

CARING FOR YOUR PETS

Have you seriously considered what will become of your faithful companion – your beloved pet – upon your death or disability? If not, now is the time. If you don't have a plan in place that quickly and easily provides for your pet's food, shelter and care, it's essential that you take steps to include your cherished pet in your estate plan. The specific estate planning method that ensures a quality life for your pet will depend a number of factors including state laws, your pet's needs, your wishes and financial resources.

Can I provide for my pet in my estate plan?

Yes. However, even though you consider your pet as a companion and devoted friend, legally, your pet is 'personal property' – and is not given the status of a person. That makes it critical to choose the right planning method. You can provide for your pet in your last will and testament or by creating a trust.

Isn't my will the easiest place to plan for the care of my pet?

Even though it may seem 'easy' to include a bequest for your pet within your will, it may not be the best approach. Why? Because your will must go through probate before it takes effect. This can be time consuming and uncertain, and since your pet needs food, water, shelter, and love every day, this may not be the best way to provide for your pet. During probate, your pet's care, or even ownership, can be in jeopardy. So, while you may want to include provisions in your will for your pet, first consider other methods. Many people are now using a 'trust' to provide funds and direction for the care of their pets.

How does setting up a trust help me provide for my pet?

Unlike a will that is subject to the probate process, a trust becomes effective immediately upon the terms outlined in your trust – usually death or disability. Your trust specifies the details concerning the care and control of your pet, as well as making funds available. Your trust can also give specific directions about the daily care, medical attention, physical control and even burial of your pet.

What is a trust and how does it work to provide for the care of my pet?

A trust is a legal entity set up to accomplish a particular purpose. We will work with you to establish a plan that will determine when and under what circumstances the trust will take effect. This includes how the trust will be funded, who will be the trustee, successor trustee, beneficiary and caretaker, and how the trustee or caretaker will manage your pet and the funds for your pet.

You want your loving pet to be fed, cared for, and to receive medical attention. You may also want to designate funds for pet insurance, or even to enforce the trust. In your trust, you can also leave real property for housing your beloved companion.

What types of trusts are available to provide care for my pet?

A 'pet trust' is really a generic term and is applied to a trust that provides for your pet. A pet cannot be a beneficiary of a traditional legal trust because one of the legal requirements for a trust is that there must

be a beneficiary, and that beneficiary must be able to enforce the terms of the trust. Obviously, a pet cannot enforce a trust. So, the choice and structure of a trust must take this into account and be properly worded to accomplish your goals.

Most trusts for the care of pets include the following:

- **Statutory Pet Trust** – Some states have enacted statutes that allow for enforceable pet trusts. This generally means that the trust can designate a third party who will have the power to enforce the terms of the trust – to compel the caretaker or trustee to use the trust funds for your pet. Some issues that arise with these trusts include whether the amount of funds in the trust is ‘reasonable’ according to court standards, and who the designated third party to enforce the trust would be.
- **Honorary Trust** – This is a type of trust set up for a specific purpose (such as to provide for a pet) but without a definite beneficiary. The problem with an honorary trust is that without a statute specifically authorizing it as a pet trust, it is essentially unenforceable.
- **Traditional Legal Trust** – One of the best methods to ensure the care of your beloved pet is to set up a traditional legal trust. This can be achieved by placing the pet and sufficient funds for its care into the trust. You can designate the caretaker of your pet as the ‘beneficiary’ of the trust as well as a trustee who will be legally responsible for managing the funds and overseeing the caretaker.