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## Estate Planning

# Caring for a pet after death.

By Eva Stark, JD, LL.M.

**W**ithout a plan, a beloved pet may be abandoned or euthanized upon the owner's death. While many pet owners are well aware of this potential issue, few take any action and devise a plan.

### Will or Trust

In some circumstances, a pet might be left to a family member or friend through a will or trust instrument. Often, funds might also be left directly to the new owner to fund the animal's expenses. While such an arrangement is simple and is often a good option, it might not always work as envisioned. The new owner might spend the funds on personal expenses rather than the pet. He or she might even abandon the animal. The new owner might only have a moral obligation to care for the pet, not a legally enforceable one, under this type of arrangement.

### Rescue Organization

Where no trusted family member or friend can be found who is willing and able to care for a pet, leaving the animal to a rescue organization or humane society may be an option. Facilities, programs, requirements for acceptance and costs vary, so pet owners should thoroughly research available options.

### Pet Trust

A pet trust is a legal arrangement that can provide for the financial support of an animal while designating individuals to care for the pet and to enforce the trust according to its terms. Nearly all states have adopted pet trust statutes. Laws



relating to the operation and duration of pet trusts vary by jurisdiction. Establishing a pet trust also involves many important considerations.

**FUNDING.** The trust should generally be funded with an amount reasonably necessary to provide for the care of the animal for the remainder of its life. The specific amount might vary widely based on the life expectancy of the animal, its anticipated boarding, feeding and veterinary expenses, as well as expenses relating to the animal's enrichment activities and lifestyle. Caretaker salary, if any, and administration costs should also be considered. Leaving unreasonably excessive amounts to a pet trust should generally be avoided as courts may re-direct excess funds to other estate or trust beneficiaries.

**TRUSTEE.** The trustee oversees the trust and manages and accounts for its assets.

**CARETAKER.** The caretaker provides daily care to the animal. Selecting a suitable caretaker is perhaps one of the most important decisions when setting up a pet trust. Ideally, the caretaker should be an

individual with a genuine interest in the animal's happiness and well-being who enjoys caring for the animal.

**INSTRUCTIONS.** It might be advisable for the settlor to leave detailed instructions about how the animal should be cared for on a daily basis. Such instructions can help ensure the animal's safety, well-being and optimal happiness. Instructions also can serve as a standard against which the level of care provided by the caretaker may be measured.

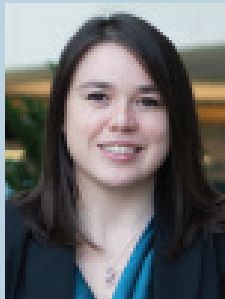
**ENFORCEMENT.** Most states that have adopted statutes relating to pet trusts allow the settlor to name one or more individuals who will have legal standing to enforce the terms of the trust in the event the trust is not administered as intended.

**SUCCESSORS.** A settlor might consider naming one or more successor trustees or caretakers in the event the named trustee or caretaker becomes unable to or unwilling to serve. This could be especially important for a pet that might have a long life expectancy relative to the caretaker or trustee.

## **REMAINDER BENEFICIARIES.**

The remainder beneficiary is the individual or entity who will receive any funds left in the trust upon its termination. Pet trusts typically terminate upon the death of the last surviving pet that the trust was created for, or when the maximum duration for a pet trust in the particular jurisdiction is reached. Remainder beneficiaries might include the settlor's family member or charities.

When creating an estate plan, pet owners might wish to evaluate with their attorney any plans or arrangements they might have for their pets. Evaluating existing plans and exploring alternatives can help ensure that a beloved pet is well provided for and cared for after the owner's death.



**Eva Stark, JD, LL.M.,** joined The Nautilus Group in 2014 to assist with the development of estate and business plans. She also performs advanced tax research. Eva graduated summa cum laude with a BS in economics and finance from The University of Texas at Dallas. She earned her JD, with honors, from Southern Methodist University, where she served as a student attorney and chief counsel at the SMU Federal Taxpayers Clinic. She received her LL.M. in taxation from Georgetown University Law Center. Prior to joining Nautilus, Eva worked in private practice in tax controversy, business law, and litigation.