts usually continue for the life of the pet or 21 years, whichever occurs first. Some states allow a pet trust to continue for the life of the pet, without regard to a maximum duration of 21 years. This is particularly advantageous for companion animals which have longer life expectancies than cats and dogs, such as horses and parrots.

Currently forty nine states and the District of Columbia recognize statutory pet trusts (Minnesota is the sole holdout). In these jurisdictions, pet owners who merely include a simple directive in their will (e.g., “I leave my dog Bebe and \$5,000 for her care to my friend Dee”) can have some assurance that the funds and pet will remain together.

Unlike a simple directive in a will, a pet trust provides a host of additional protections and advantages:

- Pet trusts are valid during a pet owner’s life and after his or her death.
- Pet trusts may help to prevent a contest to the estate—for example, if the amount left for the pet’s care is enough that someone will contest the client’s capacity, or if there is a litigious family member whom the pet owner believes may dispute the final documents.
- Pet trusts and pet protection agreements not only provide for the succession of ownership of a pet but also are ongoing and control the disbursement of funds.
- Pet trusts allow for the division and assignment of trustee duties. An investment trustee (separate from the pet guardian or trustee) can be appointed to invest funds with a view toward growth of the principal and future use on behalf of the pet, heirs, and charitable recipients.
- Pet trusts and pet protection agreements allow provisions for an owner’s incapacity. Pet trusts and pet protection agreements can help ensure that the owner and pets will remain together in the event that the owner moves to a nursing home or other long-term care facility. With a pet trust or pet protection agreement, owners may even leave a portion of the funds remaining after the pet’s death to the facilities that kept the owner and pet together.

A limited durable power of attorney can be used to designate someone to make decisions regarding the care of your pet should you become unable to do so.

Limited Durable Power of Attorney. A limited durable power of attorney can be used to designate someone to make decisions regarding the care of your pet should you become unable to do so. This person will only have the ability to make decisions about your pet during your lifetime. Consequently, you still need to consider a permanent arrangement for your pet's future care.

Caregivers

Choosing the proper caregiver. First, decide whether all pets should go to one person, or whether different pets should go to different people. People often prefer to keep pets which have bonded with one another together. Consider partners, adult children, parents, brothers, sisters, and friends who have met your pet and have successfully cared for pets themselves. Also, name alternate caregivers in case your first choice becomes unable or unwilling to take your pet.

Be sure to discuss any expectations with potential caregivers so they understand the large responsibility of caring for your pet. Remember, the new owner will have full discretion over the animal's care—including veterinary treatment and euthanasia—so make sure you choose a person you trust implicitly and who will do what is in the best interests of your pet.

Stay in touch with the designated caregivers and alternates. Over time, people's circumstances and priorities change, and you want to make sure that the arrangements you have made continue to hold from the designated caregivers' vantage points. If all else fails, it is also possible to direct your executor or personal representative, in your will, to place the animal with another individual or family (that is, in a non-institutionalized setting).

Organizations as primary pet caregiver. Most humane organizations do not have the space or funds to care for a decedent's pet indefinitely and cannot guarantee that someone will adopt your animal, although some may be able to board and care for your pet temporarily until he can be transferred to his designated caregiver. There are, however, a few organizations that specialize in long-term care of pets of deceased owners. For a fee or donation, these "pet retirement homes" or "sanctuaries" may agree to find your pet a new home or care for your pet until she dies.

Before making any formal arrangements, visit the organization to see how animals are cared for; where they are confined; who looks after them; when they are socialized and exercised; and what policies and procedures exist regarding care at the facility and placement with a new family. Also consider what might happen to your pet if the organization were to suffer funding or staff shortages.

If you decide to entrust the care of your pet to an organization, choose a well-established organization that has a good record of finding responsible homes quickly.

The June 9, 2011 edition of the New York Times (the Region section, not the Obituaries) reported that Trouble died and was cremated six months earlier. A spokeswoman for the Helmsley Trust said at the time that Trouble's remains were "privately retained" by the family. Mrs. Helmsley's will asked that Trouble's remains be buried alongside her own, in the Helmsley mausoleum. That presents a problem that Mrs. Helmsley's lawyers should have anticipated: most cemeteries have regulations that forbid the interring

of nonhuman remains at human cemeteries. Of course, her lawyers also probably knew that the law says that mausoleums are private property and the Helmsley family had its own key....

– *Jeff Brooks*, Senior Wealth Strategist

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