

Estate Planning and Companion Animals by Amy A. Breyer

One of the most important things people can do during their lifetime is to plan for what will happen to their loved ones after they're gone. Many people think of their companion animals as family members. Planning is especially important for non-human "family members" who have absolutely no ability to provide for themselves.

You Can't Leave It All to Your Companion Animal

Animals are considered property under the law and the law does not permit someone to leave property to property. Thus, you cannot give any gift outright to your companion animals. Historically, many courts would not even uphold so-called "honorary trusts" for the benefit of companion animals. Fortunately, this is starting to change. About half the states now have laws permitting the creation of trusts in favor of companion animals.

But You Can Put it into a Trust!

This past spring, Illinois joined the growing list of states that recognize enforceable pet trusts. The new law allows an owner to set up a trust for one or more "domestic or pet animals. Importantly, the law does not define "pet" so yes, it can include horses, rabbits or other animals. But be prepared to defend your reasoning; it is unlikely a court would find a trust for squirrels in your backyard valid unless you could demonstrate that they had the characteristics of pets, ie: you let them live in your house, you feed them, get them spayed, vaccinated and so forth.

The new law has several other features as well. It requires trustees to use trust money only for the benefit of the covered animal. The trust is also valid for as long as the animal lives; this is particularly important for companions such as parrots that can live for 60 or more years. The law does not require the sort of filing and reporting requirements that are generally needed for other types of trusts (unless the trust document itself or the court imposes it) and the court may appoint a trustee if necessary.

What Else You Can (and Should) Do

The most important step in developing a responsible estate plan for your animals is to find someone you trust completely to care for your companions and discuss your plans with them. If there is no one, then look for a charity that would be willing to care for your friend in exchange for a donation. Be sure to inquire about specifics, for example: will your animal live there (in cases of a shelter), go home with a volunteer, or be placed for adoption? Will your companion have to stay in a cage? What is the screening process for adoptive homes? The possibilities are as varied as the types of organizations, so be sure to ask questions until you feel comfortable you've found a good match for your companion.

You also need to think about funding your companion's continued care. In addition to food, medications, grooming needs, and regular vet visits, don't forget to include a sum to help cover emergencies. One crucial note though: no matter how much you love your companion, don't leave more than you realistically think your friend will need to maintain, at most, its current lifestyle. If you leave too much, the new law allows courts to reduce the trust if "the amount substantially exceeds the amount required for the intended use."

Rather than leaving your attorney to fight this battle later, better to sit down with your relatives and any other beneficiaries now and have a frank discussion about your wishes. If you get the sense that anyone is inclined to do away with Fido to get at your money, now is the time to deal with this. Also explain your wishes to your attorney to be sure that he or she is aware that a trust for a companion animal is now as valid as a trust for a minor or any other family member. A carefully crafted document based on a well-thought plan offers the best chance that your final wishes will be honored.

Don't Forget About Short-Term Arrangements

This is critical because it may be several weeks or months before your Will is admitted to probate and your Executor receives authority to proceed. Your companion still needs to be fed, walked and generally cared for in the meantime. Short-term arrangements are also critical in the event you are hospitalized. Try to find a friend, neighbor or relative to provide interim care for your companion. Give them written instructions and a key (or instructions on who has a key). Give a copy to your executor. Keep an extra copy, along with the rest of your estate plans, in your home. Make sure your caretaker knows the location of these documents. If you live in an apartment, provide written permission for the caretaker to enter your apartment under these circumstances and give a copy to the building superintendent. You may want to leave an extra key with the superintendent or another neighbor.

Again, if no such person is available, contact a local shelter. Here, it is especially important to provide written instructions, permission to enter your premises if necessary, and directions explaining how to obtain a key. Try to arrange for even a distant friend or relative to make sure shelter personnel are notified if you are hospitalized or die.

You can include a provision in your plan which states that short-term expenses such as food, veterinary care or transportation costs are to be paid as an estate administration expense, regardless of whether the expenses are deductible for estate tax purposes. Finally, prepare an emergency card to carry in your wallet. The card should simply state that in case of emergency, please notify [caretaker] at [phone and address] to arrange for the care of your companion animal[s]. List a contingent caretaker if you have one. You also can state the names and types of animals and who else has a copy of your instructions. Keep the card next to any other emergency information in your wallet.

Conclusion

These suggestions do take some time and planning. However, hopefully they will pay off in peace of mind for you now and a good life for your companion later.