

## Buskey Law Offices

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### Estate Planning for Pets

We engage in estate planning because we want to protect the ones we love. Most people consider their pet part of the family, but then overlook their care in the event of disability or death. What if you were injured and unable to care for your pet, or worse, unable to even make arrangements for such care? What would happen to your pet if you died? These questions are often overlooked when engaging in estate planning.

Despite our love for our pets, under the law they are considered property. In the event of your disability, the person appointed to handle your finances – whether it is someone you named in a Power of Attorney or someone the court named as the guardian of your estate – would be in charge of your pet along with your other property. Also consider what happens during the time it takes for a guardian to be appointed, or whether the person named in your Power of Attorney will know what to do.

If you have no plan in place for your property after your death, then it – along with your pet – will pass to your next of kin under the Massachusetts intestacy statute (M.G.L. c. 190B, §2-101 et seq.). Even if this is acceptable, it takes time to probate an estate and distribute assets to heirs. What happens during the interim?

If you have a Will without specific mention of your pet, after your death your pet passes with the rest of your tangible personal property. This means that the person

who inherits your furniture will likely inherit your pet as well. And again, it takes time to probate and distribute assets.

Although there is a delay for probate, it is still a good idea to state your wishes in your Will. At least you are able to name the caregiver of your choice (and a back-up caregiver), and hopefully things will “work out” in the interim.

Be sure to discuss your pet’s care in advance with the caregiver. Do not assume that a friend who loves your pet will be willing and able to provide the necessary care. Some things to consider include the type of home they live in, other pets, family allergies, job, lifestyle, and of course, the cost.

Even the caregiver with the best intentions could be unable to properly care for your pet if he or she cannot afford it. Should you leave money to the caregiver to offset the costs of caring for your pet, and if so, how much? Consideration should be given to the age and longevity of your pet, health and medical needs, and general upkeep needs such as professional grooming and doggie daycare. Also consider if the caregiver should be compensated for caring for your pet.

What if you do not want to leave money to the caregiver? What if you are concerned about compliance with your wishes? What about the delay caused by these methods of planning?

A “pet trust” is a trust designed to manage the costs of caring for your pet in the event of your disability or death. A pet trust can also include needed instructions and your wishes for your pet’s care and standard of living. It can also include your final wishes for your pet after death.

Until recently, Massachusetts did not allow trusts for the benefit of pets. Historically, trusts had to have a human or charitable beneficiary, so a trust for the care of animals was not valid. Massachusetts now has a law that specifically authorizes the use of trusts for the care of animals (M.G.L. c. 203E, §408). There are some conditions that need to be met, such as the animal has to be alive during your lifetime; you cannot provide for generations of animals that may be born after your death. It is unclear in the law if animals in gestation qualify, but the presumption is that they do.

Also, a court can reduce the amount of money funding a pet trust if the court *“determines that the amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health or appearance of the covered animal.”* (M.G.L. c. 203E, §408(c)). In that case, the amount determined to be “excess” would pass as you have directed in the trust. Recall Leona Helmsley’s bequest of \$12 million for the care of her dog, Trouble. This was reduced to \$2 million because a New York court determined it to be in excess of what was needed. The excess was distributed to the next beneficiaries.

Also of concern is who will watch over the trustee to ensure compliance with the terms of the trust. To deal with this, you may name a person to enforce the terms of the trust, which may or may not be the caregiver. You can also name someone to watch over the caregiver to ensure your pet is receiving the requisite care.

A pet trust cannot continue indefinitely; it can only last for the lifetime of a pet that was living while you were alive. Therefore, the trust should also have one or more human or charitable beneficiaries to receive the assets remaining after your pet’s

death and payment for any final arrangements you have directed in the trust (or to receive the excess if the court reduces the amount for your pet's care).

We strive to provide the best care for our pets, so it only makes sense to continue to provide for them after we are unable to do so ourselves. Doing so entails not only planning for their care, but the costs for their care. For more information about estate planning, go to <http://BuskeyLaw.com>.

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*Pet Gazette contributor Lynn Buskey is an estate and asset protection planning attorney in Boston. Lynn has a pet trust for the care of her dogs, Minnie and Buddy, just in case.*