



## Helping Clients Provide for Pets in Their Estate Plans

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*Clients want the very best for their pets. They want to know their attorney can draft a will and/or trust that provides for the dog, cat, horse, or bird that is much more than simply property to them.*

**T**hought lately about providing for pets in clients' estate plans? Not likely. The subject seldom receives in-depth news coverage or even cocktail party discussion. But it deserves the estate planner's attention. Because the bonds between people and their pets are usually so great, giving some attention to this issue can provide peace of mind—for the estate planner and for his or her clients. Failing to adequately provide for companion animals in the event that the owners die before their pets can be tragic. Moving forward with necessary actions to ensure their companions' safety, care, and smooth transition to new homes should be encouraged.

All too often people assume that they will survive their beloved pets or that friends, relatives, or neighbors—who once orally promised to care for these pets in the event of their owner's death or disability—are still able or interested in adding

new animals to their households. This is not always the case; sometimes their current circumstances prevent them from fulfilling that promise. Meanwhile, employees of local animal shelters—those on the front lines of the country's pet overpopulation crisis—frequently see the unintended consequences of pet owners' failure to appropriately provide for their pets in their wills or ascertain that friends, relatives, or neighbors truly want new companion animals in their households.

Even people who have conscientiously provided for their pets in their wills may have neglected to consider a trust and/or powers of attorney affecting their companion animals that would commence in cases of severe disability and cover the critical period immediately following death until formal administration commences, which can be weeks or even longer. Similarly, people who want to ensure that they take their roles as caregivers seriously may not know where to turn for advice on planning for their pets in estate documents.

### What Can Clients Do Now to Prepare for the Unexpected?

Because pets usually have shorter life spans than their human caregivers, clients may have planned for their animal friends' passing. But what if the client becomes ill or incapacitated or dies first? As responsible pet owners, clients provide their pets with food and water, shelter, veterinary care, and love. To ensure this quality of care continues should something unexpected happen to them, it is critical that they plan ahead.

In the confusion that accompanies a person's unexpected illness, accident, or death, pets may be overlooked. In some cases, pets are discovered in the person's home days after the tragedy. To prevent this from happening to their pets, clients should take these simple precautions:

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- Find at least two responsible friends or relatives who agree to serve as temporary emergency pet caregivers. Provide emergency caregivers with keys to the home, feeding and care instructions, the name and phone number for the pets' veterinarian, and information about the permanent care provisions made for the pets.
- Make sure neighbors, friends, and relatives know how many pets are owned and the names and contact numbers of the individuals who have agreed to serve as emergency caregivers.
- Carry a wallet alert card that lists the names and phone numbers of emergency pet caregivers.
- Post removable "in case of emergency" notices on doors or windows specifying how many and what types of pets are in the home. These notices will alert emergency response personnel during a fire or other home emergency. Avoid using stickers. Because these are often left behind by former residents, firefighters may assume the stickers are outdated, or, worse, risk their lives trying to find a pet no longer in the house.
- On the inside of front and back doors, affix removable notices listing emergency contact names and phone numbers.

Because a pet needs care daily and will need *immediate* attention should the client die or become incapacitated, the importance of the aforementioned steps cannot be overemphasized.

#### How Can Clients Ensure Long-Term or Permanent Pet Care on Becoming Seriously Ill or Dying?

The best way to make sure clients' wishes are fulfilled is by making *formal* arrangements that specifically cover the care of their pets. It is not enough that friends once orally promised to take in the animals or even that the clients decided to leave money to friends for that purpose. An effective estate plan should include a special will, trust, or other document to provide for the care

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and ownership of clients' pets, as well as the money necessary to care for them.

#### How Does a Client Choose Permanent Caregivers?

The client should first decide whether he wants all his pets to go to one person or whether different pets should go to different people. If possible, pets that have already bonded with one another should be kept together. When selecting caregivers, partners, adult children, parents, brothers, sisters, and friends who have met the pets and have successfully cared for pets themselves should be considered. Also, alternate caregivers should be named in case the first choice becomes unable or unwilling to take the pets. The client should also discuss his expectations with potential caregivers so they understand the great responsibility of caring for pets. The client needs to understand that the new owner will have full discretion over the animals' care—including veterinary treatment and euthanasia—so the client should choose people he trusts implicitly and who will do what is in the best interests of the pets.

If all else fails, it is also possible for the client to direct his executor or personal representative, in a will or some other estate planning document, to place his animals with other individuals or families (that is, in a non-institutionalized setting). Finding a satisfactory new home can take several weeks of searching; again, it is important to line up temporary care. Clients also need to know and trust their executors and provide useful—but not unrealistically con-

fining—instructions in their wills. They should also authorize their executors to expend funds from their estates for the temporary care of their pets, as well as for the costs of looking for new homes and transporting the animals to them. The will should also grant broad discretion to the executors in making decisions about the animals and in expending estate funds on the animals' behalf. Sample language for this approach is:

*[Article Number]* A. As a matter of high priority and importance, I direct my Personal Representative to place any and all animals I may own at the time of my death with another individual or family (that is, in a private, non-institutionalized setting) where such animals will be cared for in a manner that any responsible, devoted pet owner would afford to his or her pets. Prior to initiating such efforts to place my animals, I direct my Personal Representative to consult \_\_\_\_\_, D.V.M. (currently at the \_\_\_\_\_ Hospital) or, in the event of Dr. \_\_\_\_\_'s unavailability, a veterinarian chosen by my Personal Representative, to ensure that each animal is in general-



#### For More Information

The Humane Society of the United States' Office of Major and Planned Gifts offers a free kit, "Providing for Your Pet's Future Without You," complete with a six-page fact sheet, wallet alert cards, emergency decals for windows and doors, and caregiver information forms. The fact sheet is available online at [www.hsus.org/petsinwills](http://www.hsus.org/petsinwills). To order a free copy of the "Providing for Your Pet's Future Without You" kit, please call the HSUS at 1-800-808-7858 or send an e-mail to [humanelegacy@hsus.org](mailto:humanelegacy@hsus.org).

ly good health and is not suffering physically. In addition, I direct my Personal Representative to provide any needed, reasonable veterinary care that my animal(s) may need at that time to restore the animal(s) to generally good health and alleviate suffering, if possible. Any animal(s) not in generally good health or that is so suffering—and that is beyond the capabilities of veterinary medicine, reasonably employed, to restore to generally good health, or to alleviate its suffering—shall be euthanized, cremated, and the ashes disposed of in the discretion of my Personal Representative. Any expenses incurred for the care (including the costs of veterinary services), placement, or transportation of my animals, or to otherwise effect the purposes of this Article \_\_\_\_\_ up to the time of placement, shall be charged against the principal of my residuary estate. Decisions my Personal Representative makes under this Article \_\_\_\_\_—for example, with respect to the veterinary care to be afforded to my animal(s) and the costs of such care—shall be final. My intention is that my Personal Representative have the broadest possible discretion to carry out the purposes of this paragraph.

#### Is a Will the Best Way to Provide for a Pet?

Although the estate planner will help decide what type of document best suits the client's needs, the client should be aware of some drawbacks to a will. For example, a will takes effect only

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upon death, and it will not be probated and formally recognized by a court until days or even weeks later. Further, if legal disputes arise, the final settlement of property may be prolonged. Even determining the rightful new owner of the pets can get delayed. What this means is that it may take a long time for instructions regarding the pets' long-term care to be carried out.

This does not necessarily mean that clients should not include provisions in their wills that provide for pets. It simply means that clients should explore creating additional documents that compensate for their wills' limitations.

#### How Can Setting Up a Trust Help?

Unlike a will, in states where it is permitted, a trust can provide for pets immediately—not only if the client dies, but also if he becomes ill or incapacitated. That is because the client determines when his trust becomes effective. When a trust is created for pets, money is set aside to be used for the pets' care and trustees are specified to control the funds.

A trust created separately from the will does, however, carry certain benefits:

- It can be written to exclude certain assets from the probate process so that funds are more readily available to care for a pet.
- It can be structured to provide for a pet even during a lengthy disability.

There are many types of wills and trusts; determining which is best for the client and his pets depends on his situation and needs.

The estate planner also needs to make sure that a trust for the benefit of one or more specific animals is valid and enforceable in the state in question. Even if state law recognizes the validity of such trusts, tying up a substantial amount of money or property in a trust for the animals' benefit may prove to be controversial from a relative's or other heir's point of view. Moreover, trusts are relatively expensive to administer and maintain—all of which underscore the need for careful planning.

After the estate planner has overseen the creation of a will, a trust, or both, the client should leave copies with the people he has chosen to be executors of his estates, as well as the pets' designated caregivers, so the caregivers can look after the pets immediately. Caregivers should also have copies of the pets' veterinary records and information about their behavior traits and dietary preferences.

#### Pet Trust Legislation

In recent years, specific pet trust legislation has been enacted in approximately 25 states and the District of Columbia. The laws permit a person to create a trust for the care of designated domestic or pet animals and specify that a pet owner's intent to provide for his or her animal can now be protected by the courts. A few jurisdictions, such as California, Missouri, Tennessee, Wisconsin, and the District of Columbia, have essentially codified the common law "honorary trust." States that have enacted legislation to treat trusts for pets as valid, enforceable express trusts are Alaska, Arizona, Colorado, Florida, Illinois, Iowa, Kansas, Maine, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Utah, Washington, and Wyoming. Both the Uniform Trust Code (2000) and the Uniform Probate Code (1990) include provisions authorizing express trusts for the benefit of pets. See UTC § 408 and UPC § 907. Absent legislation validating trusts for the benefit of pets, state law may treat the trust as an "honorary trust" and permit the "trustee" to administer the funds. ■

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