



The Wealth Advisor

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The Gadzo Law Firm is an estate and tax planning law firm. We use our expertise and knowledge to help families like yours plan for present and future life challenges.

Planning for Pets

For many pet owners, pets are members of the family. These individuals often say that if something happens to them, they are more concerned with what will happen to their pets than to their children or spouse.

This issue of The Wealth Advisor examines the issues surrounding caring for pets after the disability or death of the pet's owner. Given the feelings of many individuals towards their pets, and the costs of care and longevity of some types of pets, planning in this area can be of critical importance. This is particularly true given our mobile society and that the laws of a different county or state may impact you and your pets or the pets of parents and other loved ones.

What Will Happen to the Pets When the Owner Becomes Disabled or Passes Away?

Most pet owners do not want their pets killed if something should happen to them. However, without proper planning, the death of the pet is almost certain in some areas. For example, in some Nevada counties, if the owner does not provide for a pet by way of a trust, when the owner dies Animal Control must take the pet to the local kill shelter if there is not a family member present who is willing to care for the pet. Some kill shelters euthanize animals 72 hours after they arrive at the facility, making it virtually impossible for anyone to adopt the pet. Thus, it is critically important that pet owners know how their state and county laws may impact their pets.

Planning Tip: Pet owners should discuss with their advisor team how state and county laws affect pets after the owner dies or cannot care for the pet.

Planning Tip: A good resource for pet owners is Providing for Your Pet's Future Without You by the Humane Society of the United States (order a free kit by calling 202-452-1100 or e-mailing petsinwills@hsus.org). It includes a door/window sign for emergency workers, an emergency contacts sticker for inside of the door, emergency pet care instruction forms for neighbors/friends/family, wallet alert cards, and a detailed instruction sheet for caregivers.

Providing for Pets Upon the Owner's Death

Outright Gifts

The law treats pets as property, and thus an individual cannot leave money outright to a pet, as property cannot own other property. An individual may leave an outright gift of money to a caretaker with the request that the caretaker care for the individual's pet for the rest of the pet's life. However, because the caretaker received the gift outright, and not in trust, no one is responsible for ascertaining whether the pet is receiving the care requested by the pet owner.

Once the caretaker receives the gift and the pet's owner is gone or incompetent, there is nothing to stop the caretaker from having the pet euthanized, throwing it out on the street, taking it to a local kill shelter, or using the assets in ways unrelated to the care of the pet. In addition, once in the caregiver's hands, the assets are exposed to the caregiver's creditors and they may be transferred to a former spouse on the caregiver's divorce.

Statutory Pet Trusts

As of late 2007, thirty-eight states and the District of Columbia have enacted statutes pertaining to pet trusts, and others have legislation pending. These statutes allow virtually any third party designated by the terms of the trust to use the trust funds for the benefit of pets.

Some state statutes specifically limit the terms of a pet trust. For example, some states limit the amount of money an individual can leave in trust for his or her pet to the amount required to care for the animal over the term of the trust. The trust must distribute any excess funds to the beneficiary(ies) who would have taken them had the pet trust terminated.

The pet's current standard of care determines the endowment amount required to provide care for the pet. Factors include: the cost of daily care (food, treats, and daycare), veterinary care (yearly teeth cleaning, shots, nail trimming, and emergency care), grooming, boarding, travel expenses, and pet insurance. Additional factors may apply in particular cases. For example, horses are expensive to maintain and require exercise, training, and a large tract of land; some birds and reptiles have very long life expectancies; and care of some pets will require construction of a special habitat on the caregiver's property.

Traditional Trusts

Even if your state does not have a specific pet trust statute, a pet owner can name a human caregiver as the beneficiary of a trust, require that the distributions to the beneficiary are

dependent on the beneficiary caring appropriately for the pet, and require the trustee to ensure that the beneficiary is properly caring for the pet using trust assets. This type of trust may be used without regard to whether the state has a specific pet trust statute.

Planning Tip: Both statutory pet trusts and traditional trusts allow the pet owner to provide detailed requirements as to how the caregiver must care for the pets upon the pet owner's disability or death.

Planning Tip: Will planning is inadequate for pets because Wills do not address disability and because of the time lapse between the pet owner's death and the Will being admitted to probate.

Funding Pet Care

Many pet owners do not have sufficient funds to properly care for their pets after their disability or death. Life insurance is one way to increase funds available to care for pets after the pet owner's death.

Planning Tip: Pet owners should consider life insurance that names a pet trust or traditional trust as beneficiary to fund a pet's care. If the pet owner is concerned that funding of a pet or traditional trust will reduce the inheritance of children or other beneficiaries, he or she should consider life insurance that names both (1) the pet or traditional trust and (2) other beneficiaries (or a trust for their benefit). These assets can be invested like any other assets during the owner's lifetime, and those who currently manage the assets can continue to do so for the pet's lifetime.

Trust Terms

Here are several issues for pet owners' consideration:

- Creating a pet panel to offer guidance to the trustee and caregiver/beneficiary, and to remove and replace the trustee and caregiver/beneficiary if necessary. Consider including a veterinarian to make the final decision regarding euthanization for medical reasons, to ensure that the pet is not euthanized prematurely by the caregiver/beneficiary.
- Paying the caregiver/beneficiary a monthly fee for caring for the pet or allowing the caregiver/beneficiary to live in the pet owner's home, rent free.
- Awarding a bonus to the caregiver/beneficiary at the end of the pet's life as a "thank you" for taking care of the pet.
- Determining how the trustee is to distribute the remaining trust funds after the last pet dies.

If the pet owner decides against creation of a pet panel to determine who will be a successor caregiver/beneficiary, the trust should name multiple successor caregivers/beneficiaries (three or more) in case a caregiver/beneficiary is unwilling or unable to serve. As a final back-up, the pet owner should consider requiring the trustee to give the pet to a no-kill animal sanctuary if there are no caregivers/beneficiaries available.

An alternative to naming individual caregivers is for the pet owner to name a local charitable organization that will ensure care in exchange for a contribution upon the owner's disability or death. A listing of such organizations nationally is available online at www.professorbeyer.com/Articles/Animals_More_Information.htm.

Pet Identification

To prevent the caregiver/beneficiary from replacing a pet that dies in order to continue receiving trust benefits, the pet owner should specify how the trustee can identify the pet. Micro-chipping the pet or having DNA samples preserved are two methods commonly used for verification.

Other

Some pet owners want their healthy pets euthanized when they pass away because "no one can care for my pets as well as I do." However, many courts have invalidated euthanasia provisions on the basis that destruction of estate property is against public policy. Instead, pet owners should consider no-kill organizations that have the pet's best interest in mind and will find the next best home for the pets.

Conclusion

Many individuals are unaware of the issues surrounding the care of their pets after their disability or death. By discussing these issues with their advisor team, pet owners can ensure that **all** of their loved ones are cared for, even when the owner is unable to care for them directly.

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.

Please feel free to [contact me](#) if you have any questions about this or any matters relating to estate planning.

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