

ESTATE PLANNING

For your pets and your peace of mind

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Our pets are an important part of our lives each and every day, enhancing them in a variety of ways. They continually provide unconditional love and companionship, as well as social and health benefits. Yet, many pet owners never think about how their pets will be provided for should something happen to them. With a small amount of planning and decision-making their care and living arrangements can be made avoiding an uncertain future for them and peace of mind for their owners.

Americans own a huge number of pets, including 65 million dogs, 77 million cats, 16 million small animals, 17 million birds and nearly 9 million reptiles according to a 2003 survey. Ordinary people are not the only ones who consider their pets important; movie stars and celebrities have made extensive provisions in their Wills and Trusts for their animals. In 1993, tobacco heiress Doris Duke left \$100,000 to her Shar-Pei, Rodeo. Actress Betty White has reportedly left almost all of her \$5 million estate to her pets and Oprah Winfrey has also made substantial provisions for her dog to live out his life in luxury after she is gone. British singer Dusty Springfield's 1999 Will specifies a trust fund for her cat, Nicholas, which is to be spent on a lifetime supply of his favorite meal, imported baby food.

In recent years, U.S. law has slowly been changing to look more favorably on Wills and Trusts that provide for pets, something European courts have always done. The love owners have for their pets can now transcend death providing the safety and well being of their pets long after they have departed.

There are several legal techniques to choose from for the care of pets in the

event of the owner's death or disability. The following is an overview of just a few:

1. Gift of the pet to a caretaker;
2. Creation of a trust for the pets;
3. Outright adoption; or
4. Placement in a "retirement" home

Choosing a method of care depends on the pet owner's wealth, type of animals involved and the choice of caretaker.

1. GIFT OF A PET TO A CARETAKER. The easiest and most common decision is to give the pets to someone named in the pet owner's will. In doing this, it is important that the person named is willing and able to care for the pets after the owner's death or disability. This is especially true if there are multiple pets that the owner wishes to remain in one household. It is also the best time to discuss any particular care instructions with the caretaker and if the pet(s) have not met the caretaker, to insure they are compatible. It is also important to stay in touch with the caretaker. Over time, people's circumstances

and priorities change and you will want to insure that the arrangements you've made are still valid.

An alternate caretaker should

also be named in case the primary caretaker predeceases the pet owner or for other reasons is unable to take the pets at the time of the pet owner's death or disability.

The pet owner should consider leaving the caretaker adequate funds to care for the pets or any special needs the caretaker may have such as building a fence or a dog run. In determining what are adequate funds, the age, type of pet and any medical needs should be taken into account.

The advantage of this approach is

that it is easy and little advance planning is needed. The disadvantage is that there are no assurances the pets will be properly taken care of by the caretaker or that the funds provided for the care of the pets will be used for such purposes. For these reasons, great care should be given in selecting the caretaker and in choosing someone the pet owner can trust to take good care of their pets after they have departed.

The following is a sample of how a Will could be written to leave pets outright to a caregiver:

Sample Will Provision:

"I, [name of pet owner] leave any pets I may own at the time of my death to [name of caretaker], together with the sum of \$_____ to be used by him/her for the care and maintenance of such pets. In the event that [name of caretaker] has predeceased me or cannot take my pets, then I leave them to [name of alternate caretaker], together with the sum of \$_____ for their care and maintenance. In either event, should there be any monies remaining out of the \$_____ after the last of my pets to die, such balance shall pass outright to the party taking care of my pets."

The legal costs of choosing this method are relatively low, as it is the simple process of adding a provision to a will, but only if the pet owner's estate is relatively modest should this method be considered. Using this method, there is a reduced likelihood that the owner's intent will be fulfilled, as there is no person directly charged with determining that the pets will truly receive proper care by the caretaker. However, the will provision does establish a moral obligation upon the caretaker. Careful thought should go into choosing a caretaker, as there is no incentive to prolong the pet's lives.

2. CREATION OF A TRUST FUND. There are two basic types of pet trusts available:

- Inter Vivos Trust; and
- Honorary Trust.

The most predicable and reliable method of providing for pets is for the owner to create an enforceable inter vivos trust. This type of trust formally appoints both the Trustee and the caretaker you have chosen for your pets. An inter vivos trust will take effect immediately upon the pet owner's death, eliminating the time delay of probating the estate in court and allowing the animals to be quickly transported to the caretaker. It also gives power to the Trustee to oversee the care of the pet owner's pets by the caretaker and to distribute a sum of money at specific intervals to care for the pets. Since most states do not allow a trust to be created directly for an animal (as pets are considered property), the trust must name a human being as the beneficiary (i.e., the caretaker) and appoint a Trustee, either a person or corporation, with instructions to the Trustee to deliver official custody of the pets to the caretaker upon the pet owner's death and then to provide payments from the trust to the caretaker.

Several states, including Alaska, Arizona, Colorado, Florida, Iowa, Michigan, Montana, New Mexico, New Jersey, New York, North Carolina, Oregon and Utah have now adopted a new pet-trust law under the Uniform Probate Code §2-907 which specifically provides for the creation of a trust with a pet as the beneficiary, thus removing the requirement of a human being. In addition, California, Missouri and Tennessee have also adopted this law, but do not provide for any enforcement if the Trustee decides not to implement the trust. Trusts in these states allow the animals as beneficiaries and provide that they be enforced by a Trustee acting on the animal's behalf. Verification with your Estate Planning attorney as to the laws on pet trusts in your state is advisable. If a pet owner moves to a different state where these laws do not exist and subsequently passes away, the trust may not be valid. A traditional Inter Vivos trust which does not rely upon state law may be a better alternative.

Rule Against Perpetuities. In states without the pet-trust law, the trust must be set up the traditional way with care taken not to violate the "rule against perpetuities." This means that the trust must have a termination date, the "rule" requiring the trust to terminate within 21 years after

the death of a human being, either the pet owner, who created the trust or the subsequent caretaker. This rule originated to prevent property from being tied up too long in a trust. In this regard, the life of an animal is not a measurable life for purposes of this rule and as such, a trust designated for the life of a pet violates the rule against perpetuities. Therefore, the trust fund must be for the benefit of the caretaker, a human being, and supervised by a Trustee. This could be a problem for animals with longer life spans, such as horses or large parrots, where the trust could conceivably terminate before the animal dies. Fortunately, many states are now phasing out the "rule" in favor of a 90-year ending period. Additionally, the U.S. Tax Code states that a beneficiary of a trust must only be a person (human being), a trust, estate, partnership, association, company or corporation. Tax laws are generally favorable to pet trusts which are normally taxed at a much lower rate than the average trust.

Funds for the Trust. Setting aside a sufficient amount of funds for the trust depends on the type of animal and its age. A horse would obviously require far more money than a dog or cat. A bank account or mutual fund could be set up naming the Trustee as the payee upon the pet owner's death or a life insurance policy naming the Trustee as the beneficiary could provide the funds for the trust. However, care should be taken not to set aside too large of an amount, as disgruntled heirs may challenge the trust in court. Even if the pet owner has no desire to benefit any family members or friends, the entire estate should not be left for the animal's care. In past lawsuits where the trust was contested, the Courts have reduced amounts left in trusts to animals to an amount it considered reasonable for their adequate care.

The average cost of setting up an inter vivos type of trust with an attorney can average from around \$2,000 to \$10,000 depending on how detailed it is and the number of animals involved.

Disbursement of Trust Funds. The pet owner should specify how the Trustee is

to make disbursements to the caretaker from the trust funds. The simplest method is to distribute a fixed amount each month to the caretaker. If there are additional costs, such as veterinary bills or the purchase of a specific item for the pets, the Trustee should be allowed to reimburse the caretaker.

Alternatively, the pet owner could provide reimbursement only for the expenses of the caretaker. Using this method, the caretaker would submit receipts to the Trustee at periodic intervals. The Trustee would review the expenses in light of the standard of living the pet owner specified and reimburse the caretaker accordingly. However, this method requires an increased burden on both the Trustee and caretaker to maintain records and could increase the cost of the trust.

A provision should also be included for final disposition of the pets upon their deaths. The pet owner will have to decide if the pets are to be buried or cremated and allow the Trustee to distribute any funds necessary for those services. A memorial for the pets may also be created on a special website.

Choosing a Trustee. Choosing a Trustee is just as important as choosing the caretaker. A Trustee may be an individual or a corporation and must be willing to expend the

time and effort necessary to carry out the wishes of the pet owner. The pet owner should also name an alternate Trustee, should the initial Trustee be unable to serve until the trust terminates and to have the power to remove the original Trustee should they cease to carry out the pet owner's wishes. An Estate Planning attorney can assist in choosing an appropriate Trustee for the trust.

Powers of the Trustee. The Trustee should be given the authority necessary by the pet owner to make regular inspections of the animals to determine their physical and psychological welfare. The inspections should occur at random times. This should be done so that the caretaker does not provide the animals with extra food, veterinary care or attention immediately prior to the Trustee's visit. The inspections should also take place at the

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caretaker's home to enable the Trustee to observe first hand the environment where the animals are kept. If in the Trustee's discretion the animals are not receiving the proper care or standard of living the pet owner requested, the Trustee should have the authority to remove the animals and deliver them to the alternate caretaker specified in the trust.

Remainder Beneficiary. The pet owner should clearly designate who will take any remaining funds after the animals have died. Otherwise, court involvement may become necessary to distribute those funds. The pet owner should be cautioned not to leave any remaining trust funds to the caretaker, as the caretaker may lack a financial incentive to care properly for the animals and may even hasten the pet's demise to gain access to the trust funds.

Naming a charitable institution which benefits animals, veterinary college or animal health research center to receive any remaining funds will most likely assure the well being of the pet owner's animals with the caretaker. This also adds the advantage of yet another entity involved in the welfare of the pets should any misappropriation of funds occur.

Euthanasia. If any of the pets left to the caretaker become ill or elderly and the possibility of euthanasia arises, the pet owner should clearly indicate in the trust who has the discretion to make that decision. The trust language should specify that the opinion of a panel of people, which includes the acting veterinarian, the Trustee and the caretaker should all be necessary in making the decision to euthanize the pet.

Honorary Trust. A second type of trust for pets is called an Honorary Trust. This is a type of trust where the caretaker's honor is relied upon to carry out the pet owner's wishes. This type of trust is not enforceable and if the caretaker refuses to carry out the pet owner's intent, there is virtually no means to force them to do so. Therefore, extreme care must be given when choosing a caretaker under this type of trust. An honorary trust would only be used where the funds of the estate are quite small and/or the animals are elderly and the caretaker is considered completely trustworthy by the pet owner.

Identify Pets to Prevent Fraud. Identifying the pet or pets in the trust should be done by means that will adequately identify the animal and prevent

the caretaker from replacing the original animal with a new "look alike" animal to keep the trust funds flowing. For example, one case involved a trust established for a black cat named Samantha – a cat who really did have nine lives. The pet owner appointed her maid as caretaker for Samantha upon her death. However, inconsistencies in the reported age of the cat tipped off the Trustee to the fact that the maid was on her third black cat, the original "Samantha" long since having died.

Having a microchip implanted is one method (although a dishonest caretaker could have it removed and implanted in another similar animal), tattoos, photos or the best method, DNA identification can all be used to correctly identify the pets in the trust. Conversely, by specifically identifying each and every pet, the pet owner would be required to update the trust any time a new pet was added to the family. If cost is a consideration, the pet owner may wish to describe all of his or her animals as a class instead of by individual name or description (for example, "All dogs I own at the time of my death.").

Prepare a "Pet Card" and "Pet Document". Two important steps a pet owner should take are the preparation of a Pet Card and Pet Document. A Pet Card should be carried in the pet owner's wallet which contains information about their pets and who to contact in an emergency to care for their pets. A Pet Document should contain the same information as the Pet Card with any additional details on the pets and should be kept with the pet owner's estate planning documents or Will.

ISSUES TO CONSIDER:

Some animals require special needs and these needs should be considered when choosing the caretaker, such as:

- Should this pet be an "only" pet?
- Type of home – is an apartment okay?
- Does the animal accept and like children?
- Should the pet be placed in a home with a fenced yard?
- Any special grooming and exercise needs of the animal

If the caretaker can provide a reasonable number of the animal's needs, the pet owner can be assured of its welfare and happiness, bearing in mind, the caretaker will never fully replace the owner in

the pet's life.

SAMPLE TRUST PROVISIONS:

"A. Trustee. I give and bequeath the sum of [amount] dollars to [first choice for Trustee] as Trustee pursuant to [insert cite for law]. If [first choice for Trustee] cannot or is unwilling to serve as Trustee, then [insert name of second Trustee] shall serve as Trustee in his or her place or shall select a Trustee to serve in their place.

The Trustee shall apply as much of the net income and principal of this trust as the Trustee determines in his or her sole discretion to be necessary or appropriate for the lifetime care and maintenance of my dogs [name or identify them] and [specify any other type of animal] and such other animals as I may own at the time of my death. After the death of all of my animals or at such time as the trust terminates or fails for any reason, any property remaining in this trust shall be distributed to [name of person or organization to receive the remaining property.]

B. Caretaker Beneficiary. [Name of caretaker] shall be the initial "Caretaker Beneficiary," but if [name of caretaker] cannot or is unwilling to receive the benefits and meet the conditions set forth below, then [name of second caretaker] shall be the successor caretaker.

C. Distributions and Possession of Trust Property. During the term of this Trust, the Trustee shall distribute to or for the benefit of the Caretaker Beneficiary such amounts of trust income as the Trustee determines to be necessary or advisable for the health, care and welfare of [name of animals] including, but not limited to food, veterinary care and/or pet insurance, toys and other recreational activities and temporary boarding or pet-sitter fees. In exercising such discretion, it is intended that the Trustee will maintain [names of animals] in the same standard of health, care and welfare as I would. The Trustee is also authorized to pay or reimburse Caretaker Beneficiary for any income taxes attributable to the Trust and other necessary expenses associated with the administration of the Trust.

In addition to the foregoing, the Trustee is authorized to be paid compensation in the amount of \$_____ per

year. In any event, the Caretaker Beneficiary shall be entitled to possession of [names of animals] for so long as he or she is providing for such care for [names of animals] and the Trust's continued ownership of [names of animals] is not jeopardized."

Disability. In the event a pet owner becomes disabled for a variety of reasons such as an auto accident, hospitalization, surgery or placement in a nursing home, a document separate from the Will or Trust, called a "Durable Power of Attorney" can be created to provide care for their pets either for a short duration or long term care. This document would allow the person appointed to do anything the pet owner could do and to use the pet owner's funds to aid in the animal's care.

3. **ADOPTION.** If the pet owner does not have a family member or friend willing or able to care for their pets, the pet owner may wish to consider outright adoption. Options for placement include the pet owner's veterinarian, Animal Shelter or breed rescue group. If any of these options is considered, questions may arise as to how the animals will be cared for prior to adoption. Will they be caged or placed in a pen? What screening procedures will be used in the adoption process? How long will they keep the animals before adoption? It is also important to allow the Executor of the Will to use funds from the estate for the care of the pets during the period that a suitable home is being located. In this way, the pets could be provided better food and medical care than they might otherwise be allowed.

4. **PET "RETIREMENT HOME."** Another choice that is gaining in popularity is the pet retirement home. This option may be appropriate for the wealthier pet owner who doesn't have a family member or friend to care for their pets. The retirement homes offer a home like setting in exchange for a contribution to the organization. Veterinary care is usually provided for the life of the pets.

The procedure for leaving pets to a pet retirement home varies depending on the program. It could be as simple as a bequest of the pets in the pet owner's Will and a specified sum of money to be given to the organization or there may be

advance enrollment requirements. For example, the SPCA of Texas Pet Survivor Life Care Cottage is a pet retirement home where for \$25,000 for each small animal (dog, cat, bird or amphibian) or \$50,000 for each large animal (horse, pony, donkey or llama), the pet will receive lifetime care in a home like setting.

Some veterinary colleges also offer similar programs, often called "Perpetual Pet Care Programs." This type of program also requires a similar enrollment fee and upon the death or disability of the pet owner, they will step in and provide care for the pets by veterinary students and eventual adoption.

CONCLUSION.

Although no one likes to think about death or disability, it is a fact of life that many of our pets will outlive us. In the past, people who left their estates to pets were thought of as eccentric or even deranged by many, but today pets are considered members of the family whose care and welfare is enormously important. American family life has changed considerably in recent years, with many widowed or single people living alone with pets who play a significant role in their lives.

Estate planning provides a method to assure that his or her trusted companion is well cared for after the owner's death. With some careful thought and planning, the pet owner can take comfort their wishes will be fully carried out and their four-legged friends will continue to be spoiled from the great beyond.

BOOKS ON ESTATE PLANNING:

All My Children Wear Fur Coats: How to Leave a Legacy for Your Pet, by Peggy R. Hoyt, JD, MBA (Legacy Planning Partners, LLC, 2002). See website: www.legacyforyourpet.com

When Your Pet Outlives You: Protecting Animal Companions After You Die, by Donald Congalton and Charlotte Alexander (New Sage Press 2002).

PerPetual Care: Who Will Look After Your Pets If You're Not Around?, by Lisa Rogak (Literature, 2003).

HOW TO FIND AN ESTATE PLANNING ATTORNEY:

The Estate Planning for Pets Foundation.
Website: www.estateplanningforpets.org.

Martindale-Hubbell is an encyclopedia of attorneys nationwide: www.lawyers.com

PET RETIREMENT HOMES:

Stevenson Companion Animal Life-Care Center located at Texas A & M University.
Phone: (979) 845-1188. Website: www.cvm.tamu.edu/petcare

Wild Cat Ranch Pet Retirement Center, Inc. Located in Comfort, Texas.
Phone: (830) 995-4689. Website: www.wildcatranch.net/wildcat.htm

Angel Care Program of the Animal Sanctuary of St. Croix Valley, Inc.
Website: ww.homeforlife.org/angelcar.htm

Bide-A-Wee Golden Years Retirement Home, located in Westhampton, New York. Pets must be eight years or older, spayed or neutered. Lifetime fee per resident: \$10,000. Phone: (212) 532-6395.
Website: ww.bideawee.org/retirement.asp

Kansas State University Foundation, KSU College of Veterinary Medicine, Perpetual Pet Care Program. Website: www.ksu.edu. See "Colleges & Depts," "School of Veterinary Medicine" then "Development & Gifts" Phone: (785) 532-4013.

MORE INFORMATION ON ESTATE PLANNING FOR ANIMALS:

The Humane Society of the United States.
Website: www.hsus.org

Petcustody.com. Contains legal forms and news for the "other" family member.
Website: www.petcustody.com

"Estate Planning for Nonhuman Family Members" by Gerry W. Beyer Professor of Law, St. Mary's University School of Law, San Antonio, Texas
Website: www.professorbeyer.com/Articles/Animals.htm