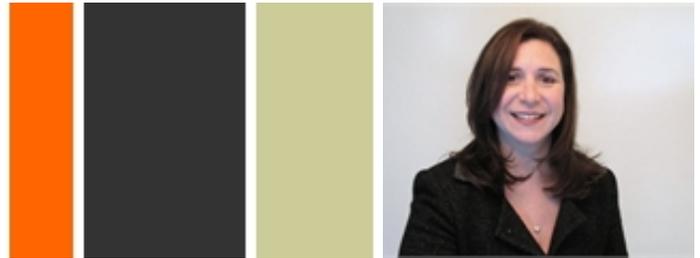


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Animal Pragmatism - Tips for Pet Trusts

Consider the cat whose meows saved a family of five from a house fire, or the African grey parrot who got lost and recited his name and address to a helpful stranger and was reunited with his family. Pets are special, and their owners may wish to ensure that their companion animals will be well cared for even when those owners are no longer able to do so because of the owners' illness or death. Recently the California legislature has recognized that companion animals are more than property and codified a pet trust law in section 15212 of the California Probate Code, entitled "Trusts for the care of animals."

Formerly a pet was viewed as property, and probate laws generally did not permit a person to leave property to property. Trusts that provided for the care of a pet following an owner's death were merely honorary and subject to the whims of the trustee. Where the trust property was significant, the deceased owner's wishes were often dismissed by a relative who preferred to use the money for the relative's own care and feeding.

What animals may be the subject of a California pet trust? The statute defines "animal" to mean "a domestic or pet animal" and all sections of the statute are to be liberally construed. This definition affords a broad interpretation as to what types of animals are contemplated by the statute; apparently pet trusts may benefit any domesticated animal, from cats and dogs, to horses, birds, and reptiles.

How long do the trusts last? Pet trusts are not meant to continue forever, only for the life of the owner's current pets. If the term is not specified in the trust, "the trust terminates when no animal living on the date of the settlor's death remains alive." This reinforces the intent that these trusts are created to care for one or more specific pets who hold a special place in their owner's heart.

The foundation of the statute rests on the language that "a trust for the care of an animal is a trust for a lawful non-charitable purpose." Therefore the trust, whether a stand-alone pet trust or a provision for the care of the pet within another trust instrument or will of the owner can lawfully benefit a pet. While will provisions can bequeath a testator's pet, this only takes effect on death. By contrast a living trust provides the flexibility and control to make specific provisions for the pet's care when the settlor is either incapacitated, disabled or in a care facility that does not permit pets. Alternatively, special provisions can be made to keep the settlor and pet together for as long as possible, with specific recommendations for facilities that allow pets. In addition, the trust sets forth care and funding for the pet when the settlor dies. These trusts do not provide for offspring of the beloved pet that are unborn at the time of the settlor's death.

The trust may be funded with transfers of money or, if funded at death, with an insurance policy payable to the trust. Some thought may be given to taxes. Transfers to an irrevocable pet trust are subject to gift taxes for transfers made while the settlor is living or estate tax if made at the settlor's death. If the owner creates a revocable trust, taxes on the income from trust assets are paid by the settlor. When the trust becomes irrevocable, such as on the settlor's incapacity or death, or even during life if the settlor so chooses, the assets of the trust are subject to income tax. A caregiver who receives income from the trust will pay income tax. A pet trust with a remainder going to charity is not subject to an estate tax deduction.

The pet trust law will tend to encourage elderly people to acquire pets, which have been shown to provide enormous benefits to their owners in terms of companionship, improving their quality of life, and often giving special needs assistance. Often older, responsible individuals do not get pets because of their fear of predeceasing their pet or becoming incapacitated and not being able to adequately care for their pet. Now, the availability of an enforceable pet trust can afford the elderly owner some peace of mind.

Will the legality of pet trusts encourage or even permit outlandish bequests to settlor's pets? The odd bequest of inordinately large gifts to a beloved pet, like the gift by Leona Helmsley to her dog, "Trouble", will still arise from time to time, however the practitioner should discuss realistic parameters with the pet owner during drafting. Considerations such as shelter (and even the cost of modifications to a caregiver's home), caregiver, necessities (such as food, treats and toys), health care, taxes and unforeseen exigencies should be calculated when determining the appropriate bequest. Even if the estate is very large and the recipient is a pet, the trust will only remain in force for the life of the pet or another pet alive at the settlor's death. Therefore, the drafter could encourage the pet owner to leave the remainder, if one exists, to a charity or to fall to the residuary clause of the trust to be distributed in a manner consistent with the settlor's wishes.

The devise of real estate along with the specific provisions for the care and benefit of the pet often ensure that the settlor's wishes will be carried out by providing a nice home for the caregiver. Where the animal or animals in question are horses or the like, certain specialized living quarters such as stables are a necessity and often require a significant sum of money to perpetuate.

The statute shows the California legislature's commitment to upholding pet trusts and further ensuring the appropriate care of the pets by providing a variety of monitoring and enforcement procedures. In fact, it appears that almost anyone interested in the welfare of the animal has standing to make sure that pet is receiving the benefits of the trust. "Any beneficiary (unclear whether man or animal), any person designated by the trust instrument or the court to enforce the trust, or any nonprofit charitable corporation that has as its principal activity the care of animals" may "inspect the animal, the premises where the animal is maintained, or the books and records of the trust." Not only, can an accounting be demanded and the pet's living conditions inspected, but the actual pet can be examined to see if it is receiving appropriate care. Some drafters recommend a provision requiring appropriate accounting procedures down to \$5,000 in assets as a safeguard

to both the pet and the pet trustee. The statute however only directs that an accounting must be provided where assets exceed \$40,000.

California Probate Code section 15212 has raised the bar regarding the care of pets. The statute recognizes the importance of pets to their owners, recognizes the legality of an instrument that designates a pet as a beneficiary of a trust for its care and benefit, and provides oversight by authorizing virtually any interested party to ensure the pet's well being.

Susan Share has an estate planning practice in Encino. Susan's family's pets include the small dog Steinway, rescued from the East Valley Animal Shelter.

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