

CARING FOR MY PET FOLLOWING MY DEATH OR INCAPACITY

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When a pet owner passes, it is not always clear what will happen to the owner's pet. This is especially true if there are no instructions left for the decedent's personal representative or trustee concerning the health, maintenance, shelter and feeding of the abandoned animal. However, careful planning prior to one's death can reduce this concern.

In almost all situations, a pet is considered one of the family. However, under common law, a pet is considered personal property of the owner such as furniture, automobiles or tools. Unlike furniture, the pet is a living thing requiring feeding, maintenance and shelter to protect it during its remaining life. The question becomes how can a pet be cared for and who is going to pay for its feeding and maintenance once its owner is deceased or incapacitated.

Because a pet is not a person, it has no means of collecting a devise from a Will and taking such a devise to a financial institution for investment purposes. As a result, the pet requires a person or entity to perform this function for it. The requirement for a person or entity to open a bank account for the pet means that the person or entity act as a trustee for the benefit of the pet. Remember that a trustee is a person or entity that holds legal title to property for the benefit of another and who may be charged with specific duties to manage that property. Thus, a trustee can be given the power and authority to protect an owner's pet following their death or incapacity.

This author often gets questions about whether a personal representative could act in the same manner as a trustee. Remember that a personal representative is a person or entity who manages the affairs of a decedent by marshalling their assets, paying debts and distributing the decedent's assets following death. A personal representative is generally not charged with the specific duty to manage the care and feeding of a pet for its remaining life. To manage the care and feeding of a decedent's pet for life, a trustee is the best solution.

What can you do to ensure that your pet is taken care of? In Florida, the only means of making certain that your pet will be cared for is to have a trust prepared in advance of your death. The trust would need to be specific to the animal through either Testamentary Trust or general trust instrument.

A Testamentary Trust is one that is created within a Will and comes into existence following the death of the Testator. Generally, the Trustee of a Testamentary Trust will receive a fixed amount of funds after a person's death to be used for the health, care, safety and feeding of an owner's pet; but, only after the Testator's death. The Trustee will take possession of funds and be directed to use such funds for the pet's shelter and care during its remaining life. Those duties can be split between a trustee of the funds and a caretaker who will provide the services necessary to care for the decedent's pet.

What happens if you become incapacitated during life? A Testamentary Trust may not be your best alternative in the event of incapacity. Should this happen, another means of making certain that your pet is cared for is to prepare a Trust instrument. A Trust can be used to make certain that your pet is cared for in the event you are unable to manage your pet due to incapacity caused by dementia, stroke or other life altering events. In such instances, your successor Trustee can take control of your pet and utilize the assets titled in the name of your Trust for the use and care of your pet.

The consequences of failing to institute a means to care for your pet during your life and following death may cause your pet to be delivered to others who may not care or love it in the same manner as you. Although this should not happen, it sometimes does causing the pet to eventually be abandoned or worse, mistreated.

If you are concerned about how your pet will be cared for following your death or incapacity, contact the attorney of your choice and discuss the options that are available to you. Remember that your pet cannot speak for itself and needs a voice to protect it in the event of your death or incapacity. By planning ahead, you can avoid later issues and moments of anxiety for you and your pet.

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