

Taking Care of Pets When We Cannot Estate Planning for Pet Owners

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What is a “pet trust”?

A pet trust is a legal document that is commonly used to ensure our pet receives proper care after we die or in the event of disability.

How does a pet trust work?

We give our pet and a sum of money or other property to a trusted person or bank (the “trustee”) who is under a fiduciary duty to make arrangements for the proper care of our pet according to our instructions. The trustee will take the pet to our designated caregiver (the “beneficiary”) and then use the property we transferred to the trust to pay for our pet’s expenses.

Are there different kinds of pet trusts?

There are two main types of pet trusts.

In a “traditional pet trust” we name a trustee to manage the funds and a caregiver to take care of our pet. The trustee reimburses the caregiver of our pet for the pet’s expenses according to our instructions as long as the beneficiary takes proper care of our pet.

A “statutory pet trust” is a simple document. It does not require the pet owner to make as many decisions regarding the terms of the trust. The state law fills in the gaps and thus a simple provision in a will such as, “I leave \$10,000 in trust for the care of my dog, Fido” may be effective.

What if my state does not have a special law authorizing pet trusts?

We may still create a traditional pet trust even if our state does not have a pet trust statute.

Which type of pet trust is better?

Many pet owners prefer the traditional pet trust because it provides us with the ability to have tremendous control over the pet’s care. In such trusts, we may designate the trustee to manage the property for our pet, designate a caregiver for the pet, identify the types of expenses the trust funds will cover, provide instructions for the proper care of the pet, and address what happens if the caregiver can no longer care for our pet, and provide instructions for the disposition of our pet after the pet dies.

When is a pet trust created?

We may create a pet trust either while we are still living, called a living trust or when we die by including the trust provisions in our will, called a testamentary trust.

Stephanie Ko, is an attorney practices in estate planning, Washington since 1999. She is experienced with pet trusts and is an adopting family of the Seattle Humane Society. She is forever grateful to the dedication of the staff and volunteer teams of this organization. She loves to help strengthen the bond between human and pets. She can be contacted by e-mail ko@stephaniekolaw.com or by phone at (425) 990-1556.

Which type of trust is better, living trust or testamentary trust?
Each type of trust has its own pros and cons.

A living trust is effective when executed; thus, it will be effective if we become disabled. This arrangement avoids delays as funds would be immediately available for the pet's care. Living trust is more comprehensive in nature so it is more expensive to set up than a testamentary trust.

A testamentary trust is less expensive to set up but funds are not immediately available for the pet's care until death occurs. Caregivers may often have to wait for funds during probate of the estate. This type of trust does not protect and provide for the care of the pet in case we are disabled as the trust is not effective until death occurs.

How much money do I need to fund my pet trust?

As pet owners, we have an idea of the ordinary and necessary expenses to provide proper care for our pet. However, these expenses often increase as the pet gets older, such as medical care and treatment. Other ordinary expenses include: animal-sitter, professional boarding expenses when caregiver is on vacation or travel, grooming and food etc.

We should avoid transferring an unnecessary amount of money into the trust because huge gifts are likely to encourage heirs to contest the trust or will. If the amount of property left to the trust is unreasonably large, the court may reduce the amount to what it considers to be a reasonable amount.

When do I fund my pet trust?

Living trust becomes effective during our life time. It will be funded when we execute the trust. Testamentary trusts are funded upon death from the estate.

How do I fund my pet trust?

If we create a living trust, we transfer money or other property to the trustee of the trust. We need to be certain to document the transfer and follow the necessary steps based on the type of the property. For example, transferring money and a piece of real property requires different documentation to be considered a valid transfer. Be sure to consult with an estate planning attorney so you don't defeat the purpose of setting up the trust.

If we create a testamentary trust for our pet, we can include a provision in the property distribution section of the will which transfers both the pet and the assets to care for our pet to the trust. Your estate planning attorney can create the provision for this purpose.

Your attorney can also create a 'pour over' will provision. We may add funds, such as money in a bank account, life insurance proceeds, annuities, retirement plans and other contracts from our estate to the trust.

Be sure to consult with an experienced estate planning attorney about the correct way of naming the trustee of the pet trust as the recipient of these funds.

How do I decide whom to designate as my pet's caregiver?

This is a very important decision. Some of the key considerations include:

- Experienced pet owners are always better than someone who has never cared for a pet.
- Willingness to assume the responsibilities associated with caring for the pet.
- Ability to provide a stable and loving home for the pet.
- Harmonious relationship between caregiver's family members and the pet.

Should I name alternate caregivers?

It is always a good idea to name backup caregivers just in case the primary caregiver you designated is unable or unwilling to take on the responsibility when needed.

What types of instructions should I include in my pet trust?

To ensure the proper care for our pet, these are some common considerations:

- Food and diet restrictions
- Daily routines, activities, toys, kennels
- Medications
- Insurance policy and contact information regarding: emergency insurance, basin health plan and health insurance
- Grooming
- Socialization
- Medical care, preferred veterinarian
- Compensation, if any, for the caregiver
- Details the caregiver must document for reimbursement of expenditures
- Whether the trust will pay for liability insurance in case the pet bites or otherwise injures someone
- How to identify the pet
- How the trustee is to monitor caregiver's services
- Disposition of the pet's remains, such as burial, cremation, memorial etc.

Who should be the trustee of my pet trust?

It can be an individual, a family member or a friend who has good financial management skills; or a professional trustee who has experience in managing trusts even though a trustee fee will need to be paid.

Do I need to name alternate trustees?

It is always a good idea to name backup trustees in case the first choice is unable or unwilling to serve.

What happens to the property remaining in the trust when my pet dies?

We should always name a "remainder beneficiary" to receive any remaining trust property after the pet dies. Many pet owners select a charitable organization that

assists the same type of animals that was covered by the trust, such as the Seattle Humane Society.

What happens if the trust runs out of property to care for my pet?

Often the caregiver will continue to care for the pet with personal funds. We should indicate in the pet trust the person or organization that you would like to donate your pet in case the caregiver is unable or unwilling to provide care for the pet when the trust runs out of funds.

Organizations, such as the Seattle Humane Society, have great programs to care for pets in such situations. Please contact them for details.

How do I get a pet trust?

Be sure to consult with an attorney who specializes in estate planning and preferable a pet owner with experience in establishing pet trusts. Such attorneys will be able to understand your concerns and pay attention to the level of details that you require for the proper care of your pet.