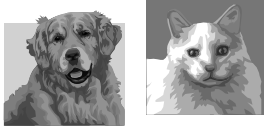


# Estate Planning Tools for Owners of Companion or Service Animals & Pets

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## Headlines August 2007



- **Leona Helmsley**
  - Left \$12 million
  - 8-year old Maltese



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## Past Headlines

- **Doris Duke**
  - \$100,000 to her dog Rodeo
- **Dusty Springfield**
  - Estate to cat
- **Natalie Schafer-Gilligan's Island**
  - Entire fortune to dog
- **Betty White**
  - Reportedly is leaving \$5 million to her pets



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## Importance of Pets

- Play an extremely significant role in the lives of many people



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## Treat Animals as Members of Family

- 65% of cat owners
- 73% of dog owners



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## Research Reveals

- 80% brag about pets to others
- 31% take time off work to be with sick pets



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## Pet Ownership-Households



- Top Three
  - Dogs \$43.5 million
  - Cats \$37.7 million
  - Fish \$14.7 million

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## Pet Ownership-Households



- Next Tier
  - Birds \$ 6.4 million
  - Small animals
    - Hamsters/  
Rabbits \$ 5.0 million
  - Reptiles \$ 4.4 million

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## Spending on Pets

- \$40 billion per year



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## Pet Impact on Owner's Life



1. Lower blood pressure
2. Reduce stress & depression
3. Lower risk of heart disease (con'd)

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## Impacts on Owner's Life (con'd)

4. Shorten recovery time after hospitalization
5. Improve concentration & mental attitude



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## Benefits of Estate Planning



- To Owners
  - Greater peace of mind knowing that their pet will be cared for as they intended

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## Benefits of Estate Planning



- For Pets
  - Smooth transition
    - To a new home &
    - New pet caregiver

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## Benefits of Estate Planning



- For family & friends
  - Make have not wanted responsibility of making multitude of decisions about care of the pet after death of pet owner

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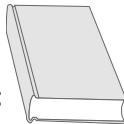
## Who gets your pet when you die?



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## Pet Definition

- Montana
  - Pet is defined as:
    - "any domesticated animal normally maintained in or near the household of its owner."



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## Pets & Property

- Pets are tangible personal property, just like
  - Dishes
  - Furniture
  - Jewelry



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## Pets Pass to Heirs



1. Provisions in owner's will
2. Directives in owner's trust instrument
3. If no will or trust, Montana intestate succession statutes
  - District Judge decides

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## Legal Documents

- Wills
- Trusts
- Durable powers of attorney



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## Content of Legal Documents Depend on

1. Specific situations
2. Needs of pets & pet owners
3. For appropriate legal wording
  - Contact attorney



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## Legal Documents

- Wills
- Trusts
- Durable powers of attorney



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## Wills & Pets

- 12% to 17% pet owners name their pets in a will



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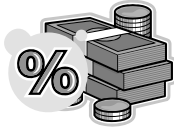
## Personal Representative

- With a will an owner can direct personal representative to use funds
  - For temporary & permanent care of pet
  - Expenses for funding & transporting pet to new home



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## Types of Bequests



- Specific Amount
- Percentage
- Fraction
- Residue

### Example

\$5,000  
10%  
1/4  
What's left

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## Sources for Bequests

- Checking/Saving Account/CDs
- Stocks, bonds, mutual funds
- Real estate
- Collections (coins, art, jewelry)



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## Will Disadvantages



- Not formally recognized by District Court for weeks/months
- Once probate settled personal representative has no authority

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## Legal Documents

- Wills
- Trusts
- Durable powers of attorney



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## Trust: When Created

### 1. While living

- Inter Vivos

### 2. At death

- Testamentary



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## Living Trust



- Assets transferred to name of trust while alive
- Additional funds can be added later

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## Benefits of Living Trust



- Takes effect immediately
- Avoids delay between pet owner's death or disability & property being available for pet's care

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## Potential Expenses



- Start-up costs
- Yearly administrative fee if trust managed by financial institution/ corporate trustee

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## Set up a Checking Account



- Write a check:
  - The payee as [name of trustee], trustee of [name of pet trust], in trust.

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## Testamentary Trust



- Created by owner's will
- Effective when will declared valid by district court

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## Disadvantage Testamentary Trust



- Funds may not be available during the "gap"
  - Time between when owner dies & when will is probated & estate closed

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## Disadvantage Testamentary Trust



- Does not provide protection if pet owner becomes disabled & unable to care for pet

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## Testamentary Trust

- Include in will provision for transferring
  - Assets to care for pet
  - Pet to a caretaker



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## Testamentary Trust Legal Language in Will

- I leave [description of pet] and [amount of money and/or description of property] to the trustee, in trust, under the terms of the [name of pet trust] created under Article [number] of this will.



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## Types of Testamentary Trusts

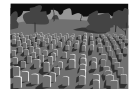
1. Traditional
2. Statutory



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## Traditional Trust

- Direct trustee to provide funding for person who provides care for pet
  - After pet owner dies or,
  - If pet owner becomes incapacitated



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## Benefit of Traditional Trust

- Provides pet owner with ability to provide detailed directions to caregiver for pet's care



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## Traditional Trust Directives

- Name who manages property (trustee)
- Name pet's caregiver (beneficiary)
- List types of expenses covered



(con'd)

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## Trust Directives (con'd)

- Alternative if primary beneficiary can't care for pet
- Disposition of pet's remains after death



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## Montana Statutory Pet Trust



- Honorary trust for pets (Montana Codes Annotated)
- Does not require owner to make as many decisions as traditional trust

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## Statutory Pet Trusts

1. No filing
2. No reporting
3. No periodic accounting
4. No separate maintenance of funds



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## Exceptions to Reporting

1. Ordered by district judge
2. Required by trust document



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## Montana Statutory Trust

- Terminates earlier of 21 years or,
- When pet dies



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## Trust Amount

- District judge may reduce amount if he/she believes it exceeds what is required for care of pet



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What do you think a Montana Judge would do in this case?

- **Leona Helmsley**
  - **Left \$12 million**
  - **8-year old Maltese**



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## District Judge

1. May name trustee if,
  - Pet owner didn't designate a trustee
  - If no designated trustee is willing or able to serve

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## Judge may Transfer Property to Another Trustee

- If such action is required to ensure funds are used to care for the pet



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## Judge Transfer of Property (con'd)

- If the pet owner did not name a successor trustee in trust instrument, & the original trustee is unable or unwilling to serve

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## Judge Transfer of Property (con'd)

- If no designated successor trustee agrees to serve



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## Death of Pet

- Remaining trust property distributed as directed:
  - Pet owner's trust document
  - Residuary clause in pet owner's will
  - Montana intestate succession statutes

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## Money Required for Pet Care

- Type of animal
  - Animal's life expectancy
  - Standard of living
- (con'd)



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## Money Required for Pet Care (con'd)

- Need for potentially expensive medical treatment
- Whether caregiver is to be paid for services



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## Pets are not Persons

- Can't be named as beneficiaries on contracts such as.....



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## Pets are not Persons (con'd)

- PODs (payable on death accounts)
- TODs (transfer on death accounts)



(Con'd)

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## Pets are not Persons

- Annuities
- Life insurance contracts



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## Life Insurance Policy

- Life insurance "creates" property
  - Name of trustee as beneficiary of life insurance policy
  - Portion of existing policy payable to pet trust



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## Trustee Duties

- Manage property in trust prudently
- Assure beneficiary cares for pet appropriately



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## Items to Include

- Food
- Veterinary care
- Toys
- Recreational activities
- Temporary boarding
- Pet-sitting fees
- Payment to caregiver



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## Who can be Trustee?

- Family members
- Friend
- Professional trustee
- Corporate trustee



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## Name Alternate Trustee

- In case first or second choice is unable or unwilling to serve



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## Legal Documents

- Wills
- Trusts
- Durable powers of attorney



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## Durable Powers of Attorney

- Effective upon pet owner's physical or mental incapacity



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## Durable Powers of Attorney



- Pet owner authorizes someone else to utilize his/her funds to provide health care & welfare of the pet

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## Duration of POA

- Ceases at death of pet owner



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## Legal Documents Review



- Wills
- Living & Testamentary Trusts
- Durable powers of attorney

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## Assuring Pet Identity



- Detailed description
- Veterinarian records
- Pictures
- Microchip implant



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## Summary



- Planning ahead— Provides owner with legal assurances district court honor your wishes

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## Legal Tools Summary

- Wills
- Pet trusts
  - Living
  - Testamentary
- Durable powers of attorney



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## Additional Resources



- Humane Society of the United States
- The Estate Planning for Pets Foundation
- Animal Legal & Historical Center

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## Reviewers



- Business, Estates, Trusts, Tax and Real Property Section-State Bar of Montana
- Texas Tech University School of Law-Lubbock, TX
- University of Montana School of Law-Missoula, MT

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## Estate Planning Tools for Owners of Companion or Service Animals & Pets



QUESTIONS?

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