



What Every Pet Owner Should Know About Estate Planning

By J. Stoddard Hayes, Jr.

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Companion animals are an important part of our lives. According to a recent study by the American Animal Hospital Association:

- 62% of households in the U.S. have companion animals.
- 85% of pet owners refer to themselves as their pets' "mom" or "dad"
- 63% celebrate their pets' birthdays
- 87% include their pets in holiday celebrations
- 65% have sung or danced with their pets
- 52% have cooked for their pets
- According to the Centers for Disease Control, 14-62% of dogs and cats in the U.S. sleep in the same bed as their human companions.

So, why do so few people consider their companion animals in their estate planning?

One explanation might be the bad press that people like Leona Helmsley and Karlotta von Liebenstein have generated. Everyone remembers Helmsley, the "Queen of Mean," who left \$12 million in trust for her white Maltese "Trouble," much to the displeasure of her children, whom she largely disinherited. And von Liebenstein's German Shepard, "Gunther IV," is known to be the world's wealthiest dog at \$372 million. Perhaps the average pet owner concludes that, because some wealthy eccentrics have given their animals vast amounts of wealth, it is foolish and wasteful to think about their companion animals in estate planning.

However, what happens to a person's household pets when they die? What if the person goes to an assisted living facility that does not allow pets? Consider this statistic: Approximately 5 to 7 million companion animals enter animal shelters nationwide every year, and approximately 3 to 4 million of those animals are euthanized (roughly 60% of dogs and 70% of cats).

Legally, the executor of your will, or the agent under your power of attorney, cannot spend any of your money to provide for your companion animals unless you specifically authorize it. Companion animals are considered "chattles" – the same as a chair or a refrigerator. Even worse, unlike the chair or the refrigerator, generally they have no

pecuniary value. So, if your executor or your agent spends your money on the animal, he is committing “waste” and can be held personally liable by the beneficiaries of your estate for every dollar he spends. As a result, where there is no planning, the executor, or the agent, has no choice but to find a no-cost option for disposing of your companion animal. Maybe a willing relative will take the animal – if it’s healthy and not too old – or maybe a “no kill” shelter will agree to take the animal. These hit or miss solutions don’t work, more often than they do.

So, what should you do to responsibly deal with an animal companion in your estate plan?

First, your lifetime planning documents, your power of attorney and living trust, for example, should include provisions to account for the possibility that you might be admitted to a hospital for several nights and not be able to feed, water or exercise your pet for a limited period of time. Those documents should also deal with longer term disability, and the possibility that you may become physically or mentally unable to care for the companion animal. Your power of attorney might authorize your designated agent to expend funds to care for your pet, to hire a caretaker, to expend funds for veterinary care, to purchase veterinary care insurance or, in certain cases, to donate the animal to a no-kill shelter, possibly with the donation of cash to provide for the animal’s care, or to arrange for the humane euthanization of the animal.

Second, your will or living trust should include provisions, similar to those in the power of attorney, authorizing your executor or trustee to expend funds for your companion animal’s care during the administration of your estate. Otherwise, if any beneficiary objects to your executor spending funds, say, for your pet’s very expensive thyroid medicine, your executor will be at risk in making those expenditures.

Third, your will should give your executor the authority to arrange for the permanent adoption of your companion animals and, if that cannot be arranged, donate them to a no-kill shelter, possibly with a simultaneous donation of funds in an amount to be determined by the executor. Finally, as a last resort, your will should give your executor the discretion to arrange for the humane euthanization of your companion animals at the estate’s expense.

You might consider a form of “endowed” gift of your pet. Some believe that the best solution is to leave the companion animal to a friend or relative with a cash legacy contingent upon the individual’s agreement to care for the animal for life. However, such a solution relies on the good faith and honesty of the person receiving the animal. There is no one to enforce the will provision, if the person later decides that caring for the pet is too much work or too expensive.

Today, most trust and estate lawyers recommend the use of a pet trust as an alternative to the informal and unenforceable arrangement outlined above. Pet trusts are given express recognition under Pennsylvania's new Trust Code. Consequently, it is now possible to create a trust for a pet's life that is enforceable and that does not visit unacceptable tax consequences on the pet's caretaker.

A pet trust is not much different than any other trust. However, because a pet cannot speak for itself (parrots excepted), there are a few unique issues that it must address:

1. What level of care should be afforded the pet and who decides that?
2. Who checks on the pet, from time to time, to make sure it is receiving proper care?
3. Who decides when the pet should be humanely euthanized?

How much should you leave to a pet trust? There is no right answer to this. Animals' life expectancies vary greatly and some, parrots and macaws for example, can live for a very long time. Some animals are more expensive to care for than others as well. A horse might cost \$500 to \$1,000 per month to maintain, while an ordinary house cat might be less than \$100 per month. Furthermore, just like humans, most of a pet's lifetime veterinary expenses are incurred in the last years of life. So, while a young, healthy dog or cat might cost less than \$100 a month to care for, a single visit to the vet for an elderly, sick pet can cost thousands of dollars. Our recommendation, however, is that \$50,000 should be an adequate sum to provide for a typical, healthy dog or cat. That amount, in today's economy, is enough to generate \$100 a month in income while the pet is young and healthy and enough to provide principal for a limited amount of veterinary care when the animal reaches the end of its normal life expectancy.

If you do decide to create a pet trust, you should give a lot of thought to whom you will name the trust's remainderman – the person who receives the trust when the pet dies. Obviously, it should not be the person having custody of the pet. However, in our view, it should not be any family member. Instead, we recommend that the trust pass to a qualified charity on the pet's death. Such an arrangement takes the pressure off the family and allows decisions about the pet's care to be made objectively. While there is no charitable deduction allowable for such a gift, it seems to work better for all concerned than naming family.

To summarize, it is important for many reasons to include provisions for your pets when you prepare your estate planning documents. The provisions do not need to be elaborate and they do not need to take substantial amounts away from family members. They do, however, need to deal with issues that would otherwise create conflicts among family members, possibly to the detriment of your pet, should something happen to you.

If we can answer any questions or provide any assistance in planning for your pets, please don't hesitate to contact us.

About J. Stoddard Hayes, Jr.

J. Stoddard Hayes is a member of Gawthrop Greenwood's Estates and Trusts Department, practicing in the areas of Estate Planning, Business Succession Planning, Trust and Estate Administration, Personal and Fiduciary Income Taxation, Equine Law, Non-Profit Corporation Law and Alternative Dispute Resolution. He concentrates his practice in succession planning for businesses and farms, as well as matters involving complex generation-skipping transfers. He lectures regularly to professional groups on tax and estate planning topics, including conservation easements, planning for family business owners, and the tax aspects of charitable giving techniques.

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