

# When It's All Going to the Dogs

## A Primer on the Emerging Trend of Pet Estate Planning

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Some people consider their pets to be members of their family. Other people have made a career out of breeding, raising, and/or sheltering animals. When animal owners pass away, if they have not made provisions for the continuing care of their animals, the outcome can be disastrous.

Often, the recipient of the animal does not want to, or is not prepared to, take on the responsibility of providing ongoing care. As a result, the animals are then euthanized, neglected, or abandoned. In order to provide for the ongoing welfare of their animal after their demise, the estate plan of the animal owner should specifically address the disposition and care of the animal.

When an animal's owner passes away, the animal will pass through the decedent's estate as personal property, just as would a lamp, a couch, or a bedroom set. As such, the ongoing ownership of the animal should be addressed in the animal owner's last will and testament. In addition to distributing the animal to a new owner or caretaker, most often, an animal owner will desire to establish a trust for the benefit of their pet.

Although approximately half of the 50 states do recognize 'pet trusts,' unfortunately, at this time, Massachusetts is not one of them. While it is not possible to create an enforceable trust solely for the benefit of an animal, it is possible to establish an enforceable trust for the benefit of the animal's caretaker.

One of the most important decisions when planning for an animal is determining who will

serve as the animal's caretaker. It is also important to name at least one alternate caretaker, if not several, who would provide care if the originally named caretaker was unable to do so. The most commonly named caretakers are relatives, friends, the animal's veterinarian or breeder, or an animal shelter or sanctuary.

A number of animal sanctuaries have emerged that will provide care for an animal until its demise. These facilities vary greatly in terms of the environment they provide, the cost of placing an animal within the sanctuary, and the type of compensation accepted. Some sanctuaries may accept only cash donations, while others are willing beneficiaries of a charitable remainder trust. The animal owner should approach the intended caretaker to ensure that the caretaker is willing to accept this responsibility and on what terms, because nothing destroys a plan faster than when the intended caretaker refuses the responsibility.

The next important decision is determining how the caretaker will be paid. The caretaker may receive funds to cover all verified expenses associated with caring for the animal. Normal and customary expenses would include housing, food, veterinary care, grooming, and burial and cremation fees. Another alternative is to provide a lump sum to the caregiver based on the care to be provided until the animal's demise. Providing a lump sum may encourage the caretaker to skimp on the animal's needs in order to allow the caretaker to retain the funds personally. In this regard, an independent party should be

empowered to inspect the animal to ensure that it is being properly maintained. Inspections should take place in the animal's home environment and should also be permitted to be made randomly.

The animal owner should also address the final disposition of the animal and of any funds remaining when the animal has passed away. Here, the inclusion of strict guidelines concerning euthanasia should be considered. If the caretaker retains the funds remaining upon the animal's passing, an unscrupulous caretaker may seek to euthanize the animal without cause simply to retain the funds.

A comprehensive estate plan will also provide for the ongoing care of the animal should the owner lose the capacity to handle his own affairs, whether due to physical or mental illness. The health care proxy, which is a document naming someone to make health care decisions for the owner, and the durable power of attorney, which is a document naming someone to make financial decisions for the owner, should contain special provisions acknowledging the animal and providing for the animal's ongoing care.

Most often, a durable power of attorney will authorize the person named to handle a laundry list of financial transactions. When an animal owner is incapacitated, the animal must be placed with a custodian, and money must be spent to provide ongoing care. To avoid any controversy regarding the care and custody of the animal, the power of attorney should authorize the person named to take custody and control of the

animal if need be. The document should further authorize the person named to arrange for someone to provide care for the animal, even to the extent that said care would require additional monetary compensation to the caretaker.

The health care proxy should notify the person named and/or medical personnel that the incapacitated person is an animal owner and that the animal is dependent upon that owner for care. While medical personnel will certainly first attend to the owner's care, if the owner remains incapacitated, the language of the health care proxy will remind the person named, and should alert medical personnel, of the need to ensure the ongoing care of the animal.

When an estate plan takes into consideration the issues raised here, the owner has taken the steps necessary to ensure the ongoing care of their pet. The animal will then receive the best substitute care possible for that of their original owner. Without such a plan, the fate of the animal is at best uncertain, and at worst unspeakable.❖

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