

## Providing for Man's Best Friend – Pet Trusts

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Conchita is one lucky Chihuahua. When her owner, heiress Gail Posner, passed away in March 2010, she and two other dogs were left with a \$3 million (USD) trust fund and an \$8.3-million Miami Beach mansion. A bodyguard and housekeeper who take care of the dogs were left a total of \$15 million. Posner's son and only child received \$1 million.

The case of Posner's pampered pups made headlines, but she wasn't the first high profile pet owner to leave serious assets behind to her animals. When billionaire hotel operator and real estate mogul Leona Helmsley died in 2007, her white Maltese named Trouble inherited a \$12 million trust fund. The provision was also made that when Trouble's time comes she be buried next to Helmsley in the family mausoleum.

Posner and Helmsley may represent the extreme end of a spectrum, but the reality is that Canadians are increasingly including their pets in their estate planning. After all, pets are often considered part of the family and it's only normal to want to make sure they are properly cared for after you die. Many pet owners want to ensure their animals continue to receive the food, grooming, and other creature comforts they are accustomed to.

### Pet Trust Basics

In Canada, you cannot leave anything directly to a pet in your Will and in most jurisdictions pets cannot be the direct beneficiaries of trusts or insurance policies. You can, however, designate a caregiver who will be responsible for your pet(s) and will be compensated accordingly.

By selecting a trusted caregiver (perhaps someone who already has a good relationship with the pet in question) you can ensure your pet is cared for according to your wishes. The law in Canada views pets as property. If you fail to make any provisions for your pet in your Will it will simply pass to your heirs, who may or may not be willing or able to care for the animal to the standard you would like. This could include giving the pet away to a shelter or even having it euthanized.

You should consider the following when determining how much to allocate to your pet's caregiver:

- The number of years you think your pet will live;
- Cost of food per year;

- Cost of medical care (everything from routine checkups to emergency care);
- Cost of regular grooming;
- Cost of boarding should the animal's caregiver be away on vacation or out of town;
- Compensation for the caregiver's time; and
- Last but not least, a care plan memo—referenced in the Will but kept as a separate document—outlining Muffy's likes and dislikes.

You might also want to think about how your family members and other beneficiaries will react to the amount you leave for your pet. If you bequeath what could be considered an excessive amount to your pet it could lead to your Will being contested. It may make sense to set up the "pet trust" while you are alive so that the money in the trust is not tied up for years—with your general estate—in litigation if your estate is challenged for any other reason.

Not surprisingly, Gail Posner's son challenged her will in court arguing that she was not of sound mind when she had her will drafted and was brainwashed into leaving Conchita and co. millions of dollars. The Courts for years have posited that eccentric behavior does not equate to delusional behavior, the latter being capable of poisoning the natural affections of the testator possibly calling into question the validity of the Will.

To avoid any such challenge, pet owners should seek advice from an expert in estates and trusts. An estates professional will help you to determine an adequate sum to designate to your pet and the best way to allocate those funds to a caregiver.

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