

CARING FOR YOUR PET AFTER YOU'RE GONE

Your pet is a cherished member of the family. But who will care for Fido or Kitty after you're gone. He may be smart, but he can't live alone. How can you make arrangements so your animal will be properly cared for? Here to answer these questions is Jennifer Peck, an expert whose pet project is estate planning for pets.

Question: What do people with pets usually do?

Answer: Usually, nothing. People don't think about planning for their pets. They may leave their wedding ring to their daughter, the work tools to their son. But Fido is forgotten.

Question: If no provisions have been made, and Fido's left holding the bone, what happens to the pet?

Answer: Often one of the family members will take the dog or cat. But sometimes that doesn't happen, and the pet goes to the local humane society.

Question: What's the best way to plan for your pet?

Answer: You would do two things: leave your pet to a particular caregiver, and set up a pet trust to pay for your pet's care. Let's start with the caregiver. You would

leave your pet to a family member, a friend, or an organization who would care for your pet when you could not. Talk to the person or organization now, to make sure they're willing.

You would also set up a pet trust, with money to care for your pet. You would need enough to pay for food, toys, medical care, and emergency care. And you probably would want to pay the caregiver for his or her work, too.

Question: How much should go into a pet trust?

Answer: There's no magic amount or formula. You should calculate the amount that you think would be needed, keep track of your costs for a couple of months. [Then set aside enough so that the investment income is enough to cover those costs. When the pet dies, the remaining funds in the trust can go to your human beneficiaries, like children, or charitable organizations.

Question: Should the caregiver and the trustee of the pet trust be the same person?

Answer: They could be, but I usually don't recommend it. I like the trustee, the person managing the trust and paying the bills, to be different from the caregiver. Otherwise, there's a chance of abuse. In one Arizona case, for example, the trustee and caregiver were the same person. The caregiver used the trust money to buy himself an expensive new car, supposedly to transport the pet. If the trustee was independent of the caregiver, this abuse would not have occurred.

Question: How about forgetting the trust and just leaving the pet and some money to a caregiver?

Answer: You can do that, and it's simpler. But it's not as protective for your pet. There have been cases where the caregiver took the pet, put it into an animal shelter, and kept the money. And there's not much that could be done!

Here's a case where you truly do want your money to go to the dogs!

Your pet has provided you with love, comfort and attention during your lifetime. Make sure you provide for your pet's care and comfort after you're gone. For more information about pet care and pet trusts, contact a lawyer.

Estate planning and pets

By Michael Lavender

I had a cat. He was a wonderful cat. He was Siamese, and his name was Henry. He destroyed my furniture, and left parts of little beasties at the bottom of the stairs where I would step on them with bare feet. Nonetheless, I loved him.

Henry lost one life to an automobile. Dr. Venezia skillfully put his leg back together, and Henry was good as new, until he confronted a coyote, which did in Henry's other eight lives.

If Henry had not been quite so fearless, I would be considering him in my estate planning. Planning for a cat or a dog or other pet can be very difficult and expensive.

Providing for a dog or cat for the balance of its life can easily require \$10,000 or more, and caring for a horse can really saddle you with expenses. A cockatoo may live as long as 80 years.

Florida, New York, California, North Carolina, Colorado, New Mexico, and Arizona and other states have specific provisions allowing the establishment of trusts for pets. Massachusetts and other states do not recognize trusts for pets, reasoning that pets cannot police their own trusts, so it does not make sense to allow trusts for them. Thus, in this state, pet owners are relegated to establishing "honorary" trusts for pets -- that is, hoping that the selected person will do the right thing.

In Florida, the courts will supervise trusts for pets, as they do for trusts with human beneficiaries. The judges will limit the amount which can be set aside for animals, out of concern that someone might establish a trust with millions of dollars for an animal (possibly justifying the common expression "the lucky dog.")

If you establish a trust for your pet, the trustee should be careful in investing the trust, for tax reasons. A trust is taxed as a conduit -- it reports income received, and claims a deduction for distribution to beneficiaries, who report the distributed income on their own income tax returns.

If a trust receives taxable income and distributes all the income to beneficiaries, the trust has no income and no tax. If, on the other hand, the trust has taxable income, that income is taxable to the trust at punitive rates.

To prevent taxpayers from establishing trusts as separate pocketbooks, Congress provided that the income tax brackets for trusts are compressed. The first \$1,850 of taxable income is taxed at 15 percent, the next \$2,550 is taxed at 27 percent, the next \$2,350 is taxed at 30 percent, the next \$2,450 is taxed at 35 percent, and any taxable income over \$9,200 is taxed at 38.5 percent.

A single taxpayer (not a trust or estate) does not reach the top tax bracket of 38.6 percent until his or her taxable income reaches \$307,050. The trust reaches the 38.5 percent bracket at only \$9,200 of retained income. Thus, the trustee has a strong incentive to pay out the trust's income to the beneficiaries, because any income not distributed to a beneficiary will be taxed to the trust at a punitive rate.

For purpose of the Internal Revenue Service Code, a pet is not a "beneficiary," so distributions to pets do not reduce the trust's taxable income. A trustee might pay out all of the trust's taxable income to provide for a pet, yet the trust would still be liable for a large tax. To avoid this, the trustee should invest in assets that produce tax-exempt income.

The Internal Revenue Service ruled in 1976 that the term "beneficiary" means "heirs, legatees and devisees" and that "heirs, legatees, and devisees" are persons." Section 7701 (a) of the Internal Revenue Code says that the term "persons" includes an "individual, trust, estate, partnership, association, company or corporation."

The Internal Revenue Service said that "since animals do not fall with this category" (individual, trust, estate, partnership, association, company or corporation), they cannot be "beneficiaries" for purposes of the statute allowing the deduction against trust income.

Anyone who reads the comics in the morning knows that the reasoning set forth by the Internal Revenue Service is simply wrong. For example, how could anyone say that Garfield is not an "individual?"