

Estate Planning for Pets and Domesticated Animals¹

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Companionship animals play an important role in the lives of humans. Cats keep us company on the couch. Dogs play Frisbee with us at the park. Pets can even prolong a person's life, lowering the risk of heart attack and rates of depression. Despite these beneficial effects in the lives of humans, more than 500,000 pets are euthanized in animal shelters throughout the United States annually because of the death or disability of the owner. How can pet owners prevent such a disaster from occurring? In this article, the author explores three ways to provide for financial support and care for your pet when you no longer can.

1st Solution: Give your Pet to a Friend or Relative

Under California Probate Code, Section 6102, an outright gift to an animal is void. However, you can give your pet to a close friend or relative, along with funds to provide for their care. An attorney can help you draft language in your will or trust so that the gift will be valid.

There are many downsides to giving your pet to a friend or relative. First, the friend or relative may not want to take care of your pet. Even if they express a desire today, your friend or relative may move away or face new life circumstances, making them unable or unwilling to provide proper care and support for your pet. Second, once your friend takes legal ownership of your pet, there is no guarantee that they will fulfill your desires, whether expressed orally or in a will. A worst-case scenario is an immediate euthanization of the pet upon a change of ownership, regardless of your best intentions.

2nd Solution: Give your Pet to an Animal Protection Organization

The second solution is to give your pet to an animal protection organization. Many organizations exist throughout California, which provide either permanent care or adoption services. A lawyer can help you add language to your will or trust to legally give your pet to an organization like the San Francisco SPCA or Pets in Need of Redwood City. Many of these organizations may also enable you to specify the type of home that would be suitable for your pet. Others require a planned gift to be made along with your pet. Organizations include the SPCA, the Humane Society, the National Cat Protection Society, Pet Pride, Pets in Need, UC Davis School of Veterinary Medicine, and the California Feline Foundation.

A gift to an organization like the SPCA is an excellent solution for many pet owners. Yet, for many, such a gift may not be sufficiently personal. Moreover, it cannot be guaranteed exactly how money for long term financial support will be provided and whether proper placement of the pet can be achieved.

3rd Solution: Pet Trusts

The third solution is to provide for your pet under a pet trust. Under Section 15212 of the

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California Probate Code, trusts for pets are allowed for an animal's lifetime. A pet trust is the best way to provide for one's pets, offering greater certainty and provision than an outright gift to a friend or charitable organization.

First, you can provide specific instructions on how your pet should be cared for. The trust may nominate potential caretakers, giving the trustee discretion to provide a suitable guardian and home. The trust can delineate how medical expenses, pet care, pet visits, and other duties are handled.

Second, the Probate Code's requirement that principal and income be paid out only for the pet's benefit provides added certainty that money will go only for the pet.

Third, the pet trust is more easily enforced than an outright gift. A regular accounting of expenses can be required, whereby a person designated in the trust, or a beneficiary, ensures that principal and income are paid for a pet's benefit.

Finally, a pet trust prevents your pet from falling through the cracks. Under the probate code, *any* nonprofit charitable organization that cares for animals, or a beneficiary or person designated by the trust, may make reasonable inspections to ensure that the pet, the books and records of the trust, and where the pet is living are proper.

Pet trusts are not for everyone. Unfortunately, a pet trust that leaves a remainder to charity is not eligible for an estate tax charitable deduction. Moreover, the expenses associated with administering a pet trust may rule out their use unless they are funded with a relatively large amount of money. Finally, while enforcement mechanisms under a pet trust are better than the alternatives, there is still no guarantee that the trustee will act completely in the pet's interest.