



LAFRENIÈRE SANNA  
— ESTATE LAW —  
A B O U T I Q U E F I R M

Chantal M.J. Lafrenière  
*B. Soc. Sc., JD, CEA*

Natalie A. Sanna  
*B.A. (Hon.), LL.B.*

## What Happens to Daisy?

Many of us consider our pets to be beloved family members. It is important to plan appropriately for our pets in the event of our mental incapacity or death.

### Immediate Care after Incapacity/Death

Every pet owner should ask a trusted friend or family member to be the emergency contact to feed and care for a pet in the event of the owner's sudden incapacity or death. It is a good idea to carry a wallet card with information such as the pet's name and address, the contact information for the emergency contact person, the pet's feeding schedule and medical history, and any other relevant information. This information should also be given to the emergency contact person. Consider how the emergency contact person will gain access to your home if that is where the pet is most likely to be.

### Gifting a Pet to a Caregiver

Although most of us do not think of our pets as assets, it is important to remember that, for legal purposes, animals are considered personal property. As such, a pet cannot be a beneficiary under a Will. A pet owner can gift his or her pet to another person who then becomes the legal owner of the pet. A provision in a Will directing that a pet be euthanized will likely not be valid as such provisions are considered to be against public policy.

Many pet owners choose to simply leave a pet to a person named in the Will under the assumption that that person will take care of the pet for its remaining lifetime. The selection of this person is an important decision. A pet owner should consider if this person would have:

- the ability to provide a loving and stable home;
- the willingness to assume the responsibilities that come with caring for a pet;
- an amicable relationship between the pet and the caregiver's family members;
- a lifestyle that is conducive to the care of the specific pet.

Before naming a person in a Will who is expected to become the caregiver, the pet owner should ask the proposed caregiver if he or she is willing to take on the responsibility. An alternate caregiver should also be named in case the first named person is unable or unwilling to take the pet. If the pet owner feels that the pet would be traumatized by the pet owner's death and that euthanization would therefore be the best course of action, he or she should discuss this with the caregiver and prepare a letter of wishes.

### Gift of Cash to Caregiver

Many pet owners also choose to provide a financial gift in a Will to the caregiver as a show of appreciation and as an initial contribution towards the care of the pet. The gift may cover the expenses relating to the care of the pet, such as food and veterinary bills, and/or compensation and out-of-pocket expenses for the caregiver. A gift for the care of a specific pet is not considered to be a charitable gift.

The gift may be an outright cash gift to the caregiver with instructions that it be used for the care of a pet. However, it is important to note that such a gift is not legally enforceable; in other words, the caregiver can abandon the pet and keep the cash. Such a gift, however, may be entirely appropriate in certain situations. For example,

where the chosen caregiver is very trustworthy, the amount of money left to care for the pet is relatively small, and/or where it is highly unlikely that the pet will outlive both the owner and the caregiver.

It is possible to provide a cash gift to a caregiver which is conditional on the caregiver providing appropriate care for the pet. However, such conditional gifts raise numerous practical problems. Firstly, such a gift requires the executor to monitor the caregiver's behaviour. Secondly, it is unlikely that such a condition would be enforced after the estate has been wound up. Thirdly, the other beneficiaries of the Will who would benefit if the conditional gift were to fail may be encouraged to bring a legal challenge in order to collect. Practically speaking, it may be best to leave a gift to a caregiver setting out the pet owner's wishes that the gift be used for the care of the pet to impose a moral, although not legal, obligation. Such a letter of wishes would not be included in the Will but would be provided to the caregiver separately either in advance of the pet owner's death or at the time that the pet is delivered to the caregiver.

## **Planning for Incapacity - A Power of Attorney for Property**

It is also important to plan for the care of a pet in the event of incapacity. A Power of Attorney for Property is a document which allows a person (a Grantor) to appoint another person (an Attorney) to act on the Grantor's behalf when they are not in a position to deal with their property and financial affairs. As animals are legally classified as property, a pet owner can include a provision directing an Attorney to undertake the care of a pet and expend any reasonable amounts necessary to provide that care. Custom drafting can allow the specific needs of a pet to be addressed.

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