

## **Making Sure Your Pets Are Cared For If You Are Incapacitated or Die**

Most of us outlive our pets - but not always. What will happen to the animals you love if suddenly you can't care for them?

### **“Millionaire Leaves Everything To Cats”**

Headlines like this give the impression that only rich people can consider legal provisions for their pets' care, and that naming pets in their wills will solve the problem. Not true. Though your options will vary according to how much money may be available to carry out your plans, people of moderate means can afford the legal fees to formalize an appropriate plan. Leaving money directly to a pet, however, is not one of your options. Pets are considered property, and are treated as part of your estate, not heirs or beneficiaries.

### **If You Don't Make A Plan**

First, would anyone know you have a pet at home, and would they be able to get in? First, you need to have someone ready to step in at a moment's notice to provide daily care, and to be able to give a veterinarian permission to treat the animal, should that need arise. You need to have an arrangement which provides that person enough money to carry this out, if they are not willing or able to bear the costs themselves. And you need to let appropriate friends, neighbors, and family know, so they won't think someone is stealing your dog while you are away, or entering your house without permission.

If you die without a will, or without making any provisions in your will for pet care, your pets will be considered part of your “residual,” or miscellaneous property, and “distributed” however the court or your personal representative sees fit. The worst case scenario might include delivering your dear one to a shelter, and an uncertain future.

### **Planning Options**

**For your pet's well-being while you are alive,** a properly drafted Power of Attorney can designate a specific person to take care of your animal(s). Another document, called a Durable Financial POA, can give that person the authority to use your money to provide for your pets' needs. Remember, you may not be capable of executing these documents when you need them most, so these legal tasks should be handled as soon as possible, and then filed away on the off chance they are someday needed. Remember them, though: if the person you designate moves or has a change in health or circumstance themselves, you will need to name another person in these documents. If you are someone who owns several pets, you may need to prepare separate documents for a number of people among whom you would distribute your animals, according to their affinity for one or another, and their ability to care for them.

Note that when you die, POA instruments expire, and you will need to have created provisions in your will or a separate trust to take over.

### **Including Pet Care in Your Will**

**There are 4 ways in which pet care can be written into your will.**

**1) You may leave your pet to a specific family member or friend** who you trust to care for the animal. Remember, though, that your pet will then become their property, to do with as they decide. You should choose a person you feel confident will

take the pet, or rehome it with appropriate cautions in place. Even for an animal lover, this is a huge responsibility, and you should not rely on an assumption or a casual reassurance by anyone. You need to carefully consider if that person is, in fact, able and willing to take on the responsibility. You may also want to designate an alternate person, in case your first choice is for some reason unexpectedly unable to fulfill the obligation.

**2) You can make your pet a “conditional gift” to someone,** meaning that you leave your pet, as property, to a particular person on the condition that they agree to care for it. The caution here is that there is no legal way to follow up and enforce the kind of care you pictured. Unlikely as it may seem, the person could conceivably give it away, abandon it, or have it put down, especially if financial compensation or another gift of some kind is written in as a gesture of thanks. As with giving your pet to someone outright, you may want to name an alternate for this “conditional gift” arrangement.

**3) You can leave the decision up to your Personal Representative,** the person who is handling the rest of your affairs after you die. Should the PR find a home for your pet? Would it be alright with you if your pet is given to a licensed shelter, in the hopes it will be adopted? If the PR is unsuccessful in both of these attempts, what should happen then? The more specific you can be, the better for your animal.

**4) You may instruct that your pet be euthanized, or put down, when you die.** While your intention may be to spare the animal trauma, or your friends and family the extra responsibility, either the court or someone who knows the animal may object

to ending its life. Historically it has been considered against public policy to carry out such wishes and courts have invalidated such instructions. If you decide to include instructions for euthanasia of your pet in your Will, be sure to include a back-up plan in case the provision is invalidated by a court or your Personal Representative is not willing to carry it out.

### Creating a Pet Care Trust

As of July 2005, it became legal in Maine for pet owners to create a trust for the care of any thier animals that were alive during that owner's life time. This is called a Statutory Trust, and it ends with the death of the animal(s) covered. Be warned, however, that it may also become unenforcable if you happen to move to a state that does not recognize a similar statutory trust.

This kind of trust can be set up to take effect before you die, if you wish, or to become active only after you die. The advantage of the first arrangement, called an *inter vivos* trust, is that it can assure that the animals' needs are met while you still live but may be unable to care for or consider your pets. The second version, called a *testamentary* trust, cannot be used to plan for a lapse in care when the owner is still alive but unable to provide that care.

Trusts for the Care of Animals must be funded with your savings, by the proceeds of sale of your assets, or by designating the trust (not the pet) as the beneficiary of a life insurance policy. In any case, it is important to estimate the costs of caring for the pet(s) named in the trust as accurately as possible. If you leave too much money in the trust, the court has the authority to return what it considers the excess amount to the person who created the trust, or that person's successors. If you truly did try to leave millions to your cat, for example, you can bet

that anyone with a plausible claim as eir or successor would petition the court to distribute the excess, and the court would likely be sympathetic.

### Someone Needs To Know

Finally, no matter what other arrangements you make, be sure the following information is written down somewhere, and that your lawyer or personal representative knows where to find it:

- name, address, and contact information for your vet;
- a history of your pets health, including conditions, allergies, shots and diseases;
- medications and dosage amounts, if applicable;
- daily habits and any favorite foods, games, toys, people and places;
- any fears or clear dislikes;
- and everything your pet might want a new person to know.

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## Providing for Pets When You Aren't There to Care

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