



*IN MEMORIAM: The late adult-amateur dressage rider and renowned veterinarian Lesley King (on her Time Lord at Dressage at Devon 2014) set up a trust that has cared for her horses since she lost her battle with cancer in 2016*



*HONORING HER FRIEND'S WISHES: Trustee Bonnie Olie now cares for "Romy" and is responsible for his expenses and welfare*

# If I Die, What Will Happen to My Horse?

You need to do estate planning anyway. Here's how to make provisions for your horse.

By Sarah Evers Conrad

**W**hen adult-amateur dressage rider Lesley King, MVB, learned that she was dying of breast cancer, she was determined to ensure that her two horses would be secure for life and never sold. King, a noted small-animal critical-care pioneer at the University of Pennsylvania's School of Veterinary Medicine in Philadelphia, created a trust containing a sum of money that she calculated would be sufficient to fund her horses' care for the rest of their lives.

The Dublin-born King, who retained Irish citizenship despite her decades in the US, asked her close friend Bonnie Olie to serve as a trustee to her estate. Olie, 65, a retired

dressage-barn manager and a longtime horse owner from West Chester, PA, would care for and ride the FEI-level German warmblood Time Lord and the retired Irish Sport-horse eventer Carrabeg Journey, would use the money to pay the horses' expenses, and would be empowered to make all decisions about the horses' welfare, Olie says.

In May 2016, King died at the age of 51. The grief was still fresh when Olie began to discover that the trust's red tape was more complicated than she'd anticipated. Making matters worse, Olie was shocked when Uncle Sam laid claim to 39 percent of King's trust-fund sum.

"Basically, forty percent of all the money Lesley had,

which she thought would go a long way in taking care of the horses, suddenly left,” Olie says. “There has to be a better way to do this, because if you want to leave money for your animals, you don’t want it all to go to taxes. You want it to go to the animal.”

For advice on finding that better way, we turned to J. Stoddard Hayes Jr., a lawyer at Gawthrop Greenwood PC, West Chester, PA, who specializes in estate planning, trust and estate administration, personal and fiduciary income taxation, and equine law. With his wife, Sophie, Hayes also operates Nanasau Farm LLC, a family-owned horse farm and boarding facility in Joppa, MD.

## Who’s Who in the World of Estate Planning

If you became disabled or otherwise unable to make decisions about your horse’s care, you’d want to know that a trusted family member or friend was empowered to act in your best interests, and those of the horse. You make that happen through *power of attorney*, which is a document that appoints a person—known as an **agent**—to handle your affairs during a time of incapacitation.

“An agent under a power of attorney has the authority to deal with the disabled person’s money,” explains Hayes, adding that an agent also has the fiduciary (financial) responsibility to protect the person’s money and not spend it on things that aren’t for the benefit of him or her.

One potential rub: “That [fiduciary responsibility] creates a conflict if that person has animals, because animals require an expenditure of funds, and those funds being expended can be argued not to benefit the disabled person. If there is no specific authorization, if that isn’t dealt with properly in the power of attorney, they can’t [spend money on the care of the animals].”

A person who creates a *will* typically names an **executor** (also known as an **administrator** or **personal representative**, or some variation thereof). The executor, Hayes explains, is “one person or group of people who become entitled to step into the decedent’s [the deceased person’s] shoes and take possession of the decedent’s personal property and real property within that state and administer it to carry out the terms of the will.”

Some people create a *trust* instead of a will for their estate, and we’ll discuss these options more in a minute. In the case of a trust, the decedent—who may also be referred to as the **grantor** or **settlor**—appoints a **trustee** or multiple trustees to carry out his or her wishes after death.

Until recently, only people could be **beneficiaries** of a

trust. Today, however, many states allow trusts to be created to benefit animals, including horses, as Lesley King did.

An **estate planner** may or may not be a lawyer, but a lawyer’s services are required in drawing up legal documents. If making provisions for a horse you own is important to you, look for an estate lawyer with knowledge of horses and equine law, Hayes recommends.

## Wills, Trusts, and Retirement Facilities

Start by asking yourself: If my horse outlives me, what do I want to have happen to him? As Hayes explains, there are three options for dealing with horses in the estate-planning process.

**Leave your horse to someone in your will.** This is the most common estate-planning method used by horse owners, according to Hayes: bequeathing the horse to a person you think will give the horse a good home.

If you decide to leave your horse to someone in your will, Hayes recommends also bequeathing all of the horse’s equipment and tack. You could also choose to leave the heir a sum of money, intended to aid him or her in caring for the horse.

**Create a trust for your horse’s care.** A trust is another kind of an advance directive, but trusts differ from wills in several important ways, according to Gaby Lapera and Dan Caplinger of the financial website The Motley Fool. One of the most significant differences is that a will must be adjudicated before a judge in what’s known as probate court, meaning that 1) there can be a delay between the death and the time the estate and its assets are disbursed; and 2) a will becomes a public document, which some people find objectionable.

Trusts do not go through probate, meaning that assets tend to pass on with less delay, and their details can be kept confidential. Because a trust can be established during one’s lifetime and assets can be transferred to the trust, some people prefer trusts over wills, especially if they are wealthy enough to appreciate the resulting tax advantages, say Lapera and Caplinger.

As Hayes explains, there are two types of trusts. A **testamentary trust** (so named because it is enacted through a person’s will, formally known as a *last will and testament*) is irrevocable, meaning that it cannot be altered or removed.

A **living trust** (aka an *inter vivos* trust), as its name suggests, is created and takes effect during a person’s lifetime. Until the person dies, a living trust is *revocable*, meaning that specifications within it can be changed, money can be

moved in and out of the trust's financial accounts, or the trust can be dissolved entirely.

Hayes suggests funding a living trust with cash and securities or with a life-insurance policy, the latter of which, he says, is the easiest option.

"When you die, then the trustee would collect the life insurance, would invest it, and would use the income and the principal for the care and maintenance of the horse. If you fund that trust while you are alive, or if you have a life-insurance policy that's payable to the trust immediately on your death, then you can provide an immediate source of funds to care for the animal just as soon as the trustee takes over."

A trust created for the care of a horse should spell out the type of care that is desired, as well as what the funds can be spent on in caring for the horse, Hayes recommends.

If the horse dies while monies remain in the trust, then the remaining funds are usually dispersed according to language in the trust document. The trust document may dictate that leftover monies go to a family member, but "that has some risk associated with it," Hayes says, "because the family member then has a vested interest in not taking care of the animal if they are also charged with that responsibility." Instead, "my preference is to name a charitable organization as the remainder beneficiary of the trust."

## Equine Red Tape: How to Transfer Ownership Records

**Y**our estate directives may designate who, or what entity, will inherit your horse if he outlives you. But he's registered with the USDF and perhaps also with US Equestrian and a breed registry, all in your name. How should executors or trustees go about changing the ownership records?

Start by ensuring that the records are up to date and reflect the correct current ownership.

"Transferring ownership helps keep USDF records accurate and prevents problems for future owners by allowing USDF to record ownership history of the horse," says Melissa Schoedlbauer, USDF's Membership Department manager.

In the case of a testamentary trust (see page 45), the executor or trustee acquires title to the horse and becomes the new owner through the probate process, says lawyer and estate-planning expert J. Stoddard Hayes Jr. If a horse owner creates a living trust, then the ownership of the horse is actually transferred to the trust while the owner is still living, via an assignment or bill of sale for "zero dollars" consideration, he explains.

Once the change of ownership is made official after the owner's death and a trustee or executor has been named as the new or interim owner, then it's time to contact the equine organizations.

"In the case of the executor, of course, this [ownership status] is only for a limited period of time," says Hayes. "The executor will carry out the provisions of the will regarding the horse, and shortly after the decedent's death will make distribution to the next owner, giving her or him a 'bill of sale.'"

**The USDF process.** According to Schoedlbauer, the USDF requires the new owner to submit a transfer-of-ownership form along with one of the

following: the horse's USDF certificate, bearing the previous owner's signature; a bill of sale signed by the previous USDF owner of record; or breed-registry papers showing the horse in the new owner's name. If none of these documents is available, then submit a notarized Transfer of Ownership II form.

The USDF charges fees for ownership transfers: \$35 for lifetime-registered horses and \$15 for horses with Horse ID (HID) numbers. If multiple horses are being bequeathed from one decedent to one heir, only one transfer fee is assessed, Schoedlbauer says.

**Schoedlbauer's tip:** Make sure that all appropriate documentation is prepared and in place when it is time for the transfer of ownership to be submitted.



### The US Equestrian process.

Individual owners should fill out a US Equestrian transfer form and submit along with the bill of sale. If a family member is assuming ownership, the process is even easier, says Ken Ball, US Equestrian's director of horse

registration and services, with written notification from the family deemed sufficient. However, if the horse's original US Equestrian recording certificate or the bill of sale is not available, or if signatures of all previous owners are not on the bill of sale, then US Equestrian requires submission of an ownership affidavit.

If a trust is in place, then a farm, corporate, syndicate, or partnership recording application must be filled out before the horse is recorded.

**Ball's tip:** A trustee of a horse-owning trust must become an individual US Equestrian member (or pay the nonmember fee) in order to participate in US Equestrian-licensed competition.

—Sarah Evers Conrad







CARETAKER: In addition to the hands-on horse care, Olie spends considerable time keeping the books as trustee for her late friend's horses

### Direct that your horse go to a retirement facility.

According to Hayes, an increasing number of equine charitable retirement facilities are taking retired horses, usually with a donation from the estate to help defray the costs of keeping the horse for the rest of its life. But for this to happen, you'll need to specify your wishes in your estate plan.

"If you don't authorize it, the executor can't spend money that is required for the entry of a horse into a long-term care program," Hayes explains.

## Weighing the Options

If money isn't an issue for you, then Hayes suggests considering a trust because it offers the highest degree of customization. (But "trusts for animals can be much more expensive to administer than trusts created for human beneficiaries for a variety of reasons. A horse owner considering use of a trust for his or her animals should consider the costs very carefully and make sure that they are taken into account in the estate planning.")

Trusts aren't a perfect solution. They siphon money away from the estate (i.e., there will be less for your survivors to inherit). And as Olie discovered, the tax burden is high. A few states impose an inheritance tax. There is income tax, as well.

"What makes the income tax on trusts so onerous," Hayes explains, "is that they hit the maximum bracket at a very low threshold—\$12,801 of income. A trust for an ani-

mal cannot deduct what it distributes for care of the horse, so it hits that maximum rate with very little income."

There are ways to get around the big tax bill, however. "If the trust is invested in tax-free bonds, then it's not an issue," says Hayes.

Although trusts tend to be settled more quickly than wills, the way that a trust is created can affect whether there is a delay in the administration of the estate. Funded living trusts are not subject to delays. There can be delays in the administration of an unfunded living trust or of a testamentary trust, but "the delay can be minimized if the will is properly written and gives the executor clear authority to pay for expenses," says Hayes.

A trust also offers some risks to the person or people who agree to be trustees (see "The Role of the Trustee" on page 48). If the trust is set up for a horse's care, after the animal dies and the remaining funds are set to be disbursed to the **remaindermen of the trust** (the beneficiaries after the horse dies), those beneficiaries can demand that the trustee provide documentation and justification for anything spent during the management of the trust. If the beneficiary feels that the trustee has spent funds irresponsibly or has been negligent, then the trustee is at risk of being sued, says Hayes.

"Trustees are held to a very high standard, and their actions may be closely scrutinized," he explains. "If the remainderman is not friendly, this can create a lot of risk for the trustee. One benefit of naming a charity as the remainderman of the trust is that a charity will generally under-

stand and sympathize with the trustee and will be less likely to be critical of expenditures.”

Wills are less complicated than trusts, but think through the possible ramifications before you bequeath your horse to someone, Hayes says. If you leave your horse to someone who decides they no longer want him, the heir can get rid of the horse using any legal means. Or if the heir turns out not to be the responsible owner you thought, then the horse’s care could suffer. Finally, as Hayes points out, a will contains no specifications as to how an inheritor must spend any additional monies you bequeath for your horse’s care, so an unscrupulous person could jet off to the islands instead of using the money to care for your horse.

Which brings us to option 3: the equine retirement facility. If your estate is more modest in size or you don’t want to deal with the issues and potential future complications of a trust, then this may be a better option than a will for ensuring your horse’s lifelong care, Hayes says.

## Will or Will Not

If the horse is not to be transferred to a living trust during the horse owner’s lifetime, the process of getting authority for the executor to take control of the decedent’s bank accounts can take a while. During that time, according to Hayes, the horse cannot change hands and its expenses cannot be paid unless someone steps up to cover the bills and is willing to eventually be reimbursed by the estate. To avoid this onerous situation, put language in your will authorizing the executor to expend funds to care for the horse during the administration of the estate and prior to the distribution of the horse to its next owner, Hayes recommends. Realize that, in the case of a will, there will be a period of six months to two years during which the executor—not the decedent and not the person to whom the horse was bequeathed—actually owns the horse, he says.

If you die without a will, then your estate—including your horse—will be disbursed by a court-appointed administrator according to the laws of your state, says Hayes. Legally speaking, horses are chattel—tangible personal property, no different from your car or a piece of jewelry. If you leave no directive, then the administrator could choose to give your horse to a family member who knows or cares nothing about equines, and that person could sell the horse by any means desired, including at auction.

## The Role of the Trustee

Olie admits that she had no idea what she was getting into when she agreed to be the trustee for King’s horses. Besides

the time she spends on horse care, she estimates that the related bookkeeping takes her four or five hours a month.

“Trustees have a fiduciary obligation to keep the trust assets separate from their own, to invest the trust’s assets as a prudent investor would, to maintain the trust’s books and records, and to file the trust’s annual tax returns,” says Hayes. “There is a lot of work associated with being a trustee.”

Olie maintains a separate checkbook, accounting records, and bank accounts for King’s trust. “I have to keep very detailed reports on every activity and every penny spent,” she says.

Some trustees are compensated for their efforts, says Hayes, but state statutes vary and some are vague on how much a trustee should be paid (often not much). “If you are thinking ahead, you can write the trust to provide adequate compensation for the trustee and other people that are involved,” he says.

## For Those You Leave Behind

Not surprisingly, it can be difficult to find someone who’s willing to take on the responsibility of being a trustee—much less multiple people, for Hayes recommends naming a succession of trustees in case one can no longer serve. And when horses are involved, the burden on the trustee may actually increase over time as age-related health issues crop up, points out Olie, who made the difficult decision to have “Hank,” King’s retired eventer, euthanized in May after the elderly gelding suffered a severe case of laminitis.

“It was as if another little piece of Lesley died,” she says of her latest loss.

“Someone needs to know that it’s a very selfless job,” Olie says of the trustee’s position. “Would I do it again for her? Yes; she was that special of a person. But I would have to think long and hard before I would do it for just anybody.”

Estate-planning experts encourage adults to write wills or other advance directives. Horse owners in particular will have peace of mind knowing that there is a plan in place for their beloved animals. Seek the guidance of qualified professionals to help ensure that no unpleasant surprises await your horses—or your heirs. ▲

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