

ESTATE PLANNING WITH YOUR FRENCHIE IN MIND

The practice of including pets in one's estate plans dates back hundreds of years. According to the Humane Society Legislative Fund, twenty-five percent of American pet owners have included pets in their estate plans. The topic has garnered even more attention since widespread media reports in 2007 about billionaire Leona Helmsley's leaving \$12 million in trust to *Trouble*, her Maltese. By virtue of being an FBDC member, you likely place a high value on your relationship with your Frenchie. But have you considered making formal arrangements to provide for your Frenchie and other pets in the event of your death or disability? Due to the complex nature of estate planning, a detailed discussion of the options available to you is beyond the scope of this article. Every person's situation is unique, and applicable laws vary from state to state. Therefore, you will need to consult your own attorney to discuss what estate plans are best for you and your pets. That being said, this article flags some general estate planning issues for you to consider and describes some basic estate planning tools that you may wish to explore with your attorney.

The Law's Traditional View of Pets

Despite how much you may love your Frenchie and consider him or her part of your family, American law usually treats dogs as personal property. That is, in the eyes of most state laws, your Frenchie is no different than a wristwatch, lamp or car. Therefore, in the absence of formal arrangements providing otherwise, your dog could be distributed to a person and/or in a manner that you did not intend in the event that you die or become disabled. For example, consider a single person with no children who has a prize winning and pampered Frenchie. If that person were to die without a will, trust or other estate plans specifically addressing his pets, many state inheritance laws would likely result in the dog being awarded to a sibling of the deceased – a sibling who may not take care of the dog in the manner that the deceased would have liked. Under the law, this result would occur even if the deceased's dog walker was ready, willing and able to take and pamper the dog for the rest of its life. As another example, consider a scenario in which you co-own a Frenchie with another person. If you own the dog as tenants with right of survivorship, the other person would become the sole owner of the dog upon your death. If, however, you own the dog in common with the other person, upon your death your ownership interest in the dog would likely pass under your estate to your heirs or under your state's laws regarding intestate descent and distribution of personal property. This may or may not be consistent with your wishes. If it is not, you have some estate planning to do. Fortunately, several options may be available to you to ensure that your Frenchie will be cared for in the manner and by the person(s) of your choosing.

Informal Arrangements

The least formal option is simply to agree with someone reliable that, in the event of your death or disability, that he or she will be responsible for the care and ownership of your dog. If you are so inclined, you can bequest money to that person in your will or other estate documents with the understanding that those funds will be used for the dog's care. Unfortunately, however, even the best intentioned relative or friend sometimes finds that when the time comes, they are no longer interested or able to fulfill their promises. This can result in the dog finding itself in a rescue situation. Thus, you may be more comfortable with making formal estate plans regarding your pet.

Providing for Your Pet in Your Will

One such formal estate planning option is to include provisions for your dog in your will. For example, after discussing your expectations about your Frenchie with various relatives and friends, you may designate one of them (with alternates identified) in your will to receive your dog. If you so chose, you may also leave money to that person in recognition of their willingness to care for your dog. One potential downside of a will, however, is that it may take days, weeks or months for it to be processed by a court. If there is a dispute about the will, this process can be drawn out even longer. In the interim, the possession and care of your dog may not be as you intended. One way to address this potential problem is to include in your will instructions to your executor regarding the immediate and temporary care of your dog, as well as an authorization allowing your executor to expend estate funds for the dog's care. Another potential problem with a will is that once a person receives your dog under the will, there is no assurance that the dog will be cared for consistent with your intentions. In other words, leaving your dog to someone in your will may not provide the kind of *checks and balances* that a trust document can.

Trusts

An increasingly popular alternative to a will to protect pets is the use of a trust. Unlike a will, a trust can be set up to take effect before you die (an *inter vivos* trust), thereby protecting your Frenchie if you become incapacitated. A trust also can be structured to provide for your dog's immediate care upon your death. Importantly, a trust can be structured such that a trustee (overseer) controls the funds, and delivers them to your dog's caretaker only as long as the caretaker is acting in accordance with the terms of the trust. Thus, a pet trust can provide a *check and balance* system that increases the likelihood that your dog will be cared for consistent with your wishes. Be mindful, however, that there will likely be some expense associated with the administration and maintenance of a trust. In addition, be sensitive to the fact that if you transfer an unreasonably large amount of funds to the trust for the benefit of your pet, your heirs or other potential beneficiaries may seek to contest your estate plans. There are several reported decisions in which courts have held that the court has the power to reduce unreasonably large amounts left to pets. Recognizing that people regard their pets as a very special and unique form of personal property, at least thirty-nine states and the District of Columbia have passed legislation authorizing *statutory* pet trusts. These statutes simplify the process of creating a trust for the care of a pet by, among other things, allowing persons designated by you or by a court to force the trustee to use the funds designated by you to care for your pet. By so doing, the statutory pet trust reduces the problem that some non-statutory (or *common law*) pet trusts have with identifying a human to enforce them for the benefit of the animal.

Some Helpful Resources

As you may sense, estate planning for a pet can become somewhat involved rather quickly. With some careful thought on your part and the assistance of an attorney, however, you can rest assured that your Frenchies will be left in good hands. You may find helpful a kit titled *Providing for Your Pet's Future Without You* which is available for free from the Humane Society of the United States. Visit hsus.org/petsinwills or request a kit by contacting petsinwills@hsus.org or by calling (202) 452-1100. Other helpful resources include: Aspca.org/petrust; estateplanningforpets.org; and professorbyer.com/articles/animals.htm