

Not all beneficiaries have two feet: Estate Planning for Pets

In the best of all possible worlds, children outlive their parents. But this dynamic is often reversed for those whose lives are enriched by their pets. It's not unusual to have a number of dogs in your lifetime, possibly more than one at the same time. You may have dogs because you love animals, or because you enjoy activities with your dog, or because you love the companionship. Whatever the reason, pets give and should receive unconditional love and attention. Research has found that pets have a positive impact on a person's quality of life by lowering blood pressure, reducing depression and stress, hastening recovery time, and improving mental concentration.

Many of us plan carefully for our human families, considering various choices when planning for our two-footed children, but we don't give the same amount of thought and care to planning for our pets. There are several ways to provide for our loved ones (two-footed and four-footed) in the event of disability, or death:

1. Name a caretaker for your pets
2. Create a trust for your pets
3. Leave your pets to a humane organization that will place your pets in loving homes\
4. Leave your pets to a pet "retirement" home.

Naming a Caretaker: The easiest and most common solution is to name a caretaker (with a back-up) for your pets in your will. Many states consider pets to be tangible personal property (similar to furniture, cars, or jewelry), and therefore ownership of your pets can be transferred by will. Obviously, anyone you name should be willing and able to accept responsibility for your pets. Often a person will leave his or her tangible personal property (including pets) to a spouse, then to children. It's best to be sure that the person "inheriting" your pets is ready to take care of them in the same way you would. It's also advisable to leave the caretaker some money for grooming, vet expenses, toys, food, and other costs. You might want to consider setting aside some extra money for extras, like fencing a yard or building a run. Most importantly, you should be sure that the caretaker will provide a loving home for your pets, and will spend the money for your pets.

There are advantages and disadvantages to this approach. It's the easiest, and requires little advance planning, other than a provision in your will to transfer ownership of your pets to the caretaker and provide money for care. However, there's no legal way to guarantee that the caretaker will take good care of your pets, or that the money will be used for the animals. The caretaker could move to another state, become unable to care for the pets, or die. The funds could be inadequate, and the pets could suffer as a result.

Legal costs to name a caretaker and set up a fund should be relatively low, but there's less certainty that your wishes will be followed, as there's no outside third party to follow up. Provisions in your will should create a moral obligation for your caretaker, but don't establish a legal requirement. Therefore the choice of caretaker becomes critically important. The caretaker should be someone you trust implicitly, and someone who will love your pets just as much as you do.

Creation of a trust for your pets: More than a handful of states allow the creation of trusts for pets. To make sure that your pets are taken care of, establishing either a living trust or a trust under will, naming an outside third party as the trustee (who has control of the money and decides how it's spent) is the best solution. Most states do not permit you to name a pet as a beneficiary of a trust, but it's possible to name the caretaker as the beneficiary, and require that the trustee turn the pet over to the caretaker at the appropriate time. While the trustee keeps ownership of the pet, the caretaker would have custody. As the owner of the pet, the trustee could enforce the trust terms by overseeing the pet's care and giving out money for the pet's expenses.

If it's possible to create a trust under your state's laws, the trust should include a plan for disbursements to the caretaker (either a fixed monthly amount or reimbursement when the caretaker submits receipts). The trust should also include the possibility of distributing money for major expenses, such as significant vet bills or adapting the caretaker's home for the pets. The trustee should be able to make regular, unannounced inspections of the caretaker's home or place where the pet lives. The trustee should also have the right to remove the caretaker, if necessary, and the ability to take custody of the pets, if necessary. It's helpful to include language describing the type of care the trustee will pay for, authorized expenses (food? Housing? Grooming? Medical care? Entry fees for either a breed show or performance event? Toys? Boarding? Cremation? Burial?).

Each pet is special, and has different needs. The funds set aside for each one's care will depend on several variables: dog or cat, young or old, medical needs or conditions that require ongoing treatment. For example, a horse would require far more money than a dog or a cat. At the same time, you shouldn't set aside so much money that your other heirs object. In the past, courts have reduced the size of a trust fund for a pet after heirs have sued because the original amount seemed unreasonable.

You should also give some thought to naming either individuals or an organization to receive any money left over after your pets have passed away. Otherwise it might be necessary (and expensive) to involve a court in the decision. Naming a charitable organization or animal welfare group may insure the well being of your pets, and could mean that there's an extra set of eyes making sure the pet is well taken care of.

Honorary Trust: You could set up an honorary trust, imposing a moral (but not legal) duty on a caretaker to provide for a pet. If you and the caretaker own a joint account (bank account, joint mutual funds, socks, or other financial resources), the joint assets could be used for your pets' care. However, the obligation to use the money for your pets isn't enforceable in a court of law. It's wise to consider this option only if there's a small amount of money involved, and only if you trust your caretaker implicitly.

Enforcement Issues: To be safe, some outside third party should have the responsibility to make sure that your pets are well taken care of, happy, and any money earmarked is used for your pets. Even more importantly, an outside third party should have the ability to make sure that the pet in the caretaker's hands is your pet. One newspaper reporter wrote about a woman

who left her black cat to her maid, with money set aside for the cat's care. After some time had passed, it was discovered that the maid had replaced the cat at least twice, so that the money for the cat's care would keep going. While it's possible to identify a particular pet through either a microchip or a tattoo, both can be removed. If your pet has any distinctive markings, a photograph or detailed description on file with veterinary records is useful. Best of all, your pet's DNA should be on file with your veterinarian, to provide absolutely reliable identification.

Adoption through an Animal Welfare Organization: If there's no logical or willing caretaker, or if your state's laws don't permit trusts for pets, you could consider leaving your pets to a humane organization with instructions that the organization place the pets. Options for placement could include your veterinarian, local shelter, animal welfare organization, or breed rescue group. If this choice appeals to you, it's a good idea to check out the care your pets will receive prior to placement, the screening process used by the adoption organization prior to placement, and the length of time your pets might spend with the organization. Your will or trust should allow your executor or trustee to distribute money for interim care, if that's appropriate. It's also possible to leave your pets to an animal welfare organization, along with money for the organization. The organization would receive any leftover money after your pets are placed in a suitable home.

Pet retirement homes: There are a growing number of "pet retirement homes" where your pets can live out their lives. If the retirement home offers the possibility of placement, any money set aside for your pets could revert to the community's endowment or general fund. Some veterinary colleges have perpetual care programs as well, and will provide loving homes and care for your pets in exchange for a cash gift.

Precautions during your lifetime: During your lifetime, it's a good idea to have a card in your wallet listing information about your pets (names, special care needed, veterinarian). The card should also identify someone who can gain access to your pets, in case of an accident or sudden illness. There should be signs on all the outside doors in your home, showing the number and type of pets in case of a fire. Your power of attorney should give specific authority to take care of your pets, including spending money for their care.

No one likes to think about dying or becoming disabled. In the past people who left a portion of their estates were considered eccentric, at best. Today many of us consider our pets as part of our families. Providing for your pets in your overall planning will provide peace of mind. With some careful thought, you can be sure that your wishes will be carried out, and that your beloved companions will be taken care of, even if you can't. They give us unconditional love, taking care of them seems the least we can do in return.