

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two thick black horizontal bars. The top bar has a slight upward curve at its ends.

NEW YORK
CITY BAR

Providing For Your Pets
In The Event of
Your Death
or Hospitalization

COMMITTEE ON ANIMAL LAW

MAY 2016

Table of Contents

Introduction	3
Designating Caretakers	4
Providing Funds for Pet Care	4
Designating a Shelter or Charitable Organization to Care for Pets	5
Making A Conditional Bequest	5
Establishing a Pet Trust	5
Providing for Euthanasia If Caretakers Cannot Be Found	6
Providing Funds for Pet Care During Transitional Period	7
<i>Arranging For Friends/Relatives To Provide Short-Term Care</i>	7
<i>Arranging for a Shelter or Charitable Organization to Provide Short-Term Care</i>	7
<i>Emergency Instructions</i>	8
<i>Providing Copies of Instructions to An Executor</i>	8
Conclusion	8
Sample Will Provisions	9
<i>Sample Will Provision I</i>	9
<i>Sample Will Provision II</i>	9
<i>Sample Will Provision III</i>	9
<i>Sample Will Provision IV</i>	10
<i>Sample Will Provision V</i>	10
Sample Testamentary Trust for the Care of Dogs and Cats	11
Sample Testamentary Trust for the Care of Horses and Farm Animals	12
Sample Note to Carry in Wallet Regarding Emergency Care of Pets	13

Providing For Your Pets

In The Event of Your Death or Hospitalization

Introduction

For many people, particularly the elderly, a pet is an important and comforting part of life, and the care and wellbeing of the pet is a primary concern. This is particularly so in the event of a pet owner's death or hospitalization. Below is a summary of measures that should be taken to plan for the care of a pet in the event of a pet owner's death or hospitalization.¹

Upon Death:

1. Include provisions in a Will to provide effectively for the comfort and care of the pet upon the death of the pet owner.
2. Make advance arrangements to protect the pet during the period of time between the owner's death and the admission of the Will to probate.

Too often this period is not considered. Although a Will can provide for the care of the pet, no action can be taken by the Executor to carry out these provisions until the Will has been admitted to probate and the Executor has received the authority to proceed by the issuance of letters testamentary. The time between death and the authority of the Executor to act can vary between several weeks and several months. Plans must be made to ensure care for the pet during this interim period.

Upon Hospitalization:

1. Make advance arrangements to ensure the care of the pet while the owner is hospitalized or incapacitated.

¹ This brochure and the accompanying sample Will and Trust provisions are not offered as legal advice and should not be relied upon without the independent advice of a qualified attorney concentrating in trust and estate matters.

Designating Caretakers

A pet owner should designate a friend or relative willing to take his or her animal and give the animal a good home upon the death of the pet owner (the "Caretaker"). The matter should be discussed in advance with the potential Caretaker to ensure that the animal will be cared for appropriately. A Caretaker who will receive an animal as the result of a bequest in a Will should understand *in advance* that he or she will become the animal's owner and, as such, will have all the rights and responsibilities of ownership.

The pet owner should then ask a qualified attorney to draft a Will leaving the animal to the particular Caretaker the pet owner has selected. It is best to name alternate Caretakers in the Will as well, in case the first-named person is unable or unwilling to take the animal when the time comes. An example of such a Will provision appears in Sample Will Provision I.

Another alternative is to give the Executor the discretion to select from among several caretakers prearranged and named by the pet owner in his or her Will. These potential Caretakers should be notified in advance that they may be selected. The Executor should also be equipped to best determine who of these choices is best suited to become the Caretaker. An example of this type of Will provision appears in Sample Will Provision II.

Providing Funds for Pet Care

Under the laws of all 50 states, a pet owner cannot leave any part of his or her estate outright to an animal. However, the owner may leave a sum of money to the person designated to care for the pet, along with a request (not a direction) that the money be used for the pet's care. It is important for the pet owner to select a Caretaker he or she trusts and who will be devoted to the pet, because the Caretaker has no legal obligation under such a provision to use the money for the purpose specified.

The owner should leave only a reasonable amount of money for the care of any pet. A large sum of money may prompt relatives to challenge the Will and the court may invalidate the bequest for pet care. The attorney may want to include an *in terrorem* clause in the pet owner's Will to reduce the chance of a challenge to the Will. This clause provides that if a person unsuccessfully challenges a provision in the Will, he or she cannot then receive property under any provision of the Will.

Designating a Shelter or Charitable Organization to Care for Pets

If no friend or relative can be found to take the pet, the pet owner should look for a charitable organization whose function is to care for or place companion animals in suitable homes. A humane society or shelter might accept the animal more willingly if such a request is accompanied by a cash bequest to cover expenses. An example of this type of Will provision appears in Sample Will Provision III.

The charity should agree to take care of the animal for his or her life or find an adoptive home for the animal. Before selecting a shelter, find out what kind of care animals receive at the shelter (for example, an animal should not have to stay for more than a short period in a cage), as well as the reputation of the shelter. If the organization is directed to find an adoptive home for the companion animal in its care, the pet owner should obtain detailed information about the adoption procedure.

Making A Conditional Bequest

New York and some other states allow the pet owners to make a "conditional bequest" in which both the animal and a sum of money are left to a beneficiary who must use the money for the care of the animal.

A conditional bequest has the advantage of *requiring* the recipient to care for the pet, but it also adds to the Executor's responsibility the task of ensuring that the person receiving the money fulfills his or her commitment. The pet owner, therefore, must select an Executor willing to undertake this added responsibility and provide this additional oversight. If a pet owner desires to make a conditional bequest, the attorney drafting the Will must consider the relevant law concerning such provisions since they can be invalidated by the courts and are, therefore, not recommended.

Establishing a Pet Trust

Under the law of most states, including New York, an animal can be the beneficiary of a trust created to care for the animal. New York's pet trust statute was enacted in 1996 and amended in 2010.² The statute enables persons to create trusts for their animals, and these trusts can be enforced by the courts. The trust can be (i) a testamentary trust created under a Will that takes effect upon the death of the pet owner, or (ii) an *inter vivos* trust created and effective while the pet owner is alive. (See Sample Testamentary Trust for the Care of Dogs and Cats and Sample Testamentary Trust for the Care of Horses and Farm Animals).

A trustee is named in the trust instrument to manage the trust and to use the funds in the trust to care for the animals. If the trustee cannot take physical

² NEW YORK ESTATES POWERS AND TRUSTS LAW (NY EPTL) § 7-8.1

possession of the animals, a different person can be named as the Caretaker. Alternate trustees and Caretakers should always be named in case the first-named person is not available to act when the pet owner dies.

Under the amended New York pet trust statute, a pet trust shall continue until no living animal is covered by the trust. This is a favorable change from previous law that subjected pet trusts to a 21-year limitation. The amended New York pet trust statute, which now follows the pet trust statutes of most states, helps ensure pet owners of parrots, horses, and other long-lived animals that all of their animal beneficiaries will be covered for the duration of their lives.

Providing for Euthanasia If Caretakers Cannot Be Found

Courts have invalidated provisions in a Will directing that an animal be euthanized upon the death of its owner. While a pet owner may feel it is important to protect a pet from subsequent mistreatment or a "bad home," it is questionable whether a healthy pet's life must end by euthanasia when his or her owner dies. Nevertheless, if a pet owner wishes to provide for euthanasia, it is preferable to specify in a Will that the pet be cared for by the Executor or a friend for a period of time and ask that this person attempt to find a good home for the pet. If no home is found after a specified reasonable period of time, the animal then may be taken for euthanasia. A court may be less likely to overturn such a provision. An example of this type of Will provision appears in Sample Will Provision IV.

As an alternative, the pet owner may write a letter to a friend or relative stating that upon the death of the pet owner, the animal should be euthanized. *A signed copy should be given in advance to the friend or relative and another signed copy should be held with the Will but not made part of the Will.* The letter is not legally binding, and the friend or relative is not obligated to carry out the instructions of the pet owner. It can, however, be a good indicator of the pet owner's wishes. Euthanasia performed pursuant to a letter from the pet owner is also subject to court challenge.

It is preferable that those relatives, other persons, or charities receiving the balance of the estate as the residuary beneficiaries give permission before any animals are euthanized, as the residuary beneficiaries could complain that the animal is part of the estate property and should pass to them. This is a rare scenario, but it has happened.

It should be noted that if you bequeath your animal to a friend or relative, that person becomes the owner and has all the rights and obligations of the pet's care, including the right to euthanize the animal.

Providing Funds for Pet Care During Transitional Period

Finally, a provision which should be included in all Wills where an animal is involved is one allowing the Executor to use estate funds to care for the animal for the period before the animal goes to the new home designated by the pet owner. The Will should state that the costs of food, veterinary care, transportation and other expenses incurred by the Executor in caring for the decedent's pet are to be paid from the estate as an estate administration expense, whether or not the expenses are deductible for estate tax purposes. An example of this type of Will provision appears in Sample Will Provision V.

Short-term arrangements for care of a pet are necessary to cover the period between the death of the pet owner and the issuance of letters testamentary or letters of administration. These letters give the Executor or Administrator authority to act but, depending on the jurisdiction, it may take from two weeks to two months to obtain them. Short-term arrangements are also necessary if the owner is hospitalized for a period of time.

Arranging For Friends/Relatives To Provide Short-Term Care

A pet owner should try to find a friend or relative who is willing to take care of his or her pet during these periods. The owner should leave word, preferably in writing, at home and with a neighbor, or with the building management and/or superintendent, for the friend or relative to be notified. The pet owner should arrange for access to his or her home to permit the care and feeding of the pet during such short-term periods. If an apartment is involved, the owner should consider leaving a key with the superintendent or a neighbor. If there is a relative or friend in the area, the owner should consider providing that individual with a key and with written permission to the building management to enter the apartment in the event of the death or hospitalization of the pet owner.

Arranging for a Shelter or Charitable Organization to Provide Short-Term Care

There may be an animal shelter or charitable organization with which arrangements can be made to care for a pet in the event of the death or hospitalization of the pet owner. Should the owner make such arrangements, shelter personnel would need written instructions addressed to the superintendent or building management and the key to permit them access. Similarly, the pet owner should leave written instructions in his or her home and with a relative or friend to notify the shelter (if a shelter is chosen) or the individual who has agreed to take care of the pet during this period.

Emergency Instructions

Once the pet owner has decided upon such arrangements for the short-term care and feeding of the pet in the event of the pet owner's hospitalization or death, the owner should carry a copy of the instructions as part of his or her identification papers in the event of sudden hospitalization or death due to an accident or illness. An example of the type of instructions to carry appears at the end of this document under Sample Note to Carry in Wallet Regarding Emergency Care of Pets.

Providing Copies of Instructions to An Executor

Finally, in the event of death, and to cover the interim period while letters testamentary are being obtained, the Executor named in your Will should also be given copies of all applicable instructions.

Conclusion

In conclusion, the best way to assure proper care for a pet under the circumstances described is to make both testamentary and short-term arrangements for the pet now and to have a Will drafted by a qualified attorney. Making such arrangements may entail a significant amount of effort on the part of the pet owner, but is important to ensure the pet is cared for in the event of the owner's hospitalization, incapacity, or death.

Sample Will Provisions

Sample Will Provision I

I give my [cat, Ginger], and any other animals, which I may own at the time of my death, to [Mary Smith], presently residing at [address], with the request that she treat them as companion animals. If she is unable or unwilling to accept my animals, I give such animals to [John Doe], presently residing at [address] with the request that he treat them as companion animals. If he is unable or unwilling to accept my animals, my Executor shall select an appropriate person to accept the animals and treat them as companion animals, and I give my animals to such person.

I direct my Executor to give [\$_] from my estate to the person who accepts my animals, and I request (but do not direct) that these funds be used for the care of my animals.

Sample Will Provision II

My Executor shall give [my dogs] to one or more of the following persons who agree to care for such [dogs] and to treat them as companion animals:

[Mary Smith], presently residing at [address]. [John Doe], presently residing at [address]. [James Smith], presently residing at [address].

My Executor shall have the discretion to select one or more of the persons named above to receive one or more of the [dogs]. If none of such persons are willing or able to take the [dogs], my Executor shall have the discretion to give the [dogs] to another person or persons who agree to care for such [dogs] and to treat them as companion animals.

My Executor shall give [\$_] to each person selected by my Executor and who accepts one or more of my [dogs].

Sample Will Provision III

I give all of my [dogs, cats, and other animals] to the [name of a shelter or rescue organization – for example, a humane shelter, the rescue organization from which the animals were adopted, a breed specific rescue organization, or any other animal shelter or rescue organization that holds itself out for this purpose (NOTE: For each, the testator should familiarize him or herself with the shelter or organization in order to ensure the ability of the shelter or organization to care for his or her animals in a manner that the testator find acceptable)], presently located at [address], with the following requests:

that the [name of the shelter or rescue organization identified above] take possession of and care for all my animals and search for good homes for them;

that until homes are found for my animals, the animals be placed in foster homes rather than in cages at the shelter;

that if it is necessary to keep some of the animals in cages while making arrangements to find permanent homes, in no event should any animal stay more than a total of 2 weeks in a cage;

that each animal should receive appropriate veterinary care, as needed;

that after attempts have been made for 3 months to place an animal, my [son], presently residing at [address], be contacted if it is not possible to place an animal so that he can assist with finding a home for the animal;

that the shelter make every effort to assure that none of my animals are ever used for medical research or product testing or experimentation under any circumstances or subjected to cosmetic or discretionary procedures that are not medically necessary;

that, after placement, shelter personnel make follow-up visits to assure that my animals are receiving proper care in their new homes.

If the [name of the shelter or rescue organization identified above] is in existence at the time of my death and is able to accept my animals, I give [\$_] to the [name of the shelter or rescue organization identified above]. If the [name of the shelter or rescue organization identified above] is unable to accept my animals, I give my animals and [\$_] to one or more similar charitable organizations as my Executor shall select, subject to the re- quests made above.

Sample Will Provision IV

My [cat, Ginger], shall be delivered to [Mary Smith or John Doe] for temporary holding. The Executor shall determine the amount from the estate to go with the animal for such temporary care and feeding. The Executor shall advertise and otherwise make diligent efforts to find a good home for the animal, taking a reasonable amount of money for these purposes from the estate. If no home can be found after [_] months, the animal shall be taken to [name and address of veterinarian] to be euthanized by the most humane method the veterinarian has competency to use.

Sample Will Provision V

I direct my Executor to pay, as an administration expense, all expenses associated with the feeding and care, including veterinary costs, of my [dogs and cats] until the animals are placed with the persons that I (or my Executor) have selected to care for the [dogs and cats] for the duration of their lives, whether or not these expenses are deductible for estate tax purposes.

Sample Testamentary Trust for the Care of Dogs and Cats

I give the sum of [____ Thousand Dollars] (\$_) and all of my dogs, cats, and any other animals of mine living at the time of my death to the trustee hereunder, IN TRUST, for the following purposes and subject to the following terms and conditions:

This trust is created pursuant to New York Estates, Powers and Trusts Law Section 7- 8.1 for the benefit of all of my dogs, cats, and any other animals of mine living at the time of my death (the “Beneficiaries” herein).

The trust shall terminate upon the death of the last to die of the Beneficiaries.

During the term of the trust, the trustee shall apply for the benefit of the Beneficiaries, any or all of the net income of the trust and however much or all of the principal of the trust from time to time, as the trustee shall in the trustee’s discretion determine to be advisable for the care, including veterinary care, of the Beneficiaries. Any income accrued but not distributed for the benefit of the Beneficiaries shall be added to the principal of the trust.

I appoint [name], presently residing at [address], to be the trustee of such trust. If such person has predeceased me or for any other reason is unable to act as such trustee, I appoint [name], presently residing at [address], to be the trustee of such trust.

I designate [name], presently residing at [address], to be the caretaker of the Beneficiaries. If such person has predeceased me or for any other reason is unable to act as such caretaker, I designate [name], presently residing at [address], to be the caretaker of the Beneficiaries. If such person has predeceased me or for any other reason is unable to act as such caretaker, the trustee shall select another person to act as caretaker of the Beneficiaries. The trustee, in the trustee’s discretion, may pay a stipend from the trust to the person acting as such caretaker.

I designate [name], presently residing at [address], as the person to enforce the trust, if necessary. If such person has predeceased me or for any other reason is unable to act in this capacity, I designate [name], presently residing at [address], as the person to enforce the trust, if necessary.

I am creating this trust to provide for the care of my animals and the trustee does not need to consider the interests of the remainderman when making distributions. The trustee, in the trustee’s discretion, may use all of the trust property for the benefit of my animals; even if the result is that nothing will pass to the remainderman.

Upon the termination of the trust, if any property remains in the trust at the time of termination, the trustee shall distribute any such income and/or principal to [name of trust remainderman—for example, a charity that rescues animals, such as the

rescue organization from which the animals were adopted, a breed specific rescue organization, or any other animal shelter or rescue organization that holds itself out for this purpose (NOTE: For each, the testator should familiarize him or herself with the shelter or organization in order to ensure the ability of the shelter or organization to care for his or her animals in a manner that the testator find acceptable)], located at [address]. If such charitable organization is not in existence at the time of termination, I give the trust remainder, if any, to a charitable organization that benefits animals described in Section 170(c) and 2055(a) of the Internal Revenue Code, to be selected by the trustee.

Sample Testamentary Trust for the Care of Horses and Farm Animals

I give my horses, farm animals, and any other animals which I may own or have in my possession at the time of my death, and the sum of [____ Thousand Dollars] (\$_), to my trustees named in Article (____) hereunder, IN TRUST, to hold and arrange for the care of such animals and to invest and reinvest such funds and to pay for the expenses of the care of such animals from such property as my trustees shall in their discretion determine. This trust is created pursuant to New York Estates, Powers and Trusts Law Section 7-8.1 for the benefit of my horses, farm animals and other domestic animals. My trustees may board my animals with a suitable boarding facility, or may rent a property where the animals can live and hire a caretaker to care for the animals. The trustees shall make appropriate arrangements for the proper care of my animals, including veterinary care, during their lives. The animals are not to be sold, but the trustees may place one or more of my animals with a [horse sanctuary or farm animal sanctuary], if the trustees, in their discretion, determine that it is in the best interests of such animals. The trustee may continue to pay for the care of such animals at such sanctuary, or make such other arrangements as may be beneficial to my animals. I designate [name], presently residing at [address], or if such person is unable or unwilling to act in such capacity, [alternate name], presently residing at [address], as the person to enforce the trust, if necessary.

This trust shall terminate upon the death of the last to die of my animals. Upon the termination of the trust, if any income and/or principal remains in the trust at the time of termination, the trustees shall distribute any such remaining income and/or principal to [name of trust remainderman—for example, a horse sanctuary or farm animal sanctuary]. If such sanctuary is not in existence at the time of termination, the trustees shall distribute any remaining income and/or principal to an animal sanctuary or sanctuaries, to be selected by my trustee, in his or her discretion.

Sample Note to Carry in Wallet Regarding Emergency Care of Pets

In any situation in which I am unable to return home to feed my pets, such as my hospitalization or death, please immediately contact [Mary Smith] at [address and phone] or [John Doe] at [address and phone], to arrange for the feeding of my [cats] located in my home at [address]. The superintendent of my apartment building [name, address and phone], my Executor [name, address and phone], and my neighbor [name, address and phone] each have a copy of this document.