

# Planning for your Pets' Care



**ARAG**

Americans are a pet-loving people. Not only dogs and cats, but we invite many other kinds of animals to live with us. In 2014 it was estimated that 68 percent of U.S. households had a pet and that more than \$55.8 billion was spent on pets and their needs.<sup>1</sup> Because we regard our pets as members of our families, it's important to consider them in contingency plans as well.

- What would happen to your pets—and who, if anyone—will care for them if you become incapacitated or when you die?
- Are there people who would love and care for your pets just as you would?
- Do you know how to ensure your pets get to those caring people? Do those people have the funds to take on the expense of lifetime care of your pets?

This Guidebook is intended to help you think through Pet Care Plans and the legal vehicles available to ensure your pets are taken care of in the manner you specify, with the necessary financial support, by the people who share your love for your pets.

We hope this guidebook will provide a valuable first step in finding clarity and relief for your legal concerns. If you have additional questions after reading this document, ARAG® can help. If you have ideas on how to improve this document, please share them with us at [Service@ARAGLegal.com](mailto:Service@ARAGLegal.com).

If you're not an ARAG member, please feel free to review this information and contact us to learn how ARAG can offer you affordable legal resources and support.

Sincerely,  
ARAG Customer Care Team

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# Glossary

**Beneficiary of a Pet Care Trust (either a Pet Care Revocable Trust or a Pet Care Testamentary Trust).** While the de facto beneficiaries are the pets on whose behalf the property in the Trust is held, managed, and ultimately distributed to their Pet Caretakers, the legal beneficiaries generally are their Pet Caretakers. Beneficiaries also include those with a future interest (e.g., the persons entitled to Trust funds after the Settlor's pets die). Pet(s) who will receive the benefit of the Trust funds may be specifically named (e.g., "my cat, Janis"), or be members of a class (e.g., "any of my pets and any animals that my pets have in gestation"). Ultimate beneficiaries after the death of the pet beneficiaries may be named in a similar manner (i.e., specifically, or as members of a class).

**Pet Care Trust.** A Pet Care Trust is a formal arrangement created by a pet owner for the receipt and management of funds to be used for the lifetime care of the pet owner's pets. The Trustee is responsible for handling the Pet Care Trust funds for the benefit of the pet owner's pets during their lifetimes in accordance with the terms of the Pet Care Trust. A Pet Care Trust can take the forms of either a Pet Care Revocable Trust or a Pet Care Testamentary Trust.

**Pet Care Revocable Trust.** A Pet Care Trust, created by a pet owner, as Settlor for the management of funds subjected to the Pet Care Trust by the Settlor during the Settlor's lifetime. The Pet Care Revocable Trust can be changed or revoked by the Settlor without anyone else's consent. The Pet Care Revocable Trust has provisions directing the management of the funds for the benefit of the Settlor's pets during any period of the Settlor's incapacity, extended absence, and after the Settlor's death. It also has provisions for the distribution of the Pet Trust funds after the death of all the Settlor's pets.

**Pet Care Testamentary Trust.** A Pet Care Trust created by a pet owner as testator in his or her Will for the management of funds given by the testator for the care of the testator's surviving pets. The funds are left to the Trustee of the Pet Care Trust established in the testator's Will and described there. It also has

provisions for the distribution of the Pet Trust funds after the death of all the testator's pets. A Pet Care Testamentary Trust only comes into existence after the pet owner testator's death and only if he or she is survived by any pets.

**Pet Caretaker.** A person the pet owner has designated to have custody of his or her pets and to provide maintenance and care for them. The Pet Caretaker will request and receive distributions from time to time from the Trustee of the pet owner's Pet Care Trust. An alternate term used for a Pet Caretaker is a Pet Guardian.

**Pet Trust Protector.** A person or organization designated to have the power to enforce the Trust for the benefit of the animals for which the Trust is intended to provide care.

**Settlor of a Pet Care Revocable Trust.** The pet owner creating a Pet Care Revocable Trust for his or her own pets, and directing what funds are to be placed in the Pet Care Revocable Trust and managed according to the Pet Care Revocable Trust's terms. Alternate terms used for the Settlor are the "Grantor" or the "Trustor."

**Testator creating a Pet Care Testamentary Trust.** The pet owner who leaves funds in his or her Will for the care of his or her own surviving pets, using a Pet Care Testamentary Trust to direct the Trustee on managing and distributing those funds to the Pet Caretaker over the lifetime of the pets.

**Trustee of a Pet Care Trust (either a Pet Care Revocable Trust or a Pet Care Testamentary Trust).** The person(s) who administers the Pet Care Trust and manages the funds held in the Trust, paying them to the Pet Caretaker, according to the Pet Care Trust's terms and the governing law, for the benefit of the Pet Care Trust's Beneficiaries (i.e., the pet owner's pets). When a Trustee acts with another as Trustee, he or she is known as a co-Trustee, and when a Trustee is only to act after a prior Trustee resigns or otherwise ceases to act, he or she is known as a Successor Trustee. In a Pet Care Revocable Trust, the Settlor is the initial Trustee or co-Trustee.

**Fund a Pet Care Trust.** A Pet Care Trust only controls funds that have been subjected to the terms of the Pet Care Trust, and the process of doing so is termed “to fund the trust.” Technically, this means the pet owner transfers funds to the Trustee of the Pet Care Revocable Trust. With a Pet Care Revocable Trust these transfers should be done during the pet owner Settlor’s lifetime, although it is possible to transfer funds to the Trustee upon the Settlor’s death (e.g., through the use of a gift in a Will or by a “transfer-on-death” provision of a non-probate transfer arrangement). With a Pet Care Testamentary Trust, these transfers are done after the pet owner testator’s death (e.g., through the use of a gift in a Will or by a “transfer-on-death” provision of a non-probate transfer arrangement).

**Please Note: Tax issues for a Pet Care Plan are not discussed in this Guidebook.**



## Personal Note from an ARAG Attorney

"I live in Dunedin, a little town on the west coast of Florida, whose residents, many of whom are retired, regularly involve their pets in their social as well as their personal lives. You'll see folks with their pets together at outside dining locales, or walking, biking or skating with their dogs running alongside. Dunedin folk take pride in nicknaming their town "Dogedin." We celebrate not just our dogs, but our cats as well.

'Dunedin has not been immune to our recent hard economic times, and combined with the natural processes of an aging population, that has meant dislocations for our animal as well as our human residents. While Dunedinites are open-hearted people and have brought many of those dislocated pets into our homes, the vagaries of life still leave our pets' futures too dependent on the fortuitous actions of others.

'I wrote this Guidebook to advise pet owners that they can very easily make reasonably funded arrangements that will ensure their pets are properly cared for if and when, those pet owners are incapacitated or die. The coincidence of local networks of animal protection societies and the adoption of pet trust legislation in almost all our states makes it possible to create reasonably funded and overseen care plans for the life of your pets. I'm using what I've learned in my researches to create a pet care plan for my dear cat, Janis Joplin. I hope you will use the information here to make your own pet care plan."

Chris G. Dunedin, Florida

## The Legal Landscape For Providing For Pets

While pet owners see pets as members of the family, the law views them merely as personal property. While the law regards bequests to animal protection and care institutions as enforceable charitable gifts, it does not regard gifts for the care of specific animals as permissible charitable gifts. Until recently, if a pet owner set up a fund or placed a provision in a Will or Trust for the care of a pet, those arrangements were not enforceable. Rather, they were deemed to be mere “honorary trusts” (i.e., totally dependent upon the “honor” and good will of the trustees or other fiduciaries or heirs of the pet owner).<sup>2</sup>

In essence, this left pets to the “luck of the draw” regarding where they would go and who would care for them if their owner became incapacitated or died.

The law, however, has been catching up with pet owners’ sentiments. Since the 1990s several states have passed laws recognizing the power of a pet owner to create legally enforceable pet trusts as Pet Care Plans. As of March 2012, forty-six states recognize such arrangements. **Only the states of Kentucky, Louisiana, Minnesota, and Mississippi lack such trust provisions at this time.** For more specifics on what your state allows, see:

- ARAG table *Citation to State Statutes on Pet Care Trusts* at [ARAGLegalCenter.com](http://ARAGLegalCenter.com)
- Animal Legal & Historical Center, Michigan State University School of Law, [animallaw.info/statutes/topicstatutes/sttowill.htm](http://animallaw.info/statutes/topicstatutes/sttowill.htm)



## What Is A Pet Care Plan?

A Pet Care Plan is a well-thought out strategy to provide for the lifetime care of your pets. It requires consideration of what you expect for the care of your pets for their lifetimes, including:

- What kinds of food, recreation, and living arrangements they should have.
- Who provides their veterinary care and how frequently they visit.
- What you want done if your pets develop medical conditions that would require extraordinary and expensive veterinary intervention and care.
- Whether you want your pet's life extended when it is in a terminal condition.
- What you want for them in regard to the disposition of their bodily remains.
- What funds will be needed to make your plan viable. This includes estimating the likely annual costs of the care you expect and of the life expectancies of your pets.
- Selecting and consulting with the people (commonly known as pet caretakers) who will take in and care for your pets as you expect and whether you will be paying them a periodic stipend (i.e., a form of compensation) out of your Pet Care Plan funds for the services they perform.
- Selecting and consulting with the people (commonly known as your pet trust trustees) who will manage and distribute the funds held in your plan and whether you will be paying them a periodic stipend out of your Pet Care Plan funds for the services they perform.
- How you want your pet trustee to distribute funds to your pet caretakers (e.g., regular and automatic monthly or quarterly care allowances, special distributions upon presentation of need, etc.).
- Whether you want to have an outside organization check periodically on the provision of care to your pets (also called your pet trust protectors).

- Who should receive any of the remaining Pet Care Plan funds when all your Pet Care Plan purposes have been served.

When you have settled on all these elements, you are ready to memorialize your Pet Care Plan in a comprehensive document that will be signed by you and properly witnessed. The document needs to:

- Identify the pets covered (either by name or by reference).
- Describe the general and specific levels of care to be provided to your pets during their lifetimes.
- Identify who will be your pets' trustees, caretakers and pet trust protectors.
- Set the amount of funding for the plan. Depending on whether you have any living pets during any period of your incapacity or unavailability or after your death, the Pet Care Plan may be triggered to provide for their care or provide distribution to the residual beneficiaries of the Plan.

A Pet Care Plan does require that you actually have pets in existence at the time it goes into effect. It operates only as long as one of those pets is alive.

- For example, you can create a Pet Care Plan even if you do not have a pet now, but anticipate having a pet later. However, when the triggering event for the Pet Care Plan takes place, you must have at least one pet in existence for whom care can be provided. If your pet has an animal in gestation, then the Pet Care Plan can cover both your pet and its immediate offspring. Currently, the laws of the states do not permit the Pet Care Plan to be enforced for the care of your pet's later-bred offspring.

Once the pets covered by the Pet Care Plan have died, and disposition of their remains has been accomplished, then the remaining funds in the Pet Care Plan will be distributed to the residual beneficiaries you have named (whether individuals or institutions).

# Documents Needed To Create A Trust

The Pet Care Plan can be expressed legally in several different vehicles:

## **Pet Care Revocable Trust**

This Plan uses a revocable trust set up and is funded by the pet owners as the vehicle. It can be set up as an independent trust, with its own trustees and funding; or it can be set up as a special provision within a Revocable Trust that the pet owner may have set up for incapacity and estate planning. It has the advantage of providing a vehicle for the care of the pet owner's pets if and when the pet owner is incapacitated or absent for an extended period, as well as for the time after the pet owner's death.

- A sample Pet Care Revocable Trust, with provisions that should be made a part of it, is downloadable for reference and discussion with your attorney who can modify it for your state's laws. Visit [ARAGLegalCenter.com](https://ARAGLegalCenter.com).

## **Pet Care Testamentary Trust**

This Plan uses a testamentary trust set up in the provisions of the pet owner's Will, that only goes into effect if the pet owner has living pets after his or her death. Since this trust does not exist prior to the pet owner's death it has no pre-existing funding but is funded out of the pet owner's estate's assets or other designated assets passing at the pet owner's death.

- A sample Pet Care Testamentary Trust, with the provisions that should be made a part of it, is downloadable for reference and discussion with your attorney who can modify it for your state's laws. Visit [ARAGLegalCenter.com](https://ARAGLegalCenter.com).

## **Non-Trust Pet Care Plan**

This Plan is less protected by law. It uses a contract for care entered into by the pet owner and the pet caretakers and entrusts funds to the caretakers as consideration for their agreement to provide lifetime care to the covered pets, according to the specific levels of care set out in the contract. The risk lies in enforcing the contract since the pets themselves cannot sue the caretakers for breach of the contract. Consequently, the selection of caretakers is critical, not just for their commitment to the pets, but for their judgment and prudence in the preservation and use of the pet care plan fund.

## Funding A Pet Care Plan

What amount is sufficient (and permitted) to fund a Pet Care Plan? Your ability to fund a Pet Care Plan depends on the liquid resources you will have available to dedicate to the care of your pet.

If your Pet Care Plan is set up as either a standalone, inter vivos trust, or as a provision in your Revocable Trust, your Plan is addressed to both the care of your pet after your death and to the care of your pet during periods of your incapacity or extended absence. The funding focus in either trust will be to transfer enough assets to the trust to meet the costs of care during your lifetime, as well as after your death.

If your Pet Care Plan is set up as a provision of your Will, the funding focus will be on the amount of the not-otherwise-distributed assets (i.e., the assets in your estate subject to probate) that will be available to your Will's Personal Representative to distribute in accordance with your Will.

Since your plan will only apply to those pets you already have (or will have when the Pet Care Trust goes into effect), it is very likely that those pets already have their major care costs (e.g., equipment, initial medical services, spaying/neutering) behind them. The necessary funding can look to your pets' expected annual upkeep costs (such as food, recurring medical care, license fees, toys and treats, litter, perhaps veterinary care insurance, and those special miscellaneous items you know you want for your pets). This annual upkeep amount will need to be projected over the remaining life expectancy of your respective pets.

The American Pet Products association provides annual cost estimates for a cat (\$670), a small sized dog (\$580), a medium sized dog (\$695), and a large sized dog (\$875).

## Pet Industry Expenditures 2013<sup>3</sup>

<b>Category of Spending</b>	<b>Amount</b>
<b>Veterinarian Visits</b>	\$14.37 billion
<b>Food</b>	\$21.57 billion
<b>Kennel Boarding/Grooming</b>	\$4.41 billion
<b>Medicine/Vitamins</b>	\$13.14 billion
<b>Total</b>	\$40.35 billion

Life expectancies for dogs vary with both size and breed, but the average life span for a dog is 10 to 12 years, with a maximum life span of 24 years. For cats, life expectancies are longer, with the average life span being 10 to 14 years, and the maximum ranging to 30 years.<sup>4</sup>

Almost all states permit a Pet Care Trust to extend until the death of the covered pets, but a few states impose an outside Pet Care Trust duration cap. The states with duration limits on how long they can operate that can be less than the lifetimes of covered pets are:

- ✓ Alaska (no more than 21 years)
- ✓ Arizona (no more than 21 years)
- ✓ Colorado (no more than 21 years)
- ✓ Iowa (no more than 21 years)
- ✓ Michigan (no more than 21 years)
- ✓ Montana (no more than 21 years)
- ✓ New Jersey (no more than 21 years)
- ✓ New Mexico (no more than 21 years)
- ✓ Tennessee (no more than 90 years)

A new factor to consider in connection with veterinary care is whether you want to give any guidance to your Pet Trustee and Pet Caretaker for extraordinary care. Advances in veterinary medicine are permitting pet owners who are willing to pay for them, previously unheard of procedures such as bone marrow transplants, stent placement for blocked passages in animal bladders and kidneys, orthopedic surgery, CT scans and MRIs. These services are very costly, especially in terms of normal pet medical expenses. Such treatment costs may prolong the life of your pet, but rapidly exhaust the funding of your Pet Trust. The issue becomes even more complicated if there are several pets to provide for in the Pet Trust since caring for one puts the rest at risk.

In addition to the funding for your pet's care, you'll have to factor in a sum to address disposition of your pet's remains by burial or cremation (e.g., between \$100 and \$350), as well as the cost of administering the trust (e.g., trustee expenses and care auditor expenses).

Finally, if you desire it, there may be a stipend amount to your pets' caregiver and compensation for the trustee.



In a number of states, the law permits a court to reduce the amount of property in a Pet Care Trust if it determines that the amount exceeds the amount required for the Pet Care Trust's intended uses. The states permitting a court to reduce a Pet Care Trust with excessive funding are:

- ✓ Alaska (if trust property "substantially exceeds")
- ✓ Connecticut (if trust property "exceeds")
- ✓ Hawaii (if trust property "substantially exceeds")
- ✓ Illinois (if trust property "substantially exceeds")
- ✓ Indiana (if trust property "exceeds")
- ✓ Maryland (if trust property "exceeds")
- ✓ Massachusetts (if court determines that the amount of property "substantially exceeds" and "the court finds that there will be no substantial adverse impact in the care, maintenance, health or appearance of the covered animal")
- ✓ Michigan (if trust property "substantially exceeds")
- ✓ Montana (if trust property "exceeds")
- ✓ Nevada (if trust property "exceeds")
- ✓ New Jersey (if trust property "substantially exceeds")
- ✓ New York (if trust property "substantially exceeds")
- ✓ North Carolina (if trust property "exceeds")
- ✓ Rhode Island (if trust property "exceeds")
- ✓ South Dakota (if trust property "substantially exceeds")
- ✓ Texas (if trust property "exceeds")
- ✓ Utah (if trust property "substantially exceeds")
- ✓ Virginia (if trust property "exceeds")

# Let us help you

If you need additional help or guidance, ARAG is here for you. Simply contact a Customer Care Specialist who can help you understand the benefits available to you. For more information:



Visit the Education Center at:  
[ARAGLegalCenter.com](http://ARAGLegalCenter.com), call  
1-800-247-4184 or email  
[Service@ARAGLegal.com](mailto:Service@ARAGLegal.com)









## Preparing to Meet Your Attorney

If you decide to consult an attorney about your legal matters, we suggest you complete the following worksheet prior to your meeting. By preparing this information ahead of time, you have the opportunity to clearly think through your needs and the attorney will have the necessary information to provide you with the highest level of legal service.

Summarize your legal needs in a few sentences. Use this as a starting point when you make your first phone call to an attorney.

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List the names, dates and pertinent details about your legal matter so you will be ready to discuss it with your attorney either over the phone or during an in-office visit.

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## Resources For More Information

**The following websites were used as resources in developing this guidebook and provide additional information.**

American Humane Association

American Society for the Prevention of Cruelty to Animals (ASPCA) and state and local SPCA organizations

Humane Society of the United States (HSUS) and state and local Humane Associations or Societies

Animal Legal and Historical Center, Michigan State University College of Law

1American Pet Products Association "2014 Pet Industry Market Size & Ownership Statistics" @[http://www.americanpetproducts.org/press\\_industrytrends.asp](http://www.americanpetproducts.org/press_industrytrends.asp)

2Black's Law Dictionary, rev. 4th ed., 1968.

3American Pet Products Association "2011-2012 APPA National Pet Owners Survey" @[http://www.americanpetproducts.org/press\\_industrytrends.asp](http://www.americanpetproducts.org/press_industrytrends.asp)

4Pet Health 101; [http://www.pethealth101.com/Senior\\_pets/senior\\_life\\_expectancy.shtml](http://www.pethealth101.com/Senior_pets/senior_life_expectancy.shtml)

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