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## **ESTATE PLANNING FOR PETS**

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Perpetual Care is a life care center for pets who have lost their owner due to death or entering a nursing care facility. Every week we receive phone calls about situations where the owner has passed away or must enter a nursing care facility and no one was designated to care for their pet(s). The need for pet estate planning is growing as baby boomers are in their Twilight years when pets are important for companionship and comfort.

When I speak with pet owners about estate planning for their pets, many of them are quite adamant that their children or other family members will care for the pets. I ask people who tell me this to have a serious talk with their children and ask if them specifically if they will take their pets in the event of their death and ask if they will sign an agreement to do so. They are often very surprised that for one reason or another, the children, other family member or friend says they cannot take their pets. Some will say that they will take the pets, while silently thinking it will never actually happen. I find that the real test of the commitment of a family member or friend to taking their pet(s) is to ask them to sign an agreement to serve as the pet's caregiver in the event of death or disability.

Almost one-third of the pets taken to animal shelters around the country are taken there by a family member due to the death or disability of another family member (ASPCA). Shelters are inundated with family pets and struggle with getting them adopted in order to avoid having to put them to sleep.

I recently received a call from the brother of a woman with Cerebral Palsy who had to be taken to the hospital and would need to go into assisted living. She had a six-year-old German

Shepherd mix dog named Rosie, that she could no longer keep. She lived in Ocala, Florida and her brother lived in Tampa, Florida. He asked if we could help care for the dog while he set her up in assisted living, which I agreed to do for them. On his way to Ocala to make arrangements for his sister, he was hit by a car and died instantly. Another brother who lived out of state contacted us and told us about the passing of his brother. This brother had recently had a heart attack and could not care for the dog and now he needed to come in from out of state not only to help his sister, but he also needed to plan a funeral for his brother. This was a very difficult time for the entire family, including Rosie the dog. Rosie was frightened with being left alone and all the changes and she exhibited fear aggression. If she had gone to the animal shelter, she probably would have failed temperament testing and would have been put to sleep. In the end, there was no one in the family willing to care for the dog and her life was at risk if she entered a shelter, so the dog was brought to the Perpetual Care life care center. We will work with Rosie to rehabilitate her and find her a loving home, or she will remain a resident at the life care center. Of course, the need for pet estate planning is not limited just to the senior population. An average of 6,775 people dies each day (2.5 million a year) in the United States (United Nations) from all causes, and over 68% of people in the U.S. own pets (American Pet Products Association). We also know that only 42%-60% of people have documented estate plans (wills and trusts) (caring.com survey/AARP survey) and of those people, only 9% of them include their pets in their estate plan designating who will care for their pets in the event of death or disability. That's an estimated 800,000 cases of pet owners who die each year in the U.S. without a documented pet estate plan.

The mission of Perpetual Care is to educate and assist pet owners about estate planning for their pets in order to prevent them from going into shelters and potentially being euthanized, just

because they lost their owner. Many pet owners consider their pets to be a member of the family, however, the legal status of pets in every state of the U.S., is that they are considered property. Therefore, since pets are property, I inform pet owners that they should designate a person or persons to care for their pets in the event of death or disability and document it, regardless of whether it is a family member or not. The options that we discuss with pet owners are wills, pet trusts and pet (life care) agreements.

## **WILLS**

A will is a bequest, and because pets are property, they can be given to someone in a will, however we do not recommend designating who will care for your pets in a will for the following reasons. A will takes effect upon a death event; however, it is becoming very common for seniors to enter nursing care facilities prior to death and people are usually not able to take a pet with them or provide care for that pet in a nursing facility. A will can disburse property (the pet) to individuals, but it does not enforce their care. A will also does not allow for fund disbursements over time; therefore, funds could be disbursed for the pet's care, but funds would be given up front rather than over the time that the pet is living and based on verification of the health of the pet. Funds should be disbursed for pets over time as a reinforcement and verification of proper care for the pet. Pet care requirements are also not documented in a will and if the will goes into probate, there is a period of time that the pet goes without someone legally designated to provide for their care, which means they could spend time in an animal shelter or with someone who is not the designated caregiver.

## **PET TRUSTS**

A pet trust is a legal arrangement to provide care for a pet in the event of death or disability of the owner and it is our recommended and preferred option for pet owners. As of 2016, every

state recognizes pet trusts, although the guiding laws vary from state to state. Pet trusts stipulate that in the event of a grantor's (pet owner's) disability or death, a trustee will hold property (cash, for example) "in trust" for the benefit of the grantor's pets. A living trust or Inter-vivos trust is created during the grantor's lifetime by a trust instrument and therefore the pet is covered under an agreement while the pet owner (grantor) is still living in case they enter a nursing facility. A trust may be revocable or irrevocable and is presumed to be irrevocable unless the document creating it states it is revocable, except in California, Oklahoma and Texas, in which trusts are presumed to be revocable until the instrument creating them states they are irrevocable. An irrevocable trust can only be "broken" (revoked) by a judicial proceeding. We recommend to pet owners that all pet trusts are revocable because changes may occur when pets die, when new pets are adopted, and their designated caregivers may also change over time.

The key parties involved in a pet trust are:

**Grantor:** The person who creates the Trust (also known as "settlor") which is the pet owner.

**Beneficiary:** The person or people who ultimately receive the property or assets in the Trust, i.e. the caregiver(s). We highly recommend having a Primary Caregiver and a Secondary Caregiver designated. As you can see from Rosie's story, things can change very quickly at times and a backup caregiver may be critical.

**Trustee:** The person, business entity or public body, that agrees to hold the property or assets.

**Enforcer:** The person, business entity or public body that ensures that the beneficiary adheres to the stipulations of the trust. Perpetual Care serves as the enforcer for all pet trusts leaving pets to Perpetual Care, but also offers to serve as enforcer for pet trusts in which we serve no other role.

**Principal:** The property or assets themselves, including money, which is held in the Trust and managed by the Trustee.

## **PET LIFE CARE AGREEMENTS**

Although I recommend setting up a pet trust to people, having talked with many pet owners, I know that some pet owners are simply not going to set up a pet trust for their pets. Generally, the reasons are:

1. They do not believe their pet will outlive them.
2. They do not want to pay the legal fees to set up a trust.
3. They just believe that someone in the family will step forward to care for their pets.

I still encourage them to have something in writing and therefore recommend a simple contractual agreement with a designated primary caregiver and a secondary caregiver to get the commitment from their family or friends and document it. For that reason, we also provide a “pet life care agreement” template on our website that they can modify for their pets, request the designated caregivers sign it and have it notarized. This is a simple contractual agreement, usually not involving any funds, between the pet owner and the family or friends who agree to take their pets. It will force them to ask the question of their family member or friend and it will be documented.

Our goal is to increase the number of pet owners who have an estate plan for their pets and reduce the number of pets taken to shelters and euthanized, which is why Perpetual Care provides pet trust templates and pet life care agreement templates on our website at [www.perpetualcare.org](http://www.perpetualcare.org), of course along with a caveat that laws vary by state and therefore they are encouraged to have their attorney review the document.