

PLANNING FOR THE CARE OF YOUR PETS

Planning for the care of pets is an important part of estate planning often overlooked; despite the fact the pet is often one of our most important “assets.” A pet is a companion, friend, and soul mate, and often may be the only one left in one’s life to fulfill such a role. Yet more than 500,000 pets are euthanized each year following death or disability of their owner, according to 2nd Chance 4 Pets, a nonprofit organization in Los Gatos, California.

Law

Currently 42 states plus DC have statutory provisions permitting trusts for companion pets¹. Section 2-907 which addresses pet trusts was added to the Uniform Probate Code in 1990 (amended in 1993) and the Uniform Trust Code of 2000 has similar provisions. Some states have adapted the language from the Uniform Codes, while others have created their own pet trust statutes.² The New York Statute can be found in New York Estates and Powers Trust Law Section 7-8.1.

Planning In The Event of Death

The pet can be bequeathed to a caregiver via a Will, with funds designated to compensate the caregiver as well as care for the pet. A specific pet(s) should not be named in the Will; instead the Will should provide “all the pets I own at the time of my death”. A bequest in a Will, however, provides no assurance that the pet will be cared for - - much less the possibility that the pet along with the money are simply taken and the pet immediately euthanized. **The named caregiver may not be able to take the pet at the time of death due to family illness, marriage/divorce, financial troubles, children, etc.** Alternate caregivers need to be named in the Will in the event the primary caregiver cannot accept the pet, but the above risks remain.

Alternatively, for a substantial fee, the pet and monetary bequest could be bequeathed to a shelter, a sanctuary or a retirement home (“Shelter”). Many people do not want their pet living in a Shelter or adopted to another family. Shelters must be researched and visited to assure acceptable for the pet to permanently or temporarily reside therein and substitute Shelters must be named (and researched).

Either a Testamentary or an Intervivos Trust could be created. The advantage of an Intervivos Trust is that it takes effect immediately and is already in place upon the owner’s death, which provides for uninterrupted care. It becomes operational if the client becomes incapacitated and is no longer able to care for her pets. For clients who do not like the idea of creating and funding a trust during their lifetime, the Testamentary Trust only comes into effect upon death of the owner.

Regardless of which Trust is chosen, the owner needs to choose a Trustee for the Trust (receiver of the pet), a pet caregiver (the beneficiary) and possibly a court enforcer for the Trust, along with alternative/successor positions. These are very difficult decisions.

How the Trust will be funded must also be considered. The client must discuss his wishes with the named individuals and be very clear as to what his instructions may be for the care of the pets, including health care and end of life decisions. Such directives may be found in a letter of intent or the trust document itself. Finally, consideration must be given to compensation for the Trustee and the caregiver, as well as the funds required to care for the pet for life. The advantage of a trust is it provides a checks and balance system for the proper care of the pets. If the terms of the Trust are not being adhered to, Court intervention can be sought.

Planning During Lifetime

During life, your client may become either temporarily or permanently incapacitated and not be able to care for their pet. As with the creation of a Trust, consideration must be given to the selection of a caregiver who has, after previous discussions, agreed to this responsibility. Funding should be made available to the caregiver; you should discuss the creation of a joint bank account or a Power of Attorney, which could facilitate the necessary funding. As mentioned above, an Intervivos Trust can also be created. The client also needs to assure that family, friends, neighbors, etc. are aware of his wishes in the event of incapacity. In the event of an emergency, a wallet- sized notification card should be carried which will alert emergency personnel that there is a pet at home and provide contact information for a specific person. Similarly, a notice visible in the home of the individual which advises emergency personnel to contact the named person in the event of hospitalization, death, etc. is useful as well. The delineated person who previously agreed to assist your client will know the necessary steps to be taken.

¹ *Pet Trusts: Fido with a Fortune?* January 27, 2010; Appendix; Professor Gery W. Beyer, Governor Preston E. Smith Regents Professor Law, Texas Tech University School of Law, Lubbock, Texas 79409

² UNIF. PROBATE CODE §2-907 (amended 1993); UNIF. TRUST CODE § 408 (amended 2005)