

PET TRUSTS IN FLORIDA: PROTECTING OUR BEST FRIENDS

- 1. Pets are often a loving member of our families.**
 - a. More than 62% of Americans own a pet: 69% have a dog, 51% have a cat, 11% have fish, 7% have birds, and 8% have other pets such as horses and reptiles.**
 - b. 90% of pet owners consider their pets to be part of their family.**
 - c. Yet, as estate planning attorneys, we often do not sufficiently discuss our client's pets with them when we ask them about potential beneficiaries of their estate.**
 - d. Approximately 500,000 dogs are euthanized each year because their owner has died and the pet was brought to a "kill shelter" and not adopted within the required time.**
 - e. Attorneys should work with their clients who have pets that they love to develop a written plan for the protection of the client's pets when they are no longer able to take care of them: a Pet Trust.**
- 2. Traditional legal obstacles to pet trust planning**
 - a. Under the common law, pet is considered chattel and, as such, cannot inherit money, property or an estate.**
 - b. Today, however, attorneys can use many tools to provide for the care of the pet in the event the pet owner suffers an emergency, disability, or death. Because a will is only effective at death, it does nothing to protect the pet in the event of the owner's disability. It is important to plan for the short term care of the pet in the**

event of an emergency or the owner's incapacity or hospitalization or for the time period between the owner's death and the administration of his or her estate. This is best accomplished through a pet trust.

c. Historically a pet cannot be the beneficiary of a trust. If a person wanted to leave money in trust for the benefit of his or her pet, the devise would have to be accomplished through an intermediary being the beneficiary.

3. Another obstacle for pet trusts was the rule against perpetuities, which generally provides that an interest in property must vest, if at all, not later than 21 years after the death of someone alive when the interest was created (the measuring life). The measuring life needs to be human; where the measuring life is that of an animal, such trusts violated the rules against perpetuities and were deemed void.

4. Some states, including Florida, have made pet trusts valid for the lifetime of the pet. The uniform probate code (UPC) does not eliminate the rule against perpetuities; it simply creates an exception to the rule for a pet.

5. Statutory Pet Trusts.

a. Many states, including Florida, have adopted pet trust statutes.

b. Florida Statute 736.0408 entitled Trust for Care of an Animal, provides: "a Trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, the death of the last surviving animal."

c. The statute authorizes the trustee to carry out the terms of the trust.

d. The statute further provides that the trustee can be designated in the pet trust document or, in the absence of an appointed trustee, the trustee can be designated by the Court.

e. The statute further provides that a trust protector may be appointed to enforce the terms of the trust or to remove a trustee that is not following the terms of the trust.

6. Federal tax implications.

a. Assets passing to a pet trust due to the settlor's death are included in the decedent's gross taxable estate.

c. The IRS has ruled that no portion of the money passing to a valid trust for the lifetime benefit of a pet qualifies for the charitable estate tax deduction, even if the remainder beneficiary is a qualifying charity. (There would be a different result if the lifetime beneficiary were a person and the remainder beneficiary was a qualified charity).

7. Selecting the caregiver and trustee.

a. Attorneys should emphasize to their clients that the most important part of the pet trust is the selection of the person designated to care for and protect the pets (the caregiver) and the selection of the trustee.

b. Often the settlor designates a person as a caregiver and then selects an alternate caregiver and perhaps even a second alternate caregiver. The trust should provide that if none of the caregivers designated by the settlor are able to act, or having acted cease to continue to do so, the trustee is authorized to select a person and/or organization to care for the pets.

c. Typically the pet caregiver and the trustee will not be the same person. The trustee will be charged with supervising the caregiver to assure that the caregiver is providing all of the care and services that are required to be given to the pet. The trustee will also be empowered to remove the caregiver if the circumstances require it and select an alternate caregiver.

d. The pet caregiver should be someone willing and able to provide for the pet's needs in a manner consistent with the care, love, and affection provided by the owner (the settlor) during the settlor's lifetime. Prior to nominating a pet caregiver, the owner should discuss his or her desires in great detail with the potential pet caregiver in order to determine that they are willing and able to accept the responsibility and provide the designated services.

e. The trustee also has the responsibility for the investment, management and distribution of the trust assets.

8. Monetary considerations

a. Careful thought should be given to the funds required for the long term care of a pet.

b. Consideration should be given to the pet's life expectancy, the standard of care desired for the pet, and the need for unanticipated and potentially expensive or extensive medical treatment.

c. The trust should include the desired care for the pet including food choices, boarding, grooming, veterinarian care, and the cost of each of these.

d. The trust should additionally provide for the payment of both the trustee and the pet caregiver.

e. It is difficult to determine the exact amount of assets needed to fund the trust to adequately cover the expenses of the pet's care. The amount depends on various factors including the pet's age, health and life expectancy. The amount will also depend on the extent of care the owner wants the pet to receive if the pet develops a serious illness such as cancer, diabetes, hip dysplasia or other serious ailments.

9. **Avoiding challenges by heirs/beneficiaries**

a. In order to avoid claims by heirs asserting that the caregiver is spending an unreasonable amount on the pet, the pet trust should include language to provide the pet caregiver with very specific written instructions regarding the care of the pets.

b. Such instructions allows the pet owner to document the current cost of the pet's care, the type of care required, the current services being provided, the current care providers, including veterinarians, groomers and petsitters.

c. Special consideration should be provided in the pet trust for unexpected events, emergencies, and critical illnesses with an instruction to the caregiver and trustee for euthanasia and the final disposition of the pet at the time of death, including cremation or burial, and the handling of the pet's remains.

10. **Other considerations**

a. The settlor may be unable to care for his/her pets because he/she will be living in an assisted living facility. The settlor may choose an assisted living facility that allows his/her pets to visit and the caregiver can be directed in the trust to bring the pet to visit the settlor several times each week at the assisted living facility.

b. It is strongly suggested that the pet be implanted with a microchip. It is a painless and relatively inexpensive procedure that will prove invaluable if the pet is lost, stolen, or hurt. It will also prevent the pet's caregiver from replacing the original pet to extend the right to receive trust distributions or benefits.

c. It is also recommended that a pet owner who has prepared a pet trust carry a simply note in his /her wallet regarding the emergency care of his/her pets: "In any situation where I am unable to return to my home to feed my pets, such as a hospitalization or death, please immediately contact my trustee (provide contact information) to arrange for the immediate feeding and care of my pet at my home."

d. Pet trusts offer pet owners a great deal of flexibility. More importantly, they offer a pet owner peace of mind knowing that their pet will be cared for in the event that they are unable to do so.