

# WHAT IF YOUR PETS OUTLIVE YOU?

Most of us take for granted that we will live longer than our beloved pets, but what if that is not the case? What would happen to your pets if something sudden and unexpected happened to you and your pets outlived you?

Many of us consider our pets to be members of our family. Can you imagine not making plans to provide for your family members and loved ones in the event of your death or incapacity? In my estate planning practice, I make a point of asking my clients about their companion animals so their estate plan can include provisions for their care. This should be a common practice among estate planning attorneys.

If you die in Texas without a will in place (also known as dying “intestate”), the State of Texas has one in mind for you which will determine how your property will be disposed. In this scenario, your property is distributed to your family members by degree of kinship. Although we love our pets as much (sometimes more!) than our human family members, the animals are not provided for in this set of circumstances. If you are lucky, you discussed with your family or friends what should happen with your pets if you should pass away suddenly or become unable to care for them, and those individuals would honor your wishes. For many of us, however, this is not the case, so we would be leaving the fate of our beloved animal friends in jeopardy.

## HOW CAN I PLAN AHEAD TO PROTECT MY PETS?

There are actions you can take to provide for the care of your companion animals in the event of your death or disability. The first step is to talk to your friends and family. Make sure that they know how many pets you have and any special related needs. Provide them with a key to your residence and security alarm codes so they can access your pets if something should happen to you. Create a ‘Pet Card’ and ‘Pet Document’. These are items you can keep in your wallet or purse. If something should happen to you, these documents could tell emergency personnel or others that you have pets at home and provide the contact information for your

designated caregivers. (You can download a sample of these forms at [www.hautedogmagazine.com](http://www.hautedogmagazine.com))

The next step is to get your estate planning in place. Most everyone is aware that they need a will.<sup>1</sup> A will allows you to have a say about how your property is disposed of when you die. In Texas, a pet is considered personal property - like a wristwatch or article of clothing - and your pet would therefore be given to the person or persons to whom you left your personal property in your will. What if you want to leave all of your property to your Aunt Tilly but she is incapable of taking care of your pet, and you know your best friend Cheryl has always loved your pets and would provide a good home for them? You can add a provision to your will for specific bequests—where you can leave specific items—such as any cats or dogs you own at the time of your death—to a specific person.

Some like to leave a specific amount of money to the person they are leaving their pet to for the care of their pet. However, I usually advise against doing so, since none of us knows what the size of our estate will be at the time we pass. If you estimate too high an amount, it may be more than your estate can afford or could lead your human beneficiaries to contest your will. If you estimate too low you may pass away without leaving a sufficient sum to care for your pets.

Another document that can help you protect your animals is a Statutory Durable Power of Attorney. This document becomes effective either immediately or only upon your incapacity (you choose which option you prefer) and allows you to appoint an agent to take care of your financial affairs. You can include a provision for pet care which allows your agent to care for your pets and to use your resources to do so.

Not every attorney is familiar with how to protect your pets in estate planning documents. If you work with an estate planning attorney who does not ask you about your pets, then by all means ask them. Or, better yet, work with an estate planning attorney who has experience taking companion animals into account.

<sup>1</sup> There are other estate planning documents most everyone should have in place including a Medical Power of Attorney (designates who would have authority to make medical decisions for you while you are temporarily incapacitated); a Living Will (where you can designate whether or not you would like to have life-sustaining treatment administered to you if you are diagnosed with a terminal or irreversible condition); and Declaration of Guardian for Minor Children (in which you name the individuals you would want to have physical custody of your children if you are their last surviving parent and something happens to you).

## DO I NEED A PET TRUST?

You can create a pet trust for the care of your companion animals in the event of your death or incapacity.<sup>2</sup> The pet trust can either be created separately from your will or can be inside your will, although trusts created in your will would not become effective until after your death. The pet trust outside your will is called an *inter vivos* trust. In this scenario, you would have the trust documents drafted and transfer the ownership of property or funds out of your individual name and into the trust for the care of any pets who are living while you are alive. A trustee would then be charged with delivering your animal companion into the care of a beneficiary of your choosing who would care for your pet and who would periodically receive funds from the pet trust to do so. The trustee would be responsible for checking in to ensure that the pet is being taken care of properly.

While this sounds like a great solution, it is not for everyone. There are expenses associated with setting up the trust and for many people, transferring ownership of their property into a trust is not practical. Another option is a trust located within your will, a testamentary trust. Your trust would be written into the will and would not take effect until you pass away, so you can retain ownership of your property until you pass without transferring its ownership into the trust.

Although these are helpful available devices, for most people, leaving their pet in their will as a specific bequest to a trusted friend or family member, with or without an amount of money provided to be used for the pet's care, is a sufficient solution. After all, why would you choose someone to care for your animal, unless you were fully confident they would do so per your requests?

## SPECIAL CASE ANIMALS

If you share your home with some species of turtles (which can live many decades) or parrots (some can live up to some 70-odd years) or horses (which can live for 20-plus years), you should consider that your pets may not only survive you, but they may also survive anyone you designate to provide care for them. For these types of pets, you may want to consider leaving your pets to an animal sanctuary equipped for that specific type of animal's care. It is usually a good idea to provide a donation to the sanctuary to help offset the cost of the animal's care. A good place to learn about a sanctuary's reputation is to ask your pet's veterinarian or a local humane society.

2] Texas: Tex. Prop. Code Ann. § 112.037

## HOW MUCH WILL ALL OF THIS COST ME?

How much do you spend now on your pet's care over the course of a year? The cost of obtaining estate planning will depend on which documents you would like to have drafted. The best first step is always to discuss your specific situation with an attorney well-versed in this area of law. Many attorneys offer free consultations. The cost for drafting a full estate planning package can range from several hundred to several thousand dollars depending on your individual situation.

Some people balk at the cost of having an attorney prepare their documents and turn to do-it-yourself estate planning products. I do not advise using these. There is no substitution for an attorney's advice tailored to your specific situation, and animal issues are not likely to be addressed in one-size-fits-all documents. After all, this is something you want done right the first time. By the time your will becomes active, you will no longer be around to revise it if it has been done improperly.

## HOW DO I GET THIS PROCESS STARTED?

A good place to start is to do an internet search for attorneys in your area who work in this area of law. You could also ask your veterinarian for a recommendation. Please bear in mind that if you move to another state after having your estate planning documents drafted, you will need to consult an attorney in your new state, since every state has different property and probate laws.

## FINAL THOUGHTS

The future well-being of your companion animals can depend upon the decisions and planning you put in place for them now. Congratulations for taking the first step, ensuring that your pets will continue to have a safe, healthy, and happy life - even in the event that you may not be here to share it with them.



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