

Pets: Considering an estate plan?

For many of us, pets are an important part of our daily lives, more like members of the family than just “animals.” For people living on their own, especially, they can take on even greater significance, serving as a constant source of companionship and unconditional love.

According to Professor Gerry W. Beyer, Professor of Law at St. Mary’s University School of Law in San Antonio, Texas, and a well-respected authority on estate planning for pets, the number of individuals who own pets is staggering. As many as 33.9 million households in the U.S. own dogs, and 28.3 million own cats. What’s more, studies show that between 12% and 27% of pet owners include their pets in their wills.

No legal protection?

Interestingly, courts of old in England looked favorably on pet owners who sought ways to provide care for their pets after their death. Historically, that concept has not been the case in the U.S. Attempts to make bequests or gifts aimed specifically at providing for the future care of pets have not been considered legally enforceable by most courts. And, currently, no state permits pet owners to leave any part of their estates directly to an animal.

Traditionally, pet owners have been limited to some rather less-than-satisfactory choices. The most common approach is to give money outright to an individual, extracting a promise that the pet will be provided with shelter, food and care in the same manner that the pet enjoyed with its owner. Although this is a simple solution, it provides hardly any protection. There is no legal way to enforce that promise in court.

Another approach has been to establish what is known as an “honorary trust.” The pet owner names someone as trustee to receive funds for the care of the animal. The trustee then either may honor the terms of the trust by using the funds for the animal’s care or relinquish the funds to the beneficiaries of the pet owner’s estate who would have received the funds if the pet had predeceased the owner. Here, the problem is that the human beneficiaries are the only ones entitled to enforce the honorary trust. Thus, if the trustee does turn the funds over to the pet owner’s beneficiaries, they cannot be required to use the funds for the pet’s care.

The new “pet trust”

Beginning in the 1990s, under guidelines established by the National Conference of Commissioners on Uniform State Laws, legislatures and courts have been addressing the concerns of pet owners wishing to establish an estate plan for their animals in the same manner as people plan for their spouses and children. Today many states have adopted legislation that permits the creation of trusts for designated pets and their offspring.

Generally speaking, a pet trust is set up by the animal’s owner either by way of a living trust or a trust in the owner’s will. In the former case, the trust is already in operation when the pet owner dies—ensuring that there are funds immediately available for the animal’s care during the time between the owner’s death and the probating of the will and subsequent funding of the trust. On the other hand, a trust established in the pet owner’s will, springing to life only after the pet owner’s death is usually a less expensive approach in terms of start-up costs and administration expense. Nor does the pet owner have to fund the trust immediately with this approach.

In either case, if the pet owner has not delivered the animal to the beneficiary/caretaker already, the owner formally will bequeath the pet to the trust, leaving the appropriate instructions to the trustee concerning delivery to the beneficiary/caretaker.

Planning considerations and questions

A pet owner will have several other important choices to make in addition to determining when to establish the trust.

For instance, he or she must choose the caretaker who will serve as the actual beneficiary of the trust. The caretaker will have the legal right to enforce the trust if the trustee fails to carry out the pet owner’s directions. As a result, a caretaker/beneficiary needs to have some knowledge of how the trust works, in addition to showing a willingness to take on the responsibilities of a pet owner.

Similarly, the trustee should be chosen with care. The pet owner should make certain that the trustee is willing to serve in that capacity and understands the responsibilities that the job requires. The trustee, whether individual or corporate, must be willing to administer and manage the trust and make the time and effort to carry out the paperwork and technical details. As a safety measure, an alternate trustee should be chosen in the event that the named trustee is unable at some future date to continue to serve.

The pet owner will be faced with a number of important questions to answer: How much should be transferred to the trust for the care of the pet? What should be provided in additional funds to pay to the caretaker or trustee, if necessary? What language should be used to describe the type of care that the pet should receive and the expenses for which the caretaker should be reimbursed? How should funds in the trust be dispersed—for example,

should there be a fixed amount paid per month (or on some other regular schedule), or should the caretaker be reimbursed only when he or she submits receipts that can be reviewed by the trustee? How long should the trust last? Finally, who should receive the funds in the trust after the death of the pet?

For further information

There are many other steps, beyond the scope of this discussion, that pet owners may want to take in order to craft a plan that will ensure that their animals will be well provided for when they cannot take care of them anymore.

Fortunately, there is a wealth of information available to provide guidance. For pet owners seeking quick access to information online, a visit to www.estateplanningforpets.org is recommended.

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Any developments occurring after January 15, 2007, are not reflected in this article.