

Inheriting Fluffy: Estate Planning for the Pet Owner¹

By Erica B. Slezak

When stories make headlines such as Doris Duke leaving \$100,000 in trust for her Shar-Pei, Rodeo, or Tinker, the stray cat in England, inheriting the north London home of an elderly lady he had befriended, some laugh and call it eccentricity. Those of us whose families include non-human members, however, smile knowingly. When it comes to providing, after death, for loved ones, pet owners cannot help but be concerned for the welfare of their animals. Despite the fact that pet owners may consider their dogs, cats, rabbits and other furry (or not so furry) companions as four-legged people, under the law, pets are property. As such, a bequest directly to an animal will not be considered valid in New York. How, then, can a pet owner ensure that his or her beloved companions are properly cared for when they survive their humans?

Probably the easiest and most straightforward way of providing for your pet, especially in smaller estates, is to name a specific person (or specific people) to whom you leave your pets. It is, of course, of utmost importance that the person (or people) whom you choose be willing and able to care for your pet in a manner acceptable to you. Consider whether the caretaker would be willing to continue to care for your pet if medical problems arise. Is it likely that your pet will outlive the caretaker? Are there other animals in the caretaker's home that are not compatible with your pet? Keep in mind that your designation of a caretaker in this manner has the effect of passing ownership of your pet to that person. The caretaker will have the legal right to give your pet to someone else, surrender your pet to a shelter, or even have it euthanized. If your pet survives the caretaker, your pet becomes part of the caretaker's estate and the caretaker's heirs or

¹ **This article is intended for informational purposes only and does not constitute legal advice. Before making any decisions regarding your Will or estate planning, you should consult a qualified attorney.**

executor will then be in the position of making decisions concerning your pet. If you have a caretaker in mind whom you are confident would provide the loving home your pet needs, but you feel that the caretaker should be reimbursed for the expense of caring for your pet, you may wish to bequeath a reasonable sum of money to the caretaker.

If your estate is large, or if you are more comfortable having a third party oversee the caretaker to ensure that your animals are being cared for as you desire and also wish to provide funds for their maintenance, New York law allows you to set aside a reasonable amount of money in a trust for your pet's care during its lifetime, with the remainder of the trust property passing to the individuals or charities you name.² By creating an honorary trust for your pet you can name a trustee who will make distributions of the income or principal of the trust to your designated caretaker (who may or may not be the trustee) for the care and maintenance of your pet, allowing you to provide for any special food, grooming, toys or other comforts which you provided for your pet during your lifetime. You can name successor caretakers and/or trustees, should your primary designees cease to act. You can direct that your trustee make regular visits to your pet to ensure your pet's well-being. Additionally, you may provide for the final disposition of your pet after he or she dies. Be aware, however, that there are limitations on honorary pet trusts. New York law restricts the duration of a pet trust to the life of the covered animals or twenty-one years, whichever comes earlier. This is usually a sufficient period to cover the lifetime of a dog or cat, but might fall short for a parrot, horse or other long-lived animal. Also, the court, in its discretion, may reduce the amount of property passing to the trust if it determines that the amount substantially exceeds the amount required to care for your pets. It is, therefore, unlikely that you would be able to create a \$5,000,000 pet trust for the benefit of Pooky, your 12-year-old Mastiff.

² N.Y. E.P.T.L §7-8.1

The above options are clearly beneficial to the pet owner who has friends or family members who would be willing and able to act as caretakers, but what is available for the pet owner without such friends or family? If you choose to create an honorary pet trust but have no caretaker or trustee in mind, the court will make whatever appointments and other determinations are necessary to carry out your intent. If you wish to make an outright bequest of your pets (with or without a corresponding cash legacy), you can direct your executor to choose a suitable home for your pet, or you may consider leaving your pets to a specific animal shelter to provide care and find an adoptive home. Some animal welfare organizations have programs in place by which a pet owner can make a monetary bequest or lifetime gift to the organization in exchange for adoption placement services and even lifetime veterinary care. There are also organizations known as “Life Care Centers” that, for a fee, will provide care for your pet for the remainder of its life. The fee can usually be paid through lifetime gift or testamentary bequest, and will vary depending on your pet’s age, breed and specific needs.

Including provisions for your pets in your Will is not the only way that you can provide for their well-being. You should also consider writing a letter of instruction to your friends, family and executor that includes pertinent information concerning your pets, such as names, breeds, health information and special care instructions. This letter should contain animal emergency contact numbers for your veterinarian and for those individuals who could provide care for your pet in the event of your injury, illness or death. This letter should be kept in the same location as your other important documents. Additionally, you should prepare a pocket emergency contact card that is carried in your wallet and/or in the glove compartment of your vehicle which includes your animals names, breeds and your animal emergency contacts so that emergency personnel will be alerted to the fact that that your animals may be home alone and in

need of care. Finally, many animal welfare organizations offer free or low cost window stickers that may be placed on the windows or doors of your home and which indicate the number and types of animals you own. This is especially helpful to firefighters, police and other emergency personnel if you are not home in the event of a fire or break-in.

Our pets are an important and integral part of our lives, and sadly, they are often left behind after our deaths. With thoughtful planning, however, we can uphold our commitment to provide our beloved companions with the care they need for the rest of their lives.