

Price & Farrington's Estate and Tax Planning FastFacts

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Estate, Tax, Business and Wealth Planning for Advisors and Clients

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Estate Planning for *the Purrfect Pet*: A Tail of a Special Claws in Your Will



Your descendants, close relatives, friends and care-givers aren't the only ones for whom you can leave something behind when your time comes. How about your furry, feathered and scaly companions? Even though the law generally treats pets as tangible personal property, many pet owners treat their pets as a part of the family. Thoughtful estate planning for pets has become increasingly popular.

For whom? An individual who might desire estate planning for a pet would include a person:

- ☑ who lives alone.
- ☑ who is advanced in age.
- ☑ who suffers from a chronic illness
- ☑ who has multiple pets and wants them to stay together
- ☑ whose spouse doesn't want to care for the pets
- ☑ whose pets have a longer life expectancy
- ☑ And so on...

Pets are living longer because of advances in veterinary science. I have it on good authority that poodles now often live 18 years and schnauzers 16 years. "Indoor" cats (and I ought to know—I have a few) live 18 years. A pet tarantula (huh?) has a life expectancy of 30 years, a ball python



Casper (4, 100 lbs.) and Madisen (1 1/2, 60 lbs.) Ocean Shores, 2006. Their parents have done estate planning for them.

(Are you crazy?) 40 years and a macaw parrot can live 80 (or more) years.

If you're like many pet owners, you want the best for your dog or cat. You give it premium food, good veterinary care and you sometimes even bring it with you on vacation. So what happens to your pet if you die or become incapacitated? Unless you've made specific provisions, your pet could be poorly cared for or wind up in a shelter and be euthanized. If you plan ahead, though, your pet can be well cared for.

Informal Planning. Many people favor informal arrangements rather than estate planning. A pet owner might talk to a person and have an implied understanding that this person will take care of the pet. The agreement has no legal force, and often no money is left for the animal's care. Some people appoint a guardian, which works for children but not for personal property. If no one steps up to take care of the pet, it will wind up in a shelter and isn't likely to be adopted or survive very long. Exotic pets with relatively long life spans may be attractive to the owner but not to possible caretakers.

DPOA. A durable power of attorney (DPOA) takes effect in the case of your disability. The DPOA would cover your pet as personal property. The owner should take care that the person he/she names as agent is willing to care for the pet when it gets right down to it.

Will. If a pet owner has a will, but it contains no specific bequest, the recipients of the tangible personal property will receive the pet whether they want it or not. In the absence of a will, the pet will pass to the surviving spouse, and if there is no surviving spouse, to the decedent's children and grandchildren. Potential problem: these individuals might not want the animal.



Glenn Price and Chuck Farrington.

In addition to arrangements with friends and family or a DPOA or a will there is, more recently, a formal option.

Trusts. Laws in more than thirty states, including Washington and Oregon, now allow owners to establish trusts for pets. These arrangements set aside money for one or more animals in the event of an owner's disability or death. The pertinent laws governing Washington pet trusts can be found at Revised Code of Washington (RCW) §11.118. A trust may not be created for just any pet; only "nonhuman animal[s] with vertebrae" are qualified beneficiaries. This means that while pet trusts can be created for mammals, birds, fish and reptiles, some aquarium-bound pets such as tarantulas, scorpions and hermit crabs are not qualified beneficiaries. (Darn! Your beloved Tommy the tarantula is on his own after you're gone. Don't worry; Harry the hedgehog and Betty the boa constrictor will do just fine.)

How much Moolah? Setting up a trust for your pet is, in many ways, similar to creating one for a child. Deciding how much cash to set aside is an important decision in establishing a pet

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trust. In addition to the client's net worth and overall goals, there are several specific factors to consider. Principally, you need to consider annual food costs, veterinary costs, boarding fees and the general life expectancy of the species.

The range of expenses between a hamster and a horse differ dramatically. Providing for a pooch or a cockatoo isn't cheap. It takes \$7,000 to \$8,000 to care for a dog through its lifetime, and that assumes the dog doesn't have any unusual allergies or illness. Macaws, African Grays and cockatoos, which can live to be 80 or older, require more money, while expenses for a horse can run as much as \$1,000 a month just for food, stabling and grooming. If you want to provide for extraordinary medical care should the need arise, there must be adequate funds for the trustee to carry out your directives. Any money left at the end of a pet's life can be distributed to heirs or donated to charity.

The players. Under a pet trust there are really three individuals looking out for the pet, and fiduciary duties are imposed on at least two of them. The *caretaker* has prime responsibility for the pet. The *trustee* has responsibility for the investment of funds and payment of expenses. In addition, there normally is a *remainder beneficiary* who will monitor the caretaker and the operation of the trust to see that everyone and everything is operating properly.

Like other trusts, pet trusts aren't foolproof; trustees can, and have been, negligent. Some of our clients want to pay a custodian a stipend, which requires extra funding appropriate for the animal's life expectancy. But precautions need to be taken to ensure that those fees aren't continued after the pet dies. Pet custodians have been known to fraudulently extend the term of a trust by obtaining look-alike animals after the original animal dies.

Example. A caretaker kept on submitting bills for payments relating to Fido, for which he was named caretaker. Fido didn't have a particularly long life expectancy and was already nine years old at the time of the owner's death. But for twenty years the bank trustee did see a dog and paid the expenses. It took time for the trustee to realize that he'd been hoodwinked; the original Fido had died years ago. There was legal recourse, and the money was returned to the trust and distributed to the remainder beneficiary. The moral? The pet trust should always be drafted to allow the trustee to bring an action against the caretaker if the trustee believes he or she is not acting appropriately. If the pet has no distinguishing characteristics, you should consider microchip implantation, a relatively inexpensive and common identification process.

It's also prudent to appoint different people as caretaker and remainder beneficiary of the trust. Otherwise, the likelihood of Tabby or Spot coming to an untimely, early demise is greatly increased. You may even wish to appoint a third party to monitor the operations of the trust and ensure your pet's well being and that your wishes are carried out under RCW 11.118.050.

Remember, too, that if you leave an arguably excessive amount of money to the pet trust, you might be encouraging disgruntled heirs to come out of the woodwork following your death to contest the will by challenging your mental capacity.

A note about taxes. The IRS has ruled that *no estate tax deduction* under I.R.C. §2055 will be allowed for



a valid pet trust, even if the trust instrument names a charity as the exclusive remainder beneficiary. The IRS's rationale is that the regulations under §664 of the Code allow only "persons" to receive payments from a charitable remainder trust.

Income taxes. Income tax issues with pet trusts are much the same as with other testamentary trusts. Because it's unusual for a pet trust to require the distribution of all income, these trusts are usually classified as "complex" trusts. As such, the trustee of a pet trust must file a form 1041 income tax return for years where the trust income exceeds \$100. Since animals aren't required to pay income tax, no distributable net income (DNI) deduction is allowed for distributions for the benefit of the pet. The trust must pay all required income tax. ■

In this FastFacts, we've covered only a few of the topics associated with planning for your pets. If you or your clients have comments or questions, don't hesitate to contact our office. As always, we wish you good planning! GJP



Think about it, Doggone it!

I love a dog. He does nothing for political reasons. *Will Rogers*
If you pick up a starving dog and make him prosper, he won't bite you. That is the principal difference between a man and a dog.

Mark Twain

Does the name Pavlov ring a bell?
Anonymous
When a man's best friend is a dog, the dog has a problem.

Edward Abbey

The reason a dog has so many friends is that he wags his tail instead of his tongue. *Anonymous*