

Will You?

Planning for your dog's care past your death is the ultimate in responsible ownership.

BY CJ PUOTINEN

Because only one out of five Americans has an up-to-date will and only 20 percent of those include provisions for pets, an estimated 500,000 dogs and cats are euthanized every year when their owners die and they have nowhere to go. Is your dog at risk?

Unless you make effective plans for your dog's welfare in case you die or are incapacitated, the worst could happen.

But preparing for your pet's future can seem a daunting task. Wills, trusts, and financial instruments are complicated enough. Add caretakers, backup caretakers, specific instructions, and veterinary care. No wonder so many of us just hope we'll outlive our pets.

"Lifetime care planning for pets doesn't have to be complicated, expensive, or overwhelming," says estate-planning attorney Heidi Goettel of Helena, Mon-

tana. "Pet owners have many options, and the peace of mind good planning provides is worth the effort."

DON'T LEAVE IT TO CHANCE

If you assume that a friend or relative will love Fluffy as much as you do or that someone will always be there for Fido, think again. Every animal shelter in the country deals with orphaned pets. They arrive for one reason: their owners didn't plan to die or become incapacitated. That didn't prevent them from having heart

attacks or accidents, and now Fido and Fluffy are homeless.

Worse, they may be alone, starving, and frightened. Does anyone know they exist? Do they need medication? Are they on special diets?

Accidents can happen anywhere at any time, but the following are risk factors for your companion animals:

- You live alone.
- You are a senior citizen, or getting close.
- You have health problems.
- Your pets are elderly or have health problems.
- Your pets are shy or don't do well when their daily routines are disturbed.
- Even a temporary incapacity – you are hospitalized, require treatment away from home, or have to be away for other reasons – can disrupt your pets' lives.

AN OUNCE OF (LEGAL) PREVENTION

The best way to prevent your pets from being harmed by your temporary or long-term absence, say legal experts, is through careful planning.

A will or testament is a legal declaration by which a person names one or more people to manage his or her estate and transfer its property at death.

You cannot leave money or property to an animal, but you can leave assets to a person who agrees to care for your pet. Even if the person who agrees to take your pet can afford to pay for the animal's upkeep, you may want to leave both the animal and a sum of money to that individual.

If a financial inheritance will be a hardship for your dog's new owner (for example, if the money makes that person ineligible for financial assistance from

When setting up a pet trust, it helps to work with an attorney who is familiar with what pets need. Estate planning attorney Heidi Goettel reviews pet trust details with author CJ Puotinen and Seamus, her husband's Cairn Terrier.
PHOTO BY STEPHEN NAGY

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Baillie, a therapy dog belonging to Marilyn Grant of Helena, MT, will always have a forever home thanks to carefully selected friends who will care for him should she not be able to. Estate planning experts say that finding a willing caregiver is the most important step in planning a pet's lifetime care. PHOTO BY CJ PUOTINEN

Social Security or another agency), or if the person might not be able to manage a lump sum inheritance, you can leave your pet to the caretaker and the money to another person with instructions for reimbursing the new owner for dog-related expenses.

Because wills are not acted upon immediately – there is a waiting period before wills are read and property changes hands, and, should legal disputes arise, final settlements can be prolonged for months or years – a will cannot guarantee that an animal's needs will be met in a timely manner. A will that includes specific instructions for an animal's care cannot be enforced. Wills do not allow the disbursement of funds over a pet's lifetime. Courts can change the provisions of a will that is challenged by relatives or other interested parties.

These potential problems do not mean wills should not include provisions for pets. Instead, they reflect the need for additional arrangements.

Pet trusts are just such plans. They involve a trustee, which can be an individual, a bank, or a non-profit organization such as a humane society, which handles the finances; a **beneficiary**, who is the person you choose as your dog's new owner and caretaker; and you, the **settlor**, the dog owner who is setting up the trust.

"Technically," says Goettel, "the animals are the beneficiaries of pet trusts. The caretaker definitely benefits from there being a trust for the animal, and the funds go to the caretaker for practical purposes, but when the beneficiary is defined as the animal or for the benefit of the animal, the trustee, who may also be the caretaker, is legally obligated to use the trust funds for the animal's care."

A **traditional pet trust**, which is legal in all 50 states, instructs a trustee to help a beneficiary by paying for the pet's expenses according to the settlor's directions as long as the beneficiary takes proper care of the pet. Traditional pet trusts provide the owner with significant control over the animal's care, such as by



specifying who will be the trustee, who will be the beneficiary/caretaker, what pet-related expenses the trustee will pay, what type of care the pet will receive, what will happen if the caretaker can no longer care for the animal, whether the animal will be buried or cremated after death, and where the pet's remains will be interred or stored.

A **statutory pet trust**, which may also be known as an **honorary pet trust**, is valid during the pet owner's life as well as after his or her death. This type of trust controls the disbursement of funds, which can occur prior to the owner's death, and it can include specific instructions for the animal's care. As of 2010, all states within the United States except for Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, and West Virginia allow this type of trust, which is more flexible than the traditional trust and does not require the pet owner to make as many decisions regarding its terms. State law "fills the gaps," making a simple provision in a will or other document (such as, "I leave \$3,500 in trust for the care of my dogs, Ranger and Rover") effective.

"When state law 'fills the gaps,'" explains Goettel, "the owner's intentions are followed even if they are hand-written on a sheet of paper. This is the simplest arrangement you can make for your pet. It works best if you and your designated

caretaker have already discussed your plans and that person understands and agrees with your wishes."

A **revocable living trust** allows you to avoid probate, the legal process for transferring property after death. A living trust lets you make changes or amendments to the trust document; allows the transfer of your personal assets to remain private rather than public; and eliminates most of the family disputes and challenges that a standard will can create. However, revocable trusts provide minimal asset protection, they can generate planning and administrative expenses, and assets must be transferred into the trust name (which won't affect your access to them).

A **testamentary trust** is less expensive because it does not take effect until after you die and your will is probated (declared valid by a court). This type of trust does not provide funds for the care of a pet during the period between your death and when your will is probated, nor does it protect your pet if you become disabled and unable to provide care.

FACTORS TO CONSIDER

"The most important and challenging factor in providing lifetime care for your dog is finding a 100-percent committed caretaker," says Goettel. "The owner is in the best position to identify a care provider. Equally important is that the

Seamus says, "I'm worried. I don't see anything about my raw meaty bones guarantee!" It's important to review all the details, and build alternatives into the plan in case some aspects of your ideal scenario are not feasible for your pet's caretaker. PHOTO BY STEPHEN NAGY

identified caretaker and care plan are in writing and are found when needed, so that the care provider is notified before the animal is surrendered to a shelter or euthanized at the direction of an uninformed third party. It often happens that people do have a plan, but no one knows of it. That is especially tragic."

Even if a friend or relative promises to take your pets in, promises can't always be kept. Today's uncertain economy is hard on pets, who are adversely affected by unemployment, divorce, home foreclosures, and relocations.

Even if your friend or relative remains willing and has a stable home, additional pets can be a source of stress, not to mention expensive. This is especially so if the animals are elderly, on special diets, on prescription medication, require frequent veterinary visits, and have challenging symptoms like incontinence, seizures, severe arthritis, or confusion. Puppies and young dogs place a different kind of stress on caretakers, including their need for training and exercise.

Your caretaker will be your dog's new owner. Transferring ownership through your will or the establishment of a trust is important because without this provision, your pet will go to your residuary beneficiary (the beneficiary who inherits everything that's not taken care of by the rest of your will); or, if you don't have a will, your pet will go to your next of kin, as determined by state law.

Once you find a willing caretaker, it's important to sit down with that person and review everything that's important to you. Does your dog eat a home-prepared diet containing special ingredients? Compete in agility? Have a job? Get monthly massages, chiropractic adjustments, hydrotherapy treatments, or acupuncture? Enjoy a cheese-stuffed Kong after dinner? Require frequent trips to the groomer? Special diets, special treatments, special training, and special activities cost time and money. Well-intentioned friends and relatives who don't share your interests or income may provide a loving home but not necessarily the one you want your dog to have.



Do you have more than one dog? Are they closely attached? Do you know someone who would foster these pets while looking for someone who would adopt them both?

It's essential that any prospective caretaker understand what he or she might have to provide. If that person has a full-time job, young children, other pets, limited space, and limited time, the burden might be impossible even if your estate paid all the expenses. It's much better for you and your prospective caretaker to realize this now, while your estate is still in the planning stage, than to have your caretaker discover that the arrangement won't work after you have passed away. Your dog might be surrendered to the nearest shelter or given to a stranger who knows nothing about you or your pet.

Once you find a willing caretaker, look for another one. Having a backup caretaker can save the day if your first choice loses her job, has to move, is in an accident, falls ill, gets divorced, or is for some other reason unable to accept your pet or continue its care. In fact, having at least two backup caretakers and at least two backup trustees (if you create a trust) is recommended.

Another factor to consider is the size of your estate. The larger it is, the more likely your plans will be challenged by relatives, individuals, organizations, or tax collectors. The legal literature describes many cases in which courts sided with plaintiffs who considered an

animal's share of an estate to be excessive or inappropriate. In 2007, real estate billionaire Leona Helmsley died and left \$12 million to her Maltese, Trouble. Because Helmsley disinherited several relatives, her will and the dog's trust were challenged in court, and Trouble's legacy was reduced to \$2 million. In some cases, judges have reduced an animal's share of an estate to nothing.

An experienced estate-planning lawyer can help you establish a trust that's more likely to survive with your instructions intact.

To prevent fraud, pet owners should clearly identify pets that are to receive care under a will, pet trust, or powers of attorney. The most effective identification tools are microchips and DNA samples, but detailed descriptions, photographs, and veterinary records can be helpful.

BUT THERE'S A CONTRACT

If you purchased your dog from a reputable breeder, you probably signed a contract agreeing to return your dog to the breeder if you cannot keep or are unable to provide for the dog. The same arrangement is used by most animal shelters, service dog programs, and rescue organizations.

"The breeder or organization wants to ensure that the dogs they place always have a good home," says Goettel. "By making arrangements ahead of time, you spare them the effort and expense of fostering your dogs and finding new homes for them. Most breeders and orga-

nizations would be thrilled to learn that the owner or adopter is making plans for the animal, and they would likely make a record of the information. If the care provider does not know about the contract, attaching it to the will or care plan for the animal will ensure that the care provider knows of it and follows its terms. To keep everyone informed, attach your original contract and related correspondence to your will or trust documents, and provide copies of these to everyone involved."

VETERINARY CARE

Because veterinary care is likely to be the greatest expense incurred by your pet's new owner, consider the following options for providing the care your dog may need.

If you already have health insurance for your dog, provide funds for keeping it up to date. If your dog does not already have health insurance, consider leaving money for the purchase of health insurance. This option is most appropriate for young dogs in good health as premiums increase as dogs age; some plans exclude dogs age nine and older; most policies have exclusions and limits; and canine health insurance premiums, copays, and deductibles can be just as complicated as they are in human health plans.

You *can* leave money to your vet. This amount will vary according to your dog's age and condition along with the treatments you are prepared to pay for. The best way to make this arrangement is through discussion with your vet. You can request that any funds left over when your pet dies be given to a relative, charity, or the veterinarian, though this request is not legally enforceable.

Signing a contract in advance with your veterinarian is a third option. In this case, you leave to the veterinarian a specific amount as credit toward expected services. If and when that money runs out, the new owner will be charged for services provided to your dog. If your dog dies before the money is spent, your contract specifies what will be done with the excess.

IF YOU CAN'T FIND A GOOD CARETAKER

If your dog came from a breeder, shelter, or organization that requires the dog's return, you have a safety net. But what if you don't know anyone who could care for your pets for the rest of their lives?

Members of dog organizations, such as kennel clubs, dog sport clubs, therapy dog organizations, and rescue organizations, along with those who take their dogs to trainers, can network with fellow members and trainers to find appropriate temporary care (think foster homes) for your dogs if needed.

Many veterinarians are named in wills or trusts as temporary guardians or as the new owners of their clients' pets. Obviously this arrangement works best when the owner and veterinarian discuss and agree on the details.

The tireless volunteers of rescue organizations save the lives of dogs and cats every day. They provide foster homes, medical care, training, spaying or neutering, and anything else an animal needs to become adoptable. To provide for your animal through a rescue organization, contact the organization now to learn what arrangements will work best.

To find such organizations, search online for your breed, such as Labrador Retriever rescue, Poodle rescue, mixed breed rescue, senior rescue, etc. You'll find national and regional organizations and networks, some of which are 501(c)3 non-profit organizations, independent organizations, or affiliates of national or regional kennel or breed clubs, all of which are dedicated to matching homeless dogs with good homes. Becoming a volunteer yourself can be a satisfying activity that will keep you informed about fostering and adoption.

Your local animal shelter may be a good choice, especially if your dog is young, healthy, and well behaved, as these dogs find new homes more quickly. Older dogs and dogs with medical problems are usually harder to place, as are dogs with behavioral problems. Shelter volunteers have an inside view of the organization and its adoption process, and because circumstances vary from one shelter to another, becoming a volunteer or consulting with shelter staff about your plans can be an important step toward your dog's future care.

Pet sanctuaries provide permanent care for the animals they take in. As with conventional shelters, conditions vary from one sanctuary to another, and careful research is a must. Your dog might or might not be happy living for an indefinite time in a sanctuary. Some pet sanctuaries don't actually provide permanent sanctuary to all of their wards,

but seek to rehome as many animals as possible. Before making arrangements to leave your dog to a sanctuary, you should familiarize yourself with the sanctuary's requirements, and be sure it will accept your animal.

Some veterinary schools and sanctuaries have continuing pet care programs in which the pets either live the rest of their lives on-site in comfortable surroundings or are adopted out or put in foster care. These programs typically require an enrollment fee (such as \$1,000) and an endowment (such as \$10,000 or more) either at the time of enrollment or as a bequest in your will.

FUND YOUR PET'S FUTURE

Once you decide what arrangements you want to make, the important question is where will the money come from to support your pets after you die or when you are no longer able to care for them? Trust funding or direct bequests can come from cash, life insurance, annuities, stocks, bonds, or property that can be sold, such as a vehicle, house, or boat.

■ **DIRECT TRANSFERS.** To create a living trust (which you create now, while you're still alive), you must transfer money or other property to your trust. Your attorney can help you arrange the transfer so that it is properly executed.

To create a trust in your will, which becomes effective after your death, you

What you can do . . .

- Think about what your dogs would do if you weren't there for them, and start planning.
- Talk to friends and family to find good caretakers or foster homes should your pets need them.
- Write down everything you want future caretakers to know about your dogs' diet, activities, veterinarian, and other important information.
- Decide how to support your dogs financially.
- Take your plans to a lawyer for best results.



The single owner of two dogs with significant behavioral issues (both exceedingly shy Shar-pei), Mary Straus wrote a pet trust to enable and ensure that her dogs could be cared for in her home in case of her death.



will use the property distribution section of your will to specify the amount of money or description of property that fund the trust.

■ **POUR OVER WILL PROVISION.** If you create a living trust, you may add property (a “pour over”) from your estate to the trust.

■ **LIFE INSURANCE.** Pet trusts can be funded by naming your trust as a life insurance policy’s beneficiary. Because life insurance “creates” property when you die, this is an easy way to fund your pet’s future should you not have sufficient assets to do so otherwise. Consult with your lawyer or life insurance agent in order to correctly name your beneficiary.

“Many people believe that naming the caretaker as beneficiary on life insurance or arranging a bequest with just the caretaker’s name and nothing further, is sufficient,” says Goettel, “when they really need to make some reference to a ‘pet trust’ or ‘for the benefit of my pet,’ so the caretaker does not consider the funds an unrestricted gift and so the funds are used as the owner intended.”

■ **PAY ON DEATH ACCOUNTS, ANNUITIES, RETIREMENT PLANS, AND OTHER CONTRACTS.** If you have an annuity, retirement plan, or other contractual arrangement that permits you to name a person to receive the property after you die, you may use those assets to fund your pet trust. Consult with your lawyer, banker, or broker about the correct way to name the recipient of these funds.

■ **A CHARITABLE REMAINDER TRUST.** If you transfer property to a tax-exempt charity, it can serve as trustee of the trust and manage or invest the property so it produces income for you. The charity then pays to the trustee of your pet trust a portion of the income for a specified number of years or for the duration of the trust. When the trust ends, the remainder of the property goes to the charity.

Because of its tax advantages, this has become a popular type of trust.

■ **DURABLE POWERS OF ATTORNEY.** This standard financial planning tool authorizes someone other than the pet owner to conduct certain acts on his or her behalf. Such a document can be written to become effective upon the pet owner’s physical or mental incapacity.

A PET TRUST IN ACTION

In 1995, when she left a long-term relationship with a partner who would have cared for her dogs if something happened to her, canine nutrition expert and WDJ contributor Mary Straus found an attorney who specialized in living trusts for pets. “I was 43 at the time and had no health issues,” she says, “but I’m a worrier and prefer to know that everything’s covered, just in case. At the time I owned two genetically shy Shar-Pei, Piglet and Nattie (Piglet was so shy initially that it took three months before she voluntarily let me touch her). These dogs would not be easy to place and they wouldn’t handle disruptions well. I agonized over what I could do to protect them should something happen to me.”

Straus’s attorney helped her create a living trust. “Basically,” she says, “I left my house to my dogs, with instructions to my successor trustee that someone be found to live there and take care of them as long as needed, with much of my estate covering the cost.”

In addition, Straus prepared a separate, non-legal document covering diet, health history, special needs, likes and dislikes, and other information such as what you might leave for a pet sitter but in more detail. “I included what kind of home my dogs might best fit into,” she says, “such as with other dogs, cats, and kids, whether my dogs need to be placed together, and so forth, in hopes that the right kind of home(s) can be found sooner or later. I also included information

about friends and rescue people I know who might help find someone to stay at my house or find a home for my dogs.” She updates these dog care instructions at least twice a year.

Straus chose a living trust because it allows her estate to avoid probate.

“A trust relies on your trustee,” says Straus. “Since no courts get involved, you have to trust

(hence the name) the person you choose to carry out your wishes. My trust is quite simple and most of it is just boilerplate. The pet trust portion is two paragraphs that come after a paragraph that specifies the amount of money or percentage of the trust estate that will fund the trust.”

Pet Trust. Settlor’s present and future primary concern upon her death is the safety, welfare, and continued care for her pets. The animals which will be living with settlor at the date of her death will be referred to hereinafter as the settlor’s “PETS”. Upon the settlor’s death, the settlor’s residence and usual furnishings shall remain in trust for a period of ten (10) years or until the natural death of the last of the PETS or until such time as the trustee has found suitable, substitute housing, shelter and care for the PETS (whichever occurs first). The retention of the residence and furnishings is for the primary purpose of providing suitable, familiar housing and shelter for settlor’s PETS during the term of the trust. Settlor expects the residence to be rented during the existence of the trust. In keeping with the settlor’s primary concern for her PETS, settlor directs the trustee to screen any and all potential tenants to assure any renter has the same or similar concern and ability to care for settlor’s PETS as settlor has, and that such care shall be compensated in such a manner that any renter shall receive an appropriate reduction in the fair rental value of the residence with is commensurate with the value of such services.

The balance of the pet trust estate and all income is to be accumulated (i.e., without distributions) during the term of the trust in a reserve account for the real property maintenance and for the feeding

and veterinary care of settlor's PETS through the term of the trust. Upon termination of the trust as described above, the balance of the trust estate shall be distributed in accordance with the residue of the trust as described in paragraph C (11) above.

Nattie passed away in 2005 at the age of 16, and Piglet followed in 2009 at 17. Straus now shares her life with Ella, a Norwich Terrier.

"My trust is still in effect," she says, "although my successor trustee knows (and I've included in my instructions) that my current dog, Ella, would do fine in another home, so there would be no need to keep the house for her. I am still leaving money for her care in an arrangement where veterinary bills and other costs would be reimbursed to the new owner rather than giving that person a lump sum. In my instructions I keep a list of people who I think might provide or help find a good home for Ella. My only problem with her is that she prefers

being an only dog, and everyone I know already has dogs!"

DO YOU NEED A LAWYER?

For the simplest of care arrangements – your best friend, a member of your family, or someone who loves your dog volunteers to care for him if something happens to you – the transfer of ownership and a simple bequest probably don't require a lawyer, assuming you live in one of the 44 states that honor statutory pet trusts.

But if your estate is large or complicated, if relatives are likely to challenge your plans, or if you want to maintain as much control of your dog's future as possible, you need a lawyer.

Some legal firms offer do-it-yourself will-writing software or programs that create pet trusts. "These can be inexpensive," says Goettel, "but will programs are not usually state-specific, and law on estates and trusts varies from state to state. Also, these will programs come with general, but not specific, advice

about estate planning. Although almost everyone believes their estate planning is simple and straightforward, many do not realize they have issues that should be dealt with very specifically. Also, a will document is only a piece of estate planning. Beneficiary designations, joint tenancy ownership, and other property issues need to be coordinated with the planning that is in a will, and the online programs may not be comprehensive in that regard." In other words, it's a good idea to check with a local lawyer who has estate-planning and pet trust experience.

HELPFUL HOMEWORK

One online resource that comes highly recommended by estate planning attorneys and the animal welfare community is 2nd Chance for Pets, a non-profit organization that helps pet owners provide for their animals' care should the owners die or become incapacitated.

The organization's free eight-page Pet Care Workbook, available online or in print, includes Care Instruction Forms that you can complete, make copies of, and share with everyone involved in caring for your pets. As the workbook reminds us, the components of a lifetime care plan are simple:

1 IDENTIFY (AND COMMUNICATE WITH) FUTURE CARETAKERS FOR YOUR PETS.

2 PREPARE WRITTEN INSTRUCTIONS OUTLINING HOW YOUR PETS SHOULD BE CARED FOR.

3 SET UP A FUND SPECIFICALLY FOR THE CARE OF YOUR PETS.

A detailed questionnaire includes everything from caretaker information to pet sitters, boarding facilities, emergency contact information, veterinarian information, trustee information, and details about your pet.

The organization also provides Emergency Identification Cards that tell first-responders or medical staff that you have pets, where they are, and who should be contacted if you are in an accident or are incapacitated. ❖

Freelance writer CJ Puotinen lives in Montana. She is the author of The Encyclopedia of Natural Pet Care and other books. See "Resources," page 24 for more information.

RECOMMENDED READING

- ❖ **ALL MY CHILDREN WEAR FUR COATS: HOW TO LEAVE A LEGACY FOR YOUR PET**, by Peggy R. Hoyt, J.D., M.B.A. Second edition. Published by the Law Offices of Hoyt & Bryan, LLC. Paperback, 283 pages, \$20.
- ❖ **EVERY DOG'S LEGAL GUIDE: A MUST-HAVE BOOK FOR YOUR OWNER**, by Mary Randolph, J.D. Sixth edition, Nolo Books, 2007. Paperback, 336 pages, \$20.
- ❖ **WHEN YOUR PET OUTLIVES YOU: PROTECTING ANIMAL COMPANIONS AFTER YOU DIE**, by David Congalton and Charlotte Alexander. NewSage Press, 2002. Paperback, 147 pages, \$14.
- ❖ **WHO WILL CARE WHEN YOU'RE NOT THERE? ESTATE PLANNING FOR PET OWNERS**, by Robert E. Kass, JD, LLM, and Elizabeth A. Carrie, JD, LLM. Carob Tree Press, 2011. Paperback, 208 pages, \$25.

RESOURCES

- ❖ **FREE PLANNING FORMS AND EMERGENCY NOTIFICATION CARDS** from 2nd Chance for Pets, 1484 Pollard Road PMB 444, Los Gatos CA 95032; 2ndchance4pets.org
- ❖ **FREE INFORMATION ON ESTATE PLANNING BASICS, EMERGENCY NOTIFICATION KIT, AND PET TRUST INFORMATION.** Trusted Pet Partners, trustedpetpartners.com
- ❖ **HEIDI GOETTEL, CROWLEY FLECK ATTORNEYS, HELENA, MONTANA** (406) 449-4165; crowleyfleck.com (direct email: hgoettel@crowleyfleck.com)