

Planning For Your Cat's Care -- If You Are No Longer There

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(An abbreviated version of this first appeared in CATS Magazine, September 1992.)

This article is intended to educate cat owners on the legal issues involved in providing for their cats. It is not intended to give legal advice.

Again and again, we hear about how people have learned to deal with the passing of a beloved cat. Unfortunately, we rarely hear about how people have made arrangements to take care of their cats, if they die first.

That is, of course, understandable. None of us wants to consider our mortality. However, we have to. In this article, I will try to give you some guidance on when to plan to take care of your cat, and how to do it.

When I first started to write this, it turned out like a memo from one lawyer to another. That may make it precise, but hardly helpful (or readable) for non-lawyers. So, I decided that the better way was to answer a series of the most commonly-asked questions.

When Do I Have To Worry About My Cats?

Realistically, most of us do not plan for the possibility that our cats will still be alive after we have died. And, among those that do, even that is fairly informal.

For example, a recent study of independently living elderly in Chicago showed that most of those pet owners participating in the study assumed that a family member or friend would take care of their pets after an owner's death. However, fewer than 2% of the pet owners had made any legal provisions for funds to support their pets.

You really need to be concerned about your cats in several different contexts, including planning for the possibility that you may die before they do, as well as for planning for the need to have someone provide care when you cannot. And remember, the average life span of a cat increases every year, so we could be looking at making provisions for a cat for a period of 10 or more years.

While few of us think about the first, in part because we do not like to admit our own mortality, even fewer plan for the second. But, increasingly, with people living alone, this is also an issue.

If you should be injured and hospitalized, does anyone else know you have cats, and have the ability to step in -- immediately? If you are older, or in poor health, you could find that you may be put under a guardianship, to help you manage your assets and to help you care for yourself. But that means someone else will be making decisions about your cats, not you.

What Do I Have To Plan For?

Really, think of the following:

Immediate intervention if you cannot take care of the cats in an emergency; Long-term assistance or placement if you are indefinitely or permanently incapacitated; and Your own death.

Each of these alternative appears clear, but remember, they are really just points on a spectrum. For example, if you die, and your cat survives you, the issue is not just leaving money to care for the cat in the long run. What happens in the short run? Who feeds your cat today and tomorrow? And for how long, and where?

I'll try to discuss some of the broad concepts involved with the last one. The others involve similar problems.

Can I Order My Cat To Be Destroyed On My Death?

Probably not. Even though a pet cat is still seen as having no monetary value, the courts which supervise the way estates are run have been reluctant to order pets destroyed by order of their now-deceased owners.

Can't I Just Leave Money To My Cat?

In one word - no. I have heard the same stories you have about some one leaving millions (it is always millions) to Fluffy. Realistically, you cannot do that. Also, as any estate planner will tell you, trying to do something like that with a lot of money will only invite challenges to your will (and to the care of your cats) by those who could get the money if the cats were not "in the way". And, the more money there is at stake, the more likely they are to try -- and to succeed.

In fact, if you try this, and it is challenged successfully, one of the following may happen:

The court may convert the bequest (that is the money you left) into a trust for the benefit of the pet (if that is even legal in your state); The court may invalidate the bequest completely, leaving the money to those who receive the bulk of the estate; or The court may invalidate the entire will. This means it is letting the money to go by "intestacy", that is outside of the will, as dictated by state law. That is typically to the closest blood relatives.

Can I Leave Money In Trust To Care For My Cat?

If you are serious about estate planning, you have probably heard about trusts. For a number of fairly antique reasons, it has always been regarded as virtually impossible to leave money in trust for a single animal (or all of your animals), as opposed to creating a trust to benefit animals as a whole.

Most state courts have refused to let pet owners set up trusts for the benefit of their pets, to care for them after the owner's death. The reasons for that have been extremely technical in nature, turning on two key problems:

The laws governing the length of trusts are based on measuring "human" lives, not those of animals; and Trusts have to have someone to "enforce" them, that is, to complain if the wishes of the person funding them are not met.

However, the laws governing trusts in many states have been changed over the years, making these objections less important, if not removing them completely. And, even in those few states where such trusts may be valid, you must be careful not to "overfill" the trust. That is, provide an amount which is somewhat related to the kind of care and length of care needed.

In fact, the legal community is probably still a little short-sighted about this concept. In legal systems which use basically the same rules about trusts, this is possible, as it is in a few states.

But, if you go to your lawyer and ask to have it done, you'll probably be told it is impossible. That's not so. It may be very difficult, but that is not the same as impossible. If this idea appeals to you, give your lawyer the information at the end of the article to help him (or her).

Remember, in addition to providing money, you have to provide someone to care for the cat's welfare, the trustee. It should be someone you trust to look out for the cat.

Can I Leave My Cat To Someone?

Yes. But it does not end there. A cat is personal property. That means someone can (a) accept the cat, and care for it, (b) accept the cat, then sell it, destroy it, or just ignore it, or (c) refuse to accept it. It is that person's choice.

Don't just leave the cat to someone without talking to them, and being comfortable with them. Make sure they know what is involved, and are willing to accept the cat.

Can I Leave Money And My Cat To Someone?

This is probably the most common approach, and also one which makes a lot of sense. The most common effort

made by those seeking to protect their cats (and other pets) is to leave money to a named person on the condition that the person care for the cat, or for the person to be left money and the cat, with a request that the cat be cared for, using the money.

While seeming to accomplish what the owner wants, such efforts, if challenged, generally are not allowed. Even if they are, this does not end your need to plan.

Let me give you a bit of cold, hard, legal information. If you leave your cat to someone, say John, with money to care for it, that does not guarantee that will happen that way. John can (a) take the cat and money and care for it, as you intend, (b) take the cat and money, but use the money for his own ends, (c) take the cat and money, and then give away, sell, or destroy the cat, or (d) just take the money and refuse the cat.

Here, as with the previous question, what is critical is that you confer with the person receiving the cat and money and make sure that you and she (or he) agree on what will happen.

Who Might Be Willing To Take My Cat?

That's a tough one. First, start with where you got your cat.

If you got your cat from a no-kill shelter, it may be willing to take it back, if you make arrangements in advance. If it was from other than a no-kill shelter, that shelter may still be willing to take back the cat and try and place it elsewhere. But the odds on it being placed elsewhere are remote. One source estimates that at 5% or less.

If you bought a pet from a breeder, check the contract you signed. Some breeders agree to take back cats (for a limited period of time), or to help place a cat if you can no longer keep it. Even if that is not in the contract, or you do not have a written contract, the breeder may be able to help you (or your estate) place the cat.

Now, turn to other sources. Friends, family, and the like, of course should be considered. But be careful, and be realistic. Never assume that because your sister appears to love your cat that she will be happy to bring it into her home with her 3 children and 2 dogs. Ask her, and then consider her answer very carefully.

Other friends who have cats may be willing to take them, but, again check.

In any case, be realistic. If you are 55, do you really think it is a good idea to arrange for your 61 year old sister to care for your cat when you die? Especially if it is 2 year old cat now. That might eventually mean having a 74 year old woman caring for a 15 year old cat. Think about it -- from both sides.

Another option is to arrange for your cat to be placed in a long-term or permanent care no-kill facility. In the former case, the facility cares for your cat while working to place it in a permanent home. In the latter, the cat stays in the facility permanently.

Several issues are involved in the decision to use such facilities:

First, as with any other option in caring for your cat, planning is vital. Most of these groups of both types require that you contact them first. In addition, you will have to make specific financial arrangements with them; Second, you have to consider whether or not your cat will be happy living, for a short time or permanently in such a facility. Some groups, among them the Humane Society, have argued that many of these facilities take in more animals than they can properly care for.

Another option is to contact groups which use companion animals for a number of purposes. These may agree to take the cat, usually if arrangements are made in advance. But that may be conditioned on their ability to use the cat, the cat's age and condition, etc.

What About Pedigreed Cats?

Here, you may have a few more options. First, a pedigreed cat, and by that I mean one with valid registration papers, may be considered as having some commercial "value". All that means is that whoever is handling your affairs must "preserve and protect" all of your assets, of which that cat is one.

But that is not very much comfort. It basically keeps that person from seeking to have the cat destroyed, and little more.

However, if you have a pedigreed cat, particularly if it is a fairly rare breed, you may be able to leave instructions to have a breed group or society contracted by your estate. The group would not be given the cats; however, it might prove useful in guiding your estate in finding new homes for the cats, both whole cats and those which have been altered.

Again, check with the breed group first. While none that I know of have set up formal systems to do this, your call may provoke them into looking into this for your benefit and for the benefit of others.

While it has not yet been taken to court, it would seem, based on the experience that estates have with breeding horse farms and the like, that a working cattery should be not just closed down at once. Unless you have left specific instructions, the job here would be to liquidate the cattery in the most economically (and profitable) manner, as quickly as possible. In other words, selling as many of the cats as possible.

What Is The Most Important Thing I Can Do?

Regardless of what option you elect to use in planning for your cat after your death, or in case of your disability, you have to make sure that you have someone who will do what you want. That means you must take the time to find someone (or some group) which you can rely on to do what you want done.

But don't stop there. Contact them (or him or her). Make your intentions clear.

And make sure that others who know you understand that you have made arrangements for your cats. To be blunt, if the people who come across your cats after your death does not know what you have planned for them, they will do what they think is best. Your wishes may never be carried out because they don't know them.

From all of this, take the following key lessons to heart:

Right now, decide who will care for your cats if you become ill or die. Make sure they are willing and able to do this. Talk with them. If you are planning to have an organization care for your cat, or arrange for its placement, check them out. Confirm any advance arrangements they need to help you. If you want to use your will or create a trust for your cats, don't try and do it by yourself. It is a tricky area for skilled lawyers; for the unskilled, such efforts will almost certainly fail. Keep in mind this sad fact - the more money involved, the more likely it is that your relatives will challenge it in court. Make sure that others know about your cat (or cats) and that you have already made arrangements for their care and disposition. remember, if something happens to you, they need care and attention - immediately.

The following are some resources, detailing specific problems and solutions, which you may want to bring to the attention of any lawyer helping you plan your estate and how you want to provide for your cats:

- "Comment: Trusts For Animals In New York - Beneficiaries And Perpetuities", 17 Syracuse Law Review 705-714 (1965-66).
- James T. Brennan, "Bequests For The Care Of Specific Animals", 6 Dusquesne University Law Review 15-40 (1967-68).
- Ian Y. Henderson, "The Thoroughbred Racehorse As An Estate Asset", 113 Trusts & Estates, 380-383, 414 ((June 1974).

- Barbara W, Schwartz, "Estate Planning For Animals", 113 Trusts & Estates 376-79, 411 (June 1974). This is probably the best place for an estate planner to start.
- Frances Carlisle, "Destruction Of Pets By Will Provision", 16 Real Property, Probate and Trust Journal 894-903 (Winter 1981).
- Murdaugh Stuart Madden and Roger Kindler, "Law Notes: Planning For The Future", Humane Society of the United States News, Fall 1989, p. 36.
- David B. Shaw, "Looking After Your Cat - Legally", Cats Magazine, November 1989, pp. 18-19.

The following three articles were all written by a member of the Australian Attorney General's Department and former law teacher, and published in Australia. They reflect current Australian and English law. And English law, which is somewhat hospitable to the idea of leaving money to care for pets, still has a strong impact on the interpretation of American laws:

- Philip Jamieson, "On Charity's Edge - The Animal Welfare Trust", 13 Monash University Law Review 1-36 (March 1987).
- Philip Jamieson, "Trusts for the Maintenance of Particular Animals", 14 University of Queensland Law Journal 175-84 (May 1987).
- Philip Jamieson, "The Family Pet: A Limitation On The Freedom Of Testamentary Disposition", 9 University of Tasmania Law Review 51-60 (1987).

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