

Wills, Trusts & Estate Section

ESTATE PLANNING FOR YOUR PET

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Estate planning is vitally important to ensure that your affairs are properly handled during any period of incapacity during your lifetime and at your death. Although it is an unpleasant topic for most people to think about, taking the time to plan for the unexpected is critical to avoid potential problems and hassles for you and your family in the future. Because pets in particular are so dependent on us, it is important to take steps to make sure they are taken care of and protected in the event we are not physically or mentally able to care for them.

Professor Gerry Beyer has given several excellent presentations on the importance of pets and estate planning, and also written a book on the subject "Fat Cats and Lucky Dogs: How To Leave (Some Of) Your Estate To Your Pet." The ASPCA also has helpful information on their website on how to prepare for and protect your pets in the event of a disaster and other unforeseeable events such as the owner's illness or death, including the increasingly popular use of Pet Trusts.

Not long ago, pet trusts were thought of as little more than things that the eccentric and ultra-wealthy did for their pets, like the famous case of Leona Helmsley and her dog Trouble. Today, pet trusts are recognized in all 50 states in one form or another, predominantly due to recognition of trusts for the care of an animal in Section 408 of the Uniform Trust Code.

Similar to the appointment of a guardian and creation of trusts for minor children, providing for your pet in your estate plan can take various forms including:

1. Gift of pet to "pet guardian" or caretaker in your Will or Revocable Trust at your death, with monetary bequest to provide for the pet's care;
2. Creation of a traditional/customized pet trust in your Will or Revocable Trust, or a Stand-Alone Pet Trust created and funded during our lifetime;
3. Creation of a statutory pet trust in your Will or Revocable Trust at your death or during our lifetime (similar to an UTMA account for a minor child); and
4. Gift of pet to the Lifetime Care Program of an animal rescue organization or sanctuary, such as Best Friends Animal Society, which typically also requires a minimum monetary bequest in your Will or Revocable Trust or lifetime gift to the organization. Which of the above options is right for you will depend on various factors, including the extent you want to provide for enforcement and oversight of your pet's care, the type and age of your pet/animal, and the amount of funds that you intend to leave for your pet. It is also extremely important to authorize payment of pet expenses and care of your pet in your Durable Financial Power of Attorney.

When creating a traditional pet trust in your Will or Revocable Trust, or as a Stand-Alone Pet Trust during your lifetime, the following considerations should be addressed:

1. Designate who will serve as the caregiver/"pet guardian" and trustee (including alternates). Generally, it is better to name different persons or entities to serve in the role of caregiver (who will actually have physical custody and care of your pet) vs. trustee (who will oversee the management and distribution of trust funds for the benefit of your pet). Be sure to discuss the appointment with your designated caregiver and trustee in advance, to make sure they are capable of accepting and willing to perform the role when the time comes. For the role of trustee, you may wish to consider naming an individual, professional or corporate trustee, or pet organization. Be sure to include a power to remove and replace the caregiver and trustee in the trust document.
2. Provide specifics as to the standard and level of care for your pet. Address such factors as home environment (e.g., whether pets should be kept together, live in home with kids vs. no kids); food/diet; exercise; grooming; boarding; medical care; pet insurance; end of life plans or directive; disposition of remains and memorial instructions.
3. Provide for how the trust funds should be administered and distributed. Typically, a fixed monthly sum will be distributed to the caregiver, with the trustee having discretion to disburse additional funds as needed. The trustee should be required to do periodic random check-ins on the pet, and be able to sufficiently identify the pet (e.g., via microchip or pet tattoo) to prevent caretaker fraud or neglect. The trustee should also be required to provide an annual accounting to the caregiver and any other designated person or trust protector. The amount of compensation for the caregiver and the trustee should also be addressed.
4. Specify the termination date for the trust and the remainder beneficiary. Typically, the trust will terminate at the death of the last animal covered by the trust (the animal must be alive during the settlor's lifetime; however, the document can provide for after-acquired pets by the settlor). The remainder beneficiary can be a charity or animal rescue organization, or any other individual or

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beneficiary of your choosing. It is typically not recommended to name the caregiver as remainder beneficiary for obvious reasons. In comparison to the traditional pet trust described above, a statutory pet trust is a less expensive alternative to leave money to care for your pet. Rather than including specific trust provisions in your Will or Revocable Trust, a simple statement such as "I leave \$10,000 in trust for the care of my dog, Lola" can be sufficient. Similar to a gift to a Uniform Transfers to Minors Act (UTMA) account, default provisions under state law will fill in the blanks. A pet guardian should be named, or any person interested in the pet's welfare may ask the court to appoint a pet guardian if one is not named, or to remove the pet guardian if the pet is not being properly care for. The court may also determine whether the value of the trust funds exceeds the amount required to care for the pet.

An outright gift of your pet with a sum of money for the pet's care to a trusted family member or caretaker in your Will or Revocable Trust is an even simpler option; however, this alternative provides no means of enforcement or assurance that the funds will be expended properly.

An experienced estate planning attorney can help you decide which of the above options may be right for you, and coordinate with your other advisors to ensure that your wishes are carried out as part of your overall estate plan. ■

