

## Pets Are ‘Family’ For Estate Planning

By Carole B. Sheffield

**M**edia coverage of the catastrophic effects of Hurricane Harvey and Hurricane Irma included uplifting portrayals of pet owners saving their pets — and loyal pets rescuing their owners. Americans’ display of compassion and courage for their pets was further enhanced when nationwide donations poured into pet charities from individuals and corporations, funneled to animal organizations located in the impacted areas to save hundreds of involuntarily abandoned pets. Love and devotion for pets is clearly the norm in the U.S. So much so, that in 2006, the year after Hurricane Katrina, the federal Pets Evacuation and Transportation Standards (PETS) Act was passed to require states applying for federal disaster relief to incorporate strategies into their evacuation plans to also accommodate pets and service animals.

Legally speaking, pets are categorized as property and are “owned.” But for the majority of pet owners their pets are far more valuable than the inanimate objects found in their homes. In fact, many owners love their pets to the extent of personifying them as family members. In some cases, the unconditionally-loving pet may become the pet owner’s *only* family member.

Approximately 68% of U.S. households own pets, and Americans spend billions on their pets’ comfort, health and entertainment. Yet many of these pet-pampering owners may not know that when a pet owner’s unexpected incapacity occurs or the pet parent dies, there are legal pet protection options available to safeguard their cherished pets from devastating consequences, such as untimely deaths in animal shelters.

### Legally Enforceable Pet Planning Options

As of 2017, all 50 states and the District of Columbia have enacted enforceable pet planning laws permitting pet owners to establish legally enforceable instruments for their continued pet’s care if the owner is incapacitated or dies.

Importantly, as with estate planning statutes for people, each state’s pet care statute is unique and should be reviewed carefully. Pet parents also want to consider a pet’s current circumstances and projected needs in light of the state’s pet care laws. The pet parent is then advised to become familiar with available pet planning options to reach overall estate planning goals.

While carrying wallet “pet cards” with emergency contact information and sharing pet wishes with family and friends are advised, only legally enforceable pet planning provisions found in estate planning instruments provide real assurances for a pet’s future. Familiar documents include:

**Durable Power of Attorney (“DPOA”):** A written instrument executed by an individual (the “principal”/pet parent) having the capacity to enter into a contractual arrangement with another person or entity (the “agent”) who is given the authority to handle the principal’s personal affairs while healthy and after incapacity — physical or mental. Pet protection provisions in a DPOA can authorize the agent to serve as the pet caregiver, or if appropriate, the principal may appoint an independent pet caregiver under the supervision of the agent. Note that DPOAs are only effective during the principal’s lifetime and terminate upon the principal’s death.

**Trust (“Pet Trust”):** A written agreement between an individual (the “grantor”/pet parent) and another person or entity (the “trustee”). Like the DPOA, the grantor may also appoint an independent pet caregiver who follows the pet parent’s instructions under the oversight of the trustee. Pet Trusts may be established during the pet parent’s lifetime or after death, in instruments such as testamentary trusts in wills. For flexibility, the living revocable trust integrates pet protective provisions for lifetime incapacity with post-death instructions and allows pet owners to change pet





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care instructions as lifetime events occur, such as the death of a pet and/or the adoption/births of others. Note that a pet parent will still want a DPOA for less serious occurrences than incapacity. Unlike wills, Pet Trusts are not subject to probate; however, like wills, trust assets are subject to taxes.

**Will:** A written instrument valid upon the pet owner's death to distribute some of the pet parent's property outright to a person or organization who will care for the pet. Often, lump sum distributions are made to the designated pet caregiver, similar to appointing guardians in wills for minor children. Also, due to the probate process, there may be a time lag between the pet parent's death and the distribution of funds to the pet caregiver. While living, the pet parent can open a small joint bank account with the appointed pet caregiver.

### Pet Owner Considerations to Incorporate Into Pet Protection Documents

Prior to the preparation of legally enforceable pet protection instruments, the following should be considered:

- **Pet Identity:** To prevent fraud, identify pets and their offspring
- **Pet Caregivers, Trustees and Agents:** To ensure uninterrupted pet care, select suitable, willing initial and successor pet caregivers, trustees and agents (who need not be the same individuals or organizations).
- **Trustee and Agent Visitations:** To encourage pet caregiver accountability, provisions may be included for the trustee of a Pet Trust and the agent of a DPOA to schedule regular inspections of the pet caregiver's home.
- **Veterinarian:** To preserve the pet's health, name the pet's current veterinarian, with instructions for annual reports sent to the trustee.
- **Pet's Standard of Care:** Describe in general terms: toys, grooming, food and exercise.
- **Pet Caregiver Benefits:** Besides compensation, if any, consider time off and bonuses.
- **Remainder Beneficiary:** To receive any excess funds from a Pet Trust after the pet's death, designate one or more beneficiaries, or perhaps an animal charity.
- **Funding:** Determine affordable and reasonable estimated funding amounts and funding distribution strategies to communicate to the trustee, agent and pet caregiver for acknowledgment and feedback — prior to executing pet planning instruments.
- **Tax Consequences:** Although beyond the scope of this article, estate, inheritance and income taxes are another financial consideration for the pet parent and should be carefully considered.

### Conclusion

Where current estate planning documents are in effect without pet protection provisions, amended instruments may be all that is needed. If there has been no estate planning or it is time to update instruments, pet planning presents an excellent reason to visit or revisit the estate planning process. ▲

