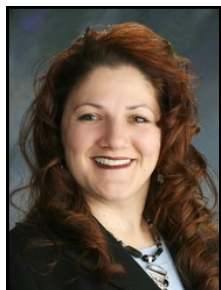


Creating an estate plan for a beloved pet

Gina M. Barry, Esq.



Many people view their pets as members of their family. They go to great lengths to ensure their pets' comfort, and often

shower them with gifts of toys and treats. Surely, they would want to ensure that these pets would be well cared for if they were to pass away.

Massachusetts allows pet trusts

In 2011, the Massachusetts legislature recognized this strong bond by passing legislation that allows a pet owner to establish a trust to provide ongoing care for any animals that they own when they pass away. Prior to this legislation being enacted, an animal owner had to leave funds with a human caretaker, who would then agree to provide care to the animals.

The statute provides that the trust will not terminate until the benefited animal, or the last of several animals, has passed away. This assumes that the trust will contain enough funds to continue to exist for that length of time. Thus, it is not enough to merely create a trust. The animal owner must also ensure that enough assets will be placed into the trust to provide the desired care. Some people overcome the lack of present funds by purchasing a life insurance policy that will pay into the trust when they pass away. Conversely, if the

trust receives an excessive amount of assets, the statute also allows for a reduction of the funds, so long as there will be no substantial impact on the benefitted animal.

The trustee's role

When creating a pet trust, it is necessary to name a trustee, who will be responsible for managing and investing the funds, as well as making distributions for animal care. Fortunately, failure to name a trustee will not be fatal as the statute provides that the court shall name the trustee in this case. The legislation also provides safeguards by restricting distributions to the trustee, with the exception of trustee fees, costs of administration, and any other distribution authorized by the trust. Further, the statute allows for court enforcement of the trust if the trust funds are being misused.

When the last of the animals passes away, or if there is a reduction as indicated above, the remaining funds would be distributed as directed in the trust. Many people choose to name a charity, such as a local animal shelter, to receive the balance of the trust funds, but the final beneficiary need not be a charity. It is highly recommended that the final beneficiary not be the trustee or the animal caretaker as that could encourage them to shorten the lives of the animals so that the balance of the trust funds would be greater when distributed to them.

Choose your caretaker carefully

Another important decision when planning for the ongoing care of a pet is determining who will serve as the animal's caretaker.

Certainly, the caretaker should be someone who would provide the same level of care as when the animal's owner was alive. While the statute does not restrict the trustee from acting as the caretaker, this arrangement is not recommended as it could lead to a lack of oversight with respect to animal care, trust fund management, or both. Naming at least one alternate caretaker, if not several, who would provide care if the originally named caretaker was unable to do so, is also recommended.

Important considerations

To ensure that the plan is carried out as intended, the following concerns should also be addressed. An animal passes through the owner's estate as personal property; therefore, the pet must be left to the trust in the owner's Will or by assignment prior to the owner's passing. In addition, the plan should clearly describe the animal to avoid "replacement" of the animal by an unscrupulous caregiver who desires to continue receiving payments from the trust. If an animal has specific care requirements, those requirements should be clearly described and the payment of any expenses that might be considered unusual or

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excessive should be specifically authorized. Finally, strict guidelines for euthanasia should be included and the final disposition of the animal should be addressed.

Planning for the ongoing care of your pets has never been easier, whereas failing to plan could leave your pets at risk of injury or death. If you do not yet have a plan in place, call your estate planning attorney today to begin the process. Having a plan in place should you leave your pet at the time of your passing could very well be the most important gift you ever buy for your beloved pet.

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