

Estate Planning For Your Pets

Article

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Do you have a friend or family member who is that pet owner? Expensive toys. Over the top sweaters. Facebook or Instagram account filled solely with pet pictures. Maybe you are that pet owner if you are reading this article. It's ok. I have a professional reason to care about estate planning for your pets, and a personal reason— my two boys, Louie and Marv.

According to the 2015-2016 American Pet Products Association National Pet Owners Survey, approximately \$60 billion was spent on pets in 2015, including approximately \$23 billion on food, \$14 billion on supplies, and \$15 billion on veterinary care. It is estimated by the Humane Society of the United States that between 100,000 and 500,000 pets go to shelters each year after their owner dies or becomes incapacitated. Given that our pets are part of the family, it is important that we consider these loved ones in our estate planning — just as we would for our human family members.

Planning for Lifetime Incapacity

Just as you would want to have powers of attorney in place so that someone could make medical and financial decisions for you if you were to become incapacitated, you want to have planning in place for your pets during your lifetime incapacity. The first major planning consideration is to determine who would be the caretaker for your pet if you were to become incapacitated. You should ensure that the designated caretaker knows he or she is your designated caretaker. You might consider completing a “pet information” sheet. The pet information sheet should include the following information:

- Feeding instructions, walking/exercise schedule, and medicines
- A copy of animal's veterinary paperwork
- Comments on personality or behavior, i.e. does not like to have paws touched

Another planning consideration is to have a wallet card, which would include that you own a pet, the pet's name, type of animal, where housed, special care instructions, and contact information for your designated caretaker.

You might also consider filling out a “Pet Care Authorization” form, similar to an authorization form that a parent would sign if a minor child is staying with a relative during a vacation. The form would designate the Agent acting under the Authorization form and outline the Agent's scope of authority under the form, including whether the Agent has the authority to have the pet euthanized,

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whether the Agent has the authority to find a substitute home for the pet, and whether the Agent has the authority to surrender the pet to a shelter.

Finally, your own financial power of attorney could include provisions related to your pets, including that your financial Agent is allowed to provide money to your designated caretaker, and that your Agent may expend your funds directly to care for your pets.

Planning for Your Death

In addition to planning for your pets during your lifetime, there are several different ways that you can plan for your pets for at the time of your death.

First, you can designate in your estate planning documents who you would like to be the caretaker of your pets upon your death. The designation of a caretaker can be done in both a Last Will and Testament (the document that governs your probate assets upon your death), or a Revocable Living Trust (a document that is often used to avoid the necessity of a court-overseen administration of your estate).

Second, you can include a provision that the caretaker of your pets will receive a monetary bequest if the caretaker agrees to accept your pet. Often clients will include amounts such as \$5,000-\$10,000 per pet, but I have seen amounts up to \$50,000 being distributed outright to the caretaker.

Third, you can create a trust for the benefit of your pets. A pet trust would be an alternative to an outright distribution of funds to the caretaker, because the trust would result in continuing oversight by a Trustee of how funds are used to benefit your pets. Many clients might consider a pet trust to be appropriate only for the uber-wealthy, for those who desire to lavish their pets with diamond collars and spa treatments. Think Leona Helmsley leaving her Maltese pooch a cool \$12 million bequest. But there are many practical situations where a pet trust would be appropriate.

There are several, related reasons to consider creating a pet trust. One is to think about the life expectancy of certain animals. Horses can live up to 40 years. Parrots up to 80. Boa constrictors up to 25. Box turtles up to 125. Second is to think about the costs associated with caring for your pet. My most recent trip to the veterinarian for annual checkups, lab testing, heart worm medications, flea and tick medications, and medications for an ear infection was approximately \$850. Owning a horse can cost upwards of \$5,000 per year. Assuming a horse might live another 20 years after a client's death, many clients might be uncomfortable making an outright distribution of \$100,000 to the caretaker and hoping that the caretaker uses that money wisely. However, because there will be additional expenses to administer a pet trust, including preparing a tax return each year and paying the Trustee a fee, there has to be sufficient funds put in the trust to make the additional expenses worthwhile.

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If a client wants to consider a pet trust, there are two basic types: one that names a human beneficiary (i.e. the caretaker) to receive distributions from the trust (a “traditional” pet trust); the other names the pet as the direct beneficiary (a “statutory” pet trust). The statutory pet trust is a newer type of trust, and its namesake comes from the fact that historically courts disallowed naming a pet as a direct beneficiary because it was against public policy. States had to specifically authorize in the state trust statutes naming a pet as a direct beneficiary of a trust. Wisconsin authorized the use of the statutory pet trust when the Wisconsin Trust Code was completely restated in 2014. In deciding which type of pet trust will make the most sense, there are income, gift, and estate tax considerations. Additionally, clients will need to consider who will serve as the Trustee, or money manager, of the trust.

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