

"But What About my Dogs and Cats?" Incorporating Concerns for Pets in an Estate Plan

By Frederick M. Misilo, Jr., Esq.

For many of us, our pets are trusted and valuable companions. Legally, pets are considered merely personal property – the Latin term is “chattel.” But our valued furry friends are more often than not considered a member of our family, not a piece of property. Therefore, it makes sense to make special provisions for them in your estate plan.

Now, I’m not talking about setting aside millions of dollars in the fashion of Leona Helmsley. I am suggesting a common-sense, practical approach. Specific provisions in your will and your durable power of attorney can be used to ensure that your pet will be taken care of in the event of your disability or death. The three important components in the planning process for your pet are: (1) identifying caregivers, (2) developing written instructions, and (3) financing.

Caregivers: Find someone who understands the responsibility he or she will be taking on. I also suggest that you select an alternate caregiver should your primary caregiver become unwilling or unable to care for your pet. Obviously, speak to the caregiver to determine if they would be willing to take on this responsibility. It is also a good idea for the caregiver to have significant contact with the pet, so they get to know the pet through first-hand experience.

Written Instructions: Develop written instructions about your pet, which include any special care requirements. For instance, issues such as food preferences, food allergies, when the pet is fed, exercise requirements, and familiar activities are important things about which the caregiver needs to be aware. These instructions should be comprehensive so the caregiver has all the information he or she needs to care for your pet. One issue that should be addressed in your written instructions is euthanasia. Given the increased capacity of animal medicine to treat injury or disease, a caregiver may be faced with making a decision to authorize sophisticated treatment for your pet. You should list the factors you would want the caregiver to consider when making such a decision such as cost, comfort and prognosis for recovery.

Financing: Consider what the costs will be for caring for your pet, as well as how you will finance those costs. The expense calculation should include everything from food to veterinarian expenses. Remember to consider the age and health requirements of your pet when computing cost as these can significantly affect the cost of caring for your pet.

These three components should be incorporated into your estate plan through specific provisions in your durable power of attorney and will. Thirty-three states have enacted specific laws which authorize the creation of a “Pet Trust,” in which a trustee-caregiver holds money specifically for the care of a pet. Unfortunately, Massachusetts does not yet have specific laws which authorize the creation of a “Pet Trust.” The last attempt by the Massachusetts legislature to enact such legislation was defeated in 2005.

So, remember, when thinking about your estate plan – don’t forget your furry friends. They’ll be glad you remembered them.

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