



## PET TRUSTS – A GROWING TREND

What are the options for individuals who want to guarantee the care of a pet after they're gone?

Setting up a trust is one of the most important decisions a family can make, and it's never a simple task. The modern American family commonly includes stepchildren, half siblings, unmarried domestic partners, and other relationships that can complicate planning matters. Special attention to details is crucial in unusual trusts, especially if the grantor wants to leave part of an estate for the care of a pet. As the practice becomes more commonplace, you should know what options are available.

### A GROWING TREND

According to the American Pet Products Manufacturers Association, 63% of U.S. households own a pet, and Americans spent an estimated \$40.8 billion on pets in 2007. Not surprisingly, attention to and care for pets are now extending to long-term protection through provisions in individual estate plans. And devoted pet owners are becoming increasingly aware of this nascent phenomenon through the press, Internet searches, and animal organizations. "It all comes down to this: If you have a pet, have a plan," says Amy Shever, founder of PetGuardian.com and its nonprofit companion, 2ndchance4pets.org.

Many states now have laws that recognize trusts for pets. Some of those states have adopted the Uniform Probate Code, others the Uniform Trust Code, and a few have independent pet trust statutes.

### PET TRUSTS: STATE BY STATE

The following shows some examples of each type of state legislation:

#### UNIFORM PROBATE CODE (UPC) §2-907

Alaska, Arizona, Colorado, Hawaii, Michigan, Montana, North Carolina, Texas, Rhode Island and Utah

#### UNIFORM TRUST CODE (UTC) §408

Arkansas, District of Columbia, Florida, Kansas, Maine, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia and Wyoming

#### INDEPENDENT STATE TRUST LEGISLATION

Idaho, Illinois, Indiana, Iowa, New Jersey, New York and Washington

In addition to relying on a pet trust statute, you may want to consider a traditional trust. Indeed, this is the only option available to a pet owner who is interested in a trust for the care of his or her pet but resides in a state that has not adopted a pet trust statute. In essence, these unique trusts allow you to leave funds and instructions for the care of a pet to a trustee, who will financially assist the pet's caretaker (the trust beneficiary) in providing for the animal. A pet trust enables you to set forth a detailed plan of pet care for the animal's remaining years. For example, you can specify the



trustee who manages the property, the type of care the caretaker will provide for the pet, who will take over if the caretaker can no longer provide proper care, and how to handle the remains after the pet dies.

#### DETAILS TO INCLUDE

Perhaps the most crucial aspect of planning is allocating enough funds for the life of the animal, whether through a living or testamentary trust. Start by establishing the cost of caring for the animal for the rest of its life. Consider the age of the pet; its life expectancy; pre-existing medical conditions; and current maintenance expenses, such as grooming, annual trips to the vet, and important incidentals, such as emergency care or liability insurance if, for example, the animal were to bite the mailman.

Compensation for the caretaker is also important because that person will implement the detailed requirements you specify. Such requirements may include the following: the animal's exercise regimen, the brand or type of food it likes or dislikes, and the way in which the owner wants to provide for the pet's final disposition. Every detail must be considered because of the unusual nature of the care. Choose a caretaker who knows and enjoys a harmonious relationship with the animal and be sure, if possible, that alternate caretakers are named in the event the first caretaker becomes incapacitated or dies prior to the pet's death.

Naming a remainder beneficiary to receive any remaining trust property after the pet dies is also important. In order to avoid a conflict of interest, the remainder beneficiary should not be the caretaker or the trustee. Leaving property to a nonprofit organization such as a local humane society, zoo, or other animal-related association would ensure that other animals will benefit from your goodwill.

A key, but often overlooked, detail is the identification of the animal(s). If this significant issue is not addressed, confusion and even fraud could result. Ed Joyce, Northern Trust's managing director in Miami, Florida, tells of a trust left for the care of nine cats. After the owner died, Joyce realized that the cats needed to be identified and sought and received court approval to tag the cats with microchips.

Joyce recommends ID options such as obtaining an "animal card," microchip implantation, or DNA sampling, particularly when there are multiple pets that are not easily identifiable or if the trustee would not know the pet well enough to determine whether the care is being provided for the intended animal.

#### TAKE TAX IMPLICATIONS INTO ACCOUNT

Be sure to have a conversation with your tax advisor about the tax consequences of a pet trust. Joyce makes the following three key points (predicated on the assumption that the pet trust is valid under state law):

- 1) Under federal estate tax law, any amounts left to a pet trust will be included in the grantor's gross estate.
- 2) The IRS has ruled that no portion of the amount passing to a pet trust qualifies for the charitable estate tax deduction, even if the remainder beneficiary is a qualifying charity.
- 3) The trust for the benefit of an animal will be subject to income taxation, unless the caretaker is the trust beneficiary. In that case, the trust should be entitled to deduct, and the caretaker would be required to recognize, distributed income.

### BRING FAMILY INTO THE DISCUSSION

It's important to help address potential sensitivity of family members. You want to avoid startling family members by leaving assets for the care of a pet or creating resentment because of the amount of the bequest.

Making provisions for a pet may raise issues among family members, and you should try to allay concerns. "Simply let them know that you care for the animal and are making provisions," says Gerry Beyer, Texas Tech law professor and pet trust expert. Cases of celebrities who left millions to their pets without informing family members are good examples of trust "don'ts."

Family and friends may take care of the responsibilities of administering a pet trust at little or no cost, but serving as a trustee can be a bigger job than they anticipate. The chosen trustee must be, at a minimum, financially savvy. A trustee who is not a family member may be a wise choice.

For many, a pet is as important as their most valuable and prized possessions. An attorney's careful and caring work to further your wishes and ease your anxiety will be appreciated as much as – or more than – any matter involving high-value property and assets.

### Edward J. Joyce

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Ed joined Northern Trust in 1984, and was named an officer in 1988, a second vice president in 1992, a vice president in 1994, and a senior vice president in 1998. He served as department manager of Estate and Trust Administration for Northern Trust's Dade and Broward counties until 2003, when he was named chief fiduciary officer for the southeast region. He held this position until 2007.

Ed earned both a bachelor of science degree in business administration and a masters of business administration degree in finance from Miami University in Oxford, Ohio.

He is an advisory board member of the American Banking Association (ABA) National and National Graduate Trust Schools and the Miami-Dade County Chamber of Commerce. He also serves on the boards of Camillus House, the American Red Cross of Greater Miami and The Keys, the New World School of the Arts Foundation, and the Miami Lighthouse for the Blind and Visually Impaired.

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