

## ESTATE PLANNING FOR PETS – THE BASICS

### PLANNING

Many pet parents fail to make plans if their pets outlive them. Pet owners can ensure their pet's future and remove any blind luck planning. None of us know the future. Even the youngest or healthiest may have an accident or a surprising illness that changes everything. A little prior planning can provide not only piece of mind in knowing that your pets will be taken care of, but also structuring a plan that mirror images your wishes for each of your pets.

### FIND AND CHOOSE YOUR REPLACEMENT NOW

You probably already know the most likely person(s) that will be a committed caregiver for your pet. Being able to identify that committed caregiver is one of the most important steps in planning for your pet's future. It is usually very wise to talk to any potential committed caregiver(s) in order to avoid any misunderstandings, and even to get written commitments from these caregivers to you with each caregiver's contact information and their stated desire to take care of your pet(s).

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You should also identify alternate or successor caregivers since the designated caregiver might predecease you, end up travelling frequently, move somewhere else that either does not allow pets or is too far to have your pet relocated. You may also go so far in your legal documents as to choose a panel of friends or family members or even a local veterinarian to be in charge of selecting a long-term caregiver, arrange for temporary care and custody of your animal until a permanent situation is worked out. You would want to outline whether a majority vote of this panel or other method is used to select that long-term caregiver. Furthermore, you may want to choose the current veterinarian for your pets as the final alternate in helping with these decisions after you have confirmed the veterinarian's willingness to so act.

### PROVIDE INFORMATION

It is recommended that you create an information packet for each of your pets containing all necessary information, including each pet's medical history, daily care needs, veterinarian of choice and other general information, such as feeding habits, walking habits and the like. It is recommended that you make sure that information is easily accessible and outline as much as you like of your expectations of the standard of living you want for your pet, including veterinary visits, medical care and end of life decisions.

## **DO YOU HAVE A WILL?**

Hopefully, you do, but review your Will and see if you have anything in there for your pets. If not, you should update your Will to include your pets and the care thereof. If you choose to use a Will, you may wish to include a monetary gift with each of your pets to be given to the recipient of that pet for his/her use in covering expenses. Most believe it is preferable to leave both your pet and money to a caregiver, with the clear understanding that the money should go toward your animal's care with any additional amounts you wish to pay the caregiver for their time and unexpected expenses.

## **IF NOT A WILL, THEN MAYBE A TRUST**

Virginia Code Section 64.2-726 permits a Trust to be created for the care of an animal or animals alive during the settlor's lifetime. The Trust typically terminates upon the death of the animal or upon the death of the last surviving animal covered by the Trust. While a Trust can be relatively expensive to administer and maintain, they do add layer of oversight that many people like. For example, the Trustee pays the money to your appointed caregiver and may regularly inspect your pet's health and living conditions. Having the person handling the money being someone different from the person providing the custody and care of your animal does create a system of checks and balances that many people like.

## **THE LEGAL SIDE**

Many types of Wills and Trusts exist so it is crucial to prepare carefully and seek legal advice. There is really no substitute for talking to an attorney in person to be certain that the document prepared or the one that you propose complies with the current law, does, in fact, address all of your contingencies (including unknown contingencies that you have not thought of) and will get your pets across the finish line. Furthermore, your heirs will be happy that you have this plan clearly set out and taken care of so that they can be certain to follow your wishes.

Whether you use a Will with specific bequests only or a Trust contained in a Will or separately standing on its own is your choice. Just be certain to get good advice knowing all of your options and all of your concerns.

## **ADDITIONAL LEGAL CHECKLIST**

1. What is a Pet Trust?

A Pet Trust is very similar to a human Trust in that it is a legally sanctioned arrangement providing for the care and maintenance of one or more companion animals in the event of your (Grantor's) disability or death. You, the "Grantor" (a/k/a "Settlor" or "Trustor") is the person who creates (sets up) the Trust, which may take effect during a person's lifetime or, if in a Will, at a person's death. The Trustee of that Trust will hold property, such as cash, bank accounts, other assets "in trust" for the benefit of your pets.

The Trust may provide for regular payments to a designated caregiver(s) and the Trust typically will continue for the life of the pet, depending upon the state statute at that time. You will also want to provide in your Trust what happens to any remaining Trust property upon the death of your pets.

2. What are my next steps?

It is best to set up a Trust for your pets with the help of an attorney who specializes in estate planning. Meet with an attorney, discuss your wishes, learn all of your options and decide on the direction that best suits you.

3. Why do I need a Pet Trust?

They are legally enforceable arrangements which give you piece of mind that your directions regarding your companion animal(s) will be carried out. A Trust can be general or very specific. For example, if your cat or dog only likes a particular brand of food or if either likes certain daily romps in a certain park, then all of this can be specified in your Trust Agreement. You can include in your Trust Agreement the number of veterinarian visits you want a year (e.g., four times a year) and the Trust can take effect during your lifetime and accomplish all of this, even in the event you become incapacitated (sick, injured, comatose, etc.). You know the particular habits of your pets better than anyone else and, therefore, you should prescribe the kind of care that our pets should have and list the person(s) who would be willing to provide that care. In other words, take care of all of this early on and in a Trust that is an existing, living document while you are alive.

4. What do you need to do next?

Here is a summary checklist of the very basics you will want to consider and provide:

- a. The name and address of the Trustee and a successor Trustee or Trustees.
- b. The name and address of the Caregiver and a successor Caregiver or Caregivers.
- c. Please note that any Trustee and any Caregiver can be individuals and/or corporations.
- d. Provide adequate identification of your pets in order to prevent fraud by using such items as photos, microchips, DNA samples or alternatively, by describing your pet as a "class" (such as "the pet(s) owned by me at the time of my illness and death").

- e. Describe in as much detail as you like your pet's standard of living and care.
- f. Require regular inspections of your pet(s) by the Trustee.
- g. Determine the amount of funds needed to adequately cover the expenses of your pet's care and specify how the funds should be distributed to the caregiver. Keep in mind that the expenses for a cat will differ from the expenses for a dog, which will also differ from the expenses for a horse.
- h. Determine the amount of funds that are reasonable and will adequately cover the expenses of administering the pet Trust.
- i. Designate a remainder beneficiary in the event the funds in the pet Trust are not exhausted. This can be your heirs or a place where other pets are cared for or any other combination.
- j. Also, provide instructions for the final disposition of your pet (for example, do you want burial or cremation). Remember that a pet Trust can offer you a great deal of flexibility and peace of mind. The most important thing for you is the preparation to be certain that your wishes are carried out.
- k. Get Ready, Set, Go!