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“And To My Pet, I Leave....”

HOW A PET TRUST ENSURES THE CONTINUAL CARE OF YOUR LIFELONG COMPANION

By Neil A. Derman, Esquire

According to the latest statistics from the American Pet Products Manufacturers Association (APPMMA), released in their 2005-2006 National Pet Owners Survey (NPOS), pet ownership in the United States is currently at its highest level, with 63 percent of all U.S. households owning a pet. This equates to more than 69 million households in the United States that own a pet. Americans own approximately 73 million dogs, 90 million cats, 139 million freshwater fish, 9 million saltwater fish, 16 million birds, 18 million small animals and 11 million reptiles.

With so many families in the United States owning a pet, the question arises, what will happen to these animals if something happens to their owners? It is important to ensure that when you plan your estate, that you address the care of your animals as well as your heirs.

Why a Pet Trust?

The federal tax code does not provide for any assistance with pet owners and the continual care of their animals once they pass away or if they become incapacitated. The Federal Tax code narrows its definition of a beneficiary, to a human being, a trust, a partnership, associate, company or corporation. However, many states have adopted statutes allowing the Federal definition of beneficiary to be expanded to non human animals. Both New Jersey and Pennsylvania have adopted such statutes.¹

When a pet owner passes away, they often assume that the surviving heirs will be willing to take over the care of that animal, or that the state laws will assist in determining the care of the animal. But pet laws and pet owners do not take into account one key fact of modern life: Surviving adult children may be reluctant to carry out a parent's final wishes.

The cost of caring for a pet may be overwhelming when you put the numbers on paper. The average pet owner spends \$400 per month over the lifetime of a pet. This calculates out to a total

¹ NEW JERSEY: NJSA §3B:11-38

PENNSYLVANIA: 20 Pa.C.S. §7738

cost of \$48,000 over the life of the animal. Costs incurred include grooming, food, medication, veterinary expenses, boarding, equipment and many others. Depending on the age and health of the animal this could become a very large burden on your heirs.

How Does a Pet Trust Function?

Just like any other trust, a pet trust is established to provide for the continual care of the animal during periods of the owners incapacity or death. The trust can be funded during your lifetime or upon death by including it in your will. The funds will be used to cover the economic burdens of the animal such as those mentioned above. A Trustee is named to take care of these funds and ensure that they are appropriately used for the continual care of your pet. These funds can be invested in a plan to ensure that the money can continue to grow and be available during the lifetime of the animal.

The second fiduciary appointed in a pet trust is a caretaker. The caretaker is an individual who will be responsible for the care of the animal during times of incapacity or once the owner has passed. Their responsibility is to look after the animal as the owner did for the animal's health, shelter, and care. Therefore you should consider only a trustworthy adult who is familiar with your animal and how you care for the pet, as well as someone who has experience in caring for pets. Although many of the caretaker's responsibility will be spelled out in the terms of the trust, it is best to discuss with the caregiver what your wishes are for the pet, as you would do with a designated Power of Attorney.

An Alternate Caregiver should be named in case something happens to your designated Caregiver. Your executor can also be provided with the power to designate a Caregiver if an opening arises. New Jersey statute provides that if no trustee is designated, or is willing or able to serve the court shall appoint a trustee in order to carry out the intent of the creator of the trust.²

What if I Over-fund the Pet Trust?

The terms of the trust will dictate where the money goes upon the passing of the last pet named in the trust. Although in some states courts have overturned a pet trust because it was over funded, the terms of the trust will likely control what happens to any excess funds. In New Jersey, the statutes allow the court to reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of any reduction shall be transferred as directed in the trust instrument or, if no such directions are contained in the trust instrument, to the estate of the creator of the trust.

Why is estate planning for pets necessary? Year after year, countless pets are left to a fate that their deceased or incapacitated owners would have never imagined, much less desired. Families with pets should get assistance from legal professionals when making formal arrangements. An attorney can assess your estate and help establish a plan which will ensure that your pet will be provided for during periods of incapacity or at death. Seek an estate planning professional who takes this issue seriously, and recognizes that the care of your pet is as important a part of your estate plan as any other issue they may consider necessary.



² NJSA §3B:11-38

Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

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