

# INCLUDING THE FAMILY PET IN YOUR ESTATE PLAN

*If You Consider Your Family Pet to be a “Loved One”  
It Only Makes Sense to Include Your Pet in Your  
Estate Plan Right Along with Your Family Members  
and Other Human Loved Ones*



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For most people the primary goals of an estate plan are to provide the framework for the division of estate assets upon death and to provide for family members and loved ones upon death. If you have a pet (or two) that you treat as part of the family, has it occurred to you that your pet should be included in your estate plan? Legally, your pet is considered your property, meaning your pet should be included in the division of your estate assets. For most people estate planning is about providing for the continued care of loved ones. If you consider your family pet to be a “loved one,” it only makes sense to include your pet in your estate plan right along with your family members and other human loved ones. Including your dog, cat, or other pet in your plan is relatively easy. Failing to do so, however, can have dire consequences for your pet.

## **PET OWNERSHIP IN THE UNITED STATES**

Americans are rather unique in their relationships with animals. In most other cultures animals are either revered or despised. In the United States,



however, we often treat animals as our equals – as part of the family. If you own a pet, you are hardly alone. Collectively, Americans own about 180 million cats and dogs. At least one dog or one cat is found in almost half of all American households. Dogs and cats, however, are not the only types of pets found in American homes. We also like exotic pets as well. Americans own 16 million birds and 11 million reptiles. In addition, another 18 million small pets, such as hamsters, rabbits, and guinea pigs also live in American homes along with 140 million freshwater fish and 10 million salt water fish. Americans clearly consider animals to be part of the family.

## **WHAT HAPPENS TO YOUR PET WHEN YOU DIE OR BECOME INCAPACITATED?**



If you own a cat, dog, or other pet, you likely spend a considerable amount of money on your pet every year. More importantly, you probably devote time and attention to your pet in an effort to make your

pet feel loved. Losing your beloved pet would be tragic. What happens though, if your pet loses you? Your death or incapacity could effectively take you away from your pet, leaving your pet's future unclear unless you have planned ahead and include pet planning in your overall estate plan.

Sadly, over 500,000 animals each year end up homeless or in a shelter because of the death or incapacity of their human owner. This happens because of both legal and practical reasons. While you may argue that it is



the other way around, the law says that you own your pet. Therefore, absent provisions to the contrary, your pet becomes part of your estate if you die. If your estate goes through probate it could be months, even years, before the fate of your pet is decided. In the

meantime your pet has no legal owner.

In reality, the legal status of a pet may not even become an issue anyway if the pet is overlooked in the days after your death. Your pet could be left to fend for himself, forgotten by everyone, with tragic results.

If you become incapacitated and unable to care for your pet the situation is no better. Legally, your pet is still your property, meaning that no one else has the legal authority to step in and take control of your pet. You, however, cannot care for your pet any longer. Your beloved pet could end up neglected, or worse, because there is no one to step in and help.

## ESTATE PLANNING OPTIONS – HOW YOU CAN PREVENT TRAGEDY

Now that you know why it is important to include your pet in your overall estate plan let's review the options available for doing so. There are three basic methods that can be used to provide for the care and maintenance of your pet should something happen to you.

- **Informal Agreement/Letter of Instruction**– people frequently rely on nothing more than a verbal agreement with a family member or friend to take care of their pet should something happen to them. This is simply not enough. First, because an animal is considered to be your property, the law might not consider a verbal agreement to be sufficient to transfer ownership after your death. The same applies should you become incapacitated. Including your wishes in a “Letter of Instruction” will provide a court with guidance; however, if you die intestate ( no Will), the court's hands are tied. All of your “assets”, including your pet, will be divided according to the Texas intestate succession laws. Moreover, there is no way to be certain that the intended caregiver will be willing and able to care for your pet when the time comes. Finally, an informal agreement does not provide a method for you to provide funds for the continued care and maintenance of your pet.
- **Last Will & Testament** – because the law considers your pet to be your property you can “gift” your pet to someone in your Will. This option has the advantage of actually transferring legal ownership of the pet to the intended caregiver. You also have the option to gift assets to the intended caregiver to be used to care for your pet. This

option is certainly preferable to an informal agreement; however, it has significant drawbacks. Your Will only becomes relevant when you die, meaning that the provisions of your Will do not help if you become incapacitated. In addition, your Will could take months to probate, leaving the status of your pet in limbo in the meantime. Finally, there is no guarantee that the assets you gift to the intended caregiver will actually be used as you intended them to be used.

- **Pet Trust**—creating a pet trust is by far the best option for several reasons. First, a pet trust can cover both your death and your incapacity and will do so immediately, ensuring that your pet’s legal status is not left undecided for any length of time. Second, a trust

allows you to appoint a neutral trustee to oversee the trust funds and disbursements, ensuring that the funds are actually used as you intended. Finally, the trust terms you create



allow you to dictate how your pet will be cared for, ensuring that your pet will continue to receive the same level of care you gave him/her, even after you are no longer able to provide that care yourself.

If you consider a pet to be part of your family, talk to your estate planning attorney about incorporating a pet trust into your comprehensive estate plan. Don’t let your pet become another statistic.

Humane Society of the United States, [Pets by the Numbers](#)

ASPCA, [Pet Care](#)

American Bar Association, [Estate Planning Issues Involving Pets](#)

AVMA, [Pet Trusts: Caring for a Pet That Outlives Its Owner](#)

## About the Author



Stephen A Mendel

Stephen A. Mendel is a member of the American Academy of Estate Planning Attorneys, a national organization that serves the needs of legal professionals whose practices focus on estate planning and asset protection. The Academy fosters excellence among its members and helps them deliver the highest possible service to their clients. Stephen A. Mendel provides a broad spectrum of strategies and planning tools that can accomplish very diverse goals.

Mr. Mendel is an attorney who focuses a substantial part of his practice on estate planning. Mr. Mendel's guiding principle is to provide his clients with quality legal services tailored to each client's specific needs and goals.

Mr. Mendel has been providing quality estate planning for Houston and surrounding area clients for many years. His firm helps numerous people who are concerned about protecting their families from the devastating legal effects of disability and death. The aim of the firm is to help you accomplish your estate planning goals and to take the mystery out of the planning process.

Specific services include, but are not necessarily limited to, design and preparation of wills & trusts, asset protection, use of family limited partnerships as part of the planning process, buy-sell agreements, business counseling, and succession of closely held, family owned businesses.

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