

# Why Pets Belong In Your Estate Plan

Pet owners generally view their pet as a faithful companion and a member of the family. But have you considered what will happen if your pet outlives you? Without proper planning, your pet may face an uncertain fate.

## Make provisions in your estate plan

In the event that your pet outlives you, it's important to consider who might take over responsibility for their care. At best, a friend or family member may be willing to adopt or care for your pet. If not, your pet may be sent to a shelter, abandoned, or even euthanized. Humane Canada (also known as the Canadian Federation of Humane Societies) estimates that in 2017, approximately 42,700 pets were surrendered by their guardians.<sup>1</sup> Presumably, this includes pets whose owners died or had become incapacitated.

Just as you would arrange for the care of your children, there are several things to consider with respect to the fate of your pet:

- **Legally, pets are classified as property.** Although there appears to be a movement in Canada to treat animals differently to other types of property,<sup>2</sup> for legal purposes, animals are currently considered property. Therefore, unless you plan otherwise, upon your death, your pet may become the property of whoever receives your car, furniture, jewelry and other personal items. More importantly, this person may not want the responsibility of caring for an animal.
- **Informal arrangements can fall short.** A friend or family member may say that they'll take your pet upon your passing, but these types of arrangements can fail for a number of reasons, including, but not limited to: allergies; conflicts with other pets; incompatibility with children; relocation; or a lack of adequate finances.
- **Disagreements can get in the way.** After your passing, friends and family members may disagree about who should adopt your pet, and as these disputes are worked out, your former companion may not get the care and attention it deserves.

## How to prepare for the possibility your pet may outlive you

The only way to ensure that your pet is given to someone who is both willing and able to care for it, is to make specific provisions in your estate plan. The following three steps can help you get started.

### 1. Select one or more caregivers

It's important to consider who will be willing and able to take care of your pet in your absence — both for short-term emergency situations and as a permanent caregiver.

Stress and confusion are common in the event of an unexpected illness, accident or death. In these times, a pet can be inadvertently overlooked, perhaps for days. A temporary emergency care plan for your pet will help ensure it gets daily care and attention, and includes the following basic precautions:

- Name one or more responsible family members or friends as temporary emergency caregivers. Make sure they have access to your home, and provide them with care and feeding instructions, the name of your veterinarian, and the details of permanent placement provisions you have made.
- Make sure a close family member, friend or neighbour knows what pets you have, and has the contact information for your emergency caregivers.
- Carry a wallet "alert card" that lists the names and phone numbers for your emergency pet caregivers.

Next, select a committed permanent caregiver for your pet, as well as an alternate caregiver in case your first choice is unable to act for some reason. Here are some considerations:

- The caregiver you select will have full discretion over your pet's care, including veterinarian treatment and end-of-life decisions. Choose someone who will be able to provide a stable home for your pet and who you trust will always do what is in your pet's best interest. Also, consider whether your pet will be able to comfortably co-exist with family members or other pets the caregiver may already have.
- Have a candid conversation with your intended caregiver in advance to be sure he or she is willing to take on the responsibility of caring for your pet.
- Discuss any special care your pet may need so the caregiver fully understands the commitments involved.
- Make suitable financial arrangements for the care of your pet, which may make the caregiver more comfortable about taking on this responsibility.
- If you have multiple pets who were raised together or have otherwise bonded, consider if you want them to stay together. This may be an important factor in the choice of a caregiver.
- If you adopted a pet from an organization, be sure to check your adoption agreement for clauses requiring your pet to be returned to their care.<sup>3</sup>

If you do not have a person who is willing and able to take on the role of caregiver, consider naming a sanctuary, rescue organization or no-kill shelter in your estate plan. Some organizations, such as the Ottawa and Winnipeg Humane Societies, offer a pet stewardship program. These facilities can often find a trustworthy caregiver, although some may impose a fee that you'll need to factor into your estate planning (see step 3).

## 2. Document your intentions

After you've selected a caregiver, formally document your intentions in your estate plan.

The simplest and most straightforward approach is to simply make an outright gift of your pet to your designated caregiver.

You can also include a gift of money to the caregiver with instructions that the funds are to be used for the care of your pet. With this type of informal arrangement, you are trusting that the designated caregiver will remain healthy and capable of caring for your pet for the remainder of its lifetime, and that the caregiver will be financially responsible in using the gifted funds for the benefit of your pet.

A more formal and readily available option is to establish a pet trust under your estate plan. These trusts provide for additional protection, safeguards, and oversight by creating a legally binding arrangement for the ongoing care of your pet.

With a pet trust, you name a caregiver for your pet and a trustee (as well as alternates). The trustee has a fiduciary responsibility to manage and distribute the funds held for the benefit of your pet. The trustee and caregiver can be the same person, but naming different people for each role makes each accountable to the other, which can further protect your pet. The trustee can:

- Help ensure that the caregiver follows the instructions you left, including end-of-life decisions;
- Regularly inspect and confirm your pet's health and living conditions; and
- Follow instructions for the distribution of any funds remaining after your pet's death, which could go to one or more animal charities, other charitable organizations or family members.

In Canadian common law provinces (all provinces except Quebec), pet trusts are considered "non-charitable purpose trusts." Non-charitable purpose trusts are generally not legally valid, but there are limited exceptions, including the purpose of caring for specified animals. In Quebec, it may be possible to establish a trust to benefit a specific pet as a "private trust." It is important to note that, depending on the province, the trust may be restricted to existence for a period of 21 years. Under Canadian tax law, a trust is a separate taxpayer which must file its own income tax returns.

## 3. Arrange funding for the costs of care

Include financial arrangements for the care of your pet so that your caregiver does not have to personally shoulder that burden.

The costs of caring for a pet span a wide range, and vary with the pet's age and breed, as well as its lifestyle and your personal preferences. Funding considerations include:

- Costs for transporting the pet to the caregiver;
- Estimated annual care expenses (food, grooming, training, veterinarian bills, medications, boarding costs, etc.);
- Special health needs requiring expensive medical treatments; and
- Compensation to be paid to the caregiver, if any.

Keep in mind that if you leave an unusually large amount of money for the benefit of a pet, legal disputes could erupt between other beneficiaries. A court may ultimately reduce the amount to what it considers reasonable for the pet's care.

As difficult as it can be to think of leaving a beloved pet behind, taking steps to include your pet in your estate planning can provide you with peace of mind that your pet's future will be secure.



To make sure that your estate plan is current and includes planning for your pets, please speak with your BMO financial professional today.

#### Footnotes

<sup>1</sup>See Page 13, "2017 Animal Shelter Statistics" published by Humane Canada on November 15, 2018.

<sup>2</sup>For example, see the Animal Welfare and Safety Act of Quebec which indicates that "animals are sentient beings that have biological needs"; and a recent case of the Newfoundland Court of Appeal where Hoegg, J.A. stated in dissent that "Ownership of a dog is more complicated to decide than, say, a car, or a piece of furniture."

<sup>3</sup>"Estate Planning with Dogs and Cats." Best Friends Animal Society. <https://bestfriends.org/resources/general-pet-care/estate-planning-dogs-and-cats>.



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