

## **Estate Planning For The Benefit Of Pets**

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Then one day the poet, suddenly did die.  
But he left all of his royalties to Spooner, his old hound;  
Growing old on steak and bacon, in a dog house ten feet round.

Jimmy Buffet - *Death of an Unpopular Poet* © 1973

### **Introduction**

The components of Estate Planning include protecting and looking after loved ones and protecting against financial difficulties and loss due to the depredations of creditors including the tax authorities. More than 2/3rds of Americans report that they consider their pets to be important family members. In some cases parents are estranged from their children and actually receive most of their emotional support from pets. Most people take significant care in dealing with their assets and personal possessions. However, the difficult problem of how to deal with a pet is sometimes ignored.

When pet owners do nothing, the last stop that the family makes when going from the funeral to the airport may be to drop the decedent's pet off at the local animal shelter. Often times friends and family not know what else to do especially where the decedent has left no instructions or made no plans.

In ancient Egypt, it was customary for pets to be subjected to euthanasia and buried with their owners. Sometimes an ill, disabled or aged pet cannot adapt to a new home. This may be particularly true with dogs which sometimes waste away after the death of a beloved owner.

Some owners feel it is appropriate to go to significant lengths to avoid the possibility that their beloved pet will be subjected to euthanasia. Such people basically have three options: (1) identify particular friends who are willing to care for the pet and put such instructions in writing; (2) establish a contract for pet care effective at the pet owner's death or (3) establish a trust for the benefit of the pet to be funded on the pet owner's death.

### **Instructions for Pet Care**

Often times pet owners will identify particular friends who would be willing to provide care for pets in the event the owner is deceased. It is important that these arrangements be put into writing in the form of a will or written instructions. To ensure the enforceability of the instructions, it is appropriate that they be included in a will or similar formal instrument. Basically such an arrangement

transfers ownership of the pet to another individual who is legally free to deal with the pet as their own.

### **Perpetual Care Contract**

This option involves a binding legal contract for the care of the pet in the event of the owner's death. The contract may be with an individual or organization. The arrangement usually calls for payment from the deceased pet owner's assets to compensate for the continuing care.

Some veterinary colleges provide programs for surviving pets. Those include the University of California at Davis and the Stevenson Companion Animal Life-Care Center at Texas A & M University. These programs require that the deceased owner leave the college an appropriate bequest or endowment.

The Kansas State University College of Veterinary Medicine has established a perpetual pet care program which involves an endowed scholarship for a veterinary student who will care for an animal in the event you become incapacitated or predecease your pet. With this program, the owner can designate the particular care they want for their pet (e.g., a two-hour walk on Sundays, etc.) and may decide if they want their pet to live out its life with one owner or if the pet should be passed down to another veterinary student when the first student graduates. At the end of the program, the remaining funds are used for the advancement of the College of Veterinary Medicine and a fund that supports studies on diseases and disorders in animals. There are also pet nursing homes for elderly or ailing animals.

Keep in mind that such arrangements are a contract and there may be practical difficulties in enforcing the contract after the pet owner is deceased. Even with the best intentions, persons may agree to provide perpetual care for pets, but will be unwilling or unable to do so when the time comes. In addition, pets cannot bring legal action to enforce claims or even complain about their care. An informal way to handle this would be to have a trusted friend supervise the care and situation.

### **Formal Pet Trusts**

Pets cannot own property and thus a direct bequest in your will to a pet would probably be voidable. To deal with this issue, Alaska is one of several states which now legally recognize trusts for the benefits of pets.

This change in the law occurred effective January 1, 1997. The law (AS 13.12.907) provides that a trust for the care of designated domestic or pet animal is valid and enforceable. Such trusts are limited to a term of 21 years. The trust instrument may designate an individual to enforce trust provisions or the court may appoint such an individual trust enforcer. The court has the right to reduce

the amount of property transferred to the trust if the court determines that the amount substantially exceeds the amount reasonably required.

Under prior law, trusts for the benefit of pets were considered honorary and generally viewed as unenforceable. To get around this, some people provided that the dog should pass to a specific care taker and then provided a trust for the benefit of the care taker limited to the expenses of maintaining the pet. In some circumstances, those trusts were attacked as void against the ancient rule against perpetuities (a trust may not extend beyond a period of 21 years plus human lives in being). It was argued that in the absence of human beneficiary, a trust is merely an unenforceable honorary trust.

An example of this arrangement is in the Estate of Doris Duke (tobacco heiress) who provided for the care of her dogs by a care taker at her residence for the life of the dogs and bequeathed the sum of \$100,000 to her trustees to be held for the benefit of that dog with the principal and income to be paid for the maintenance of the dog.

The distribution was attacked by the Doris Duke Charitable Foundation (one of her residual beneficiaries) as an unenforceable trust. In August of 1997, the New York Surrogates Court (a probate court) determined in favor of the dogs and found that the trust was enforceable. While the court finally upheld the trust, the expense and uncertainty of such legal proceedings demonstrate the importance of statutory changes specifically allowing pet trusts. New York has subsequently amended its law to join Alaska as a pet-friendly jurisdiction.

## **Conclusion**

There are a number of options available for pet owners who are concerned about the care of their pet in the event the pet survives them. A trust to provide for your pet's care is now an available option under Alaska law and may be appropriate in some circumstances. Other less formal options are also available. In any event, every responsible pet owner should address such issues and deal with them in a timely fashion.