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Estate Planning to Care for Your Beloved Pets

As pets have come into so many more households and have become part of so many families, it is possible that these pets will outlive their family members. Consideration should be given as to who will care for one's pets if that happens.

By **Amy Neifeld Shkedy and Rebecca Rosenberger Smolen** | December 21, 2020



Rebecca Rosenberger Smolen, left, and Amy Neifeld Shkedy, right, of Bala Law Group.

During this COVID pandemic, we have seen a significant rise in the adoption and sale of pets, particularly puppies, kittens and rescue dogs and cats. So many individuals and families have sought comfort in furry companions during this time, both for emotional support and because with so many individuals working from home during the pandemic, the process of training pets is now a possibility that may not have existed before.

As pets have come into so many more households and have become part of so many families, it is possible that these pets will outlive their family members. Consideration should be given as to who will care for one's pets if that happens. There are several options in setting up the care for a pet in your estate plan.

Oftentimes, a will is silent on the care of a pet. For many families, this isn't a concern and, as a practical matter, we have seen this work out well in the event that a pet outlives its owner without preplanning. Under the law,

pets are treated as part of tangible personal property, along with furniture, furnishings, personal effect, jewelry, cars and artwork (this has always seemed a bit odd to us, but that is what the law provides). Thus, if a will provides that a decedent's tangible personal property is to pass to his children, then the children (or one of them) would be the ones continuing to care for the pets (or perhaps the guardians of the children if the children are minors). Of course, there is always the possibility that if there is more than one child, they may disagree as to who will take ownership of the pets, so it's best to have a conversation ahead of time about how to work this out. For decedents who have no children, the other named beneficiaries under the will, perhaps siblings or friends, would be the caretakers.

In situations where the named beneficiaries may not be the appropriate choice as caretakers, or for other reasons, it may be a good idea to specifically pre-select who will be a pet's caretaker after the death of the decedent owner. In a will or revocable trust, a decedent can select a caretaker, including one or two alternates in the event that the named individual is not willing and able to care for the pet. For decedents who may not know the right person for the job, another option is to provide that the executor named in the will (or trustee named in the revocable trust) should select an appropriate pet caretaker. This can include a relative or friend or animal rescue organization that is able and willing to take ownership of pet and find a permanent home for pet to reside in for the remainder of the pet's life. Many clients wish to leave a cash amount (generally ranging from \$10,000 to \$50,000 per pet) to the caretaker for taking in a pet. This cash amount is payable directly to the caretaker for his, her or its own use, and does not have to be used specifically for the care of the pet, although, in the case of an individual caretaker, the hope is that the cash will be used to offset expenses for caring for the pet. The cash amount left to the individual will be subject to Pennsylvania inheritance tax, depending on the relationship of the individual to the decedent (i.e., 4.5% if the caretaker is a parent, child or other lineal heir, 12% if the caretaker is a sibling, or 15% for all others). There would be no inheritance tax imposed if the caretaker is an animal rescue organization that is a 501(c)(3) organization.

In Pennsylvania, like many other states, there is also an option to establish what is often referred to as a "pet trust." The rules for a pet trust (referred to as "trust for care of animal") in Pennsylvania are set forth by statute under 20 Pa.C.S. Section 7738, which came into law in 2006 and follows the Uniform Trust Code. A pet trust may be created during the owner's lifetime or at death, such as under a will or revocable trust. A pet trust is created to provide for the care of a pet and may last during the pet's remaining lifetime, or if there is more than one pet, upon the death of the last surviving pet. The amount of cash to be allocated to fund a pet trust should be reasonable in order to provide enough funds to care for and maintain the pet's good health, but should not be in excess of that amount. According to subsection (c) of Section 7738, to the extent that the funding amount is in excess of the "intended use" of the trust, such excess amount is to be distributed to the settlor (if the trust was set up during the original owner's lifetime) or to the remainder beneficiaries of the trust under the Will or applicable trust document, unless otherwise provided in the document. In deciding on the appropriate amount with which to fund the trust, considerations such as the pet's food, grooming, veterinary care, against the backdrop of the age of the pet, should be taken into account. The law is still unclear as to whether Pennsylvania inheritance tax will be imposed on a pet trust (based on the funding amount), and there have been different rulings in Pennsylvania in different counties, but the Department of Revenue's position is that the tax would be imposed at 15%.

The adoption of so many pets has certainly been a silver lining of this pandemic. As they become a part of the family, it is advisable to develop a contingency plan in case these pets outlive their owners. We have found that for so many individuals, as a practical matter, the care for these pets after death works out, and a close family member or friend becomes the caretaker. However, in certain situations, it may be a good idea to incorporate this into one's estate plan, whether formally or not, to improve chances of resting easy at night, as we all have enough other things to worry about during these uncertain times.

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