

WE LOVE OUR PETS, BUT WHO WILL TAKE CARE OF THEM IF WE DIE FIRST?

January 29, 2019

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We love our pets, and we make sure to give them plenty of affection, quality food, play time, and veterinarian care. But have you made plans for your pets in the event of your death or incapacity? Unless you make plans for a new home and care of your pets, they may have nowhere to go and end up in an undesirable situation. Pet owners should designate a caregiver and if so needed, provide funds for the caregiver to care for the pet(s) during the remaining lifetime of the pet(s).

Designate someone to leave your pet to in your will:

A pet owner cannot leave any part of her estate directly to the pet. One option is to identify a person who is willing to adopt your pet. Make sure you should discuss this important responsibility with them first. In the alternative, if you do not have a friend or family member to adopt your pet, you may look for a non-profit charitable organization whose principal function is to care for, or place, companion animals. You can then execute a will with a provision that you will bequest your pet to that person or organization when you die. However, wills are designed to distribute property after death and cannot be used to provide instructions on how to care for the pet. You may want to consult an estate planning attorney to ensure you create the proper documents to bequeath your pet to your designated pet caregiver.

Statutory Pet Trust under California Probate Code §15212

An alternative to the above is to create a statutory pet trust, which is permitted under California Probate Code §15212. A statutory pet trust allows pet owners to create a court-enforceable trust for the care of one or more pets. The trust may be created during the pet owner's lifetime and take effect immediately (an inter-vivos trust), or it may be created under the pet owner's will and take effect upon the pet owner's death (a testamentary trust). While you can create either type of trust for the care of your pet, creating an inter-vivos trust can help ensure that your pets are cared for in the event of your incapacity, and not just upon your death. An inter-vivos trust can also help avoid the delay that would occur during the period between the pet owner's death and the court appointment of the executor under the pet owner's will, because the executor cannot take any action until he or she obtains authority from the probate court to administer the will. This process can take months, which means your pet may not be properly cared for during that delay.

Before you decide to set up a pet trust, however, you should confirm whether the rescue organization or breeder from which you may have obtained your pet has any restrictions against your ability to transfer your pet upon your death or incapacity.

How the Statutory Pet Trust Works

The pet owner who creates the statutory pet trust is called the settlor. The person who manages the trust funds for the benefit of the pet is called the trustee. The person with

whom the pet lives and who takes care of the pet is called the caregiver. The beneficiary of the trust is the pet or pets that are named as beneficiaries in the trust.

During the pet owner's lifetime, the pet owner serves as the settlor, trustee, and caregiver. When the pet owner dies, the person named as the successor trustee in the trust will take over as trustee and manage the trust assets, and the person named as the caregiver will take possession of and take care of the pet. You may designate the same person to serve as both the trustee and caregiver, but this may not be advisable in certain situations. (See below for a discussion on selecting the trustee and caregiver.)

For the remainder of the pet's life, the trustee will make distributions to the caregiver for the pet's needs. When all pets named in the trust die, the trust will terminate, and the trustee will disburse the funds remaining in the trust, if any, to the remainder beneficiaries named in the trust. If no remainder beneficiaries are named in the trust, then the remaining assets of the trust will be distributed to those beneficiaries named in the pet owner's will, if any, and if not, to the pet owner's legal heirs according to California law.

Selecting the Right Trustee and Caregiver

The trustee and the caregiver of the pets may or may not be the same person. It may be advisable to designate the same person as the trustee and caregiver if the trust is funded with a minimal amount to care for the pet for the remainder of its life. However, if the pet owner decides to fund the trust with an amount larger than what may be needed for the pet's care, then designating the same person as the trustee and caregiver is not recommended due to the increased risk that the trustee/caregiver may misuse the trust funds for her own benefit.

Funding the Pet Trust

Determining how much to leave in the trust depends on many factors, such as the number of pets who will be the beneficiaries, the ages of the pets, the anticipated health needs of the pets, etc. At any time after the trust is created, the pet owner can supplement the trust as needed, if she feels that additional amounts are necessary. While it is important to leave an amount sufficient to care for the pet for the remainder of its life (and to pay trustee and caregiver service fees as needed), the pet owner should be advised that leaving an unreasonably high amount in the trust may open doors for litigation by future beneficiaries.

Consult with a qualified estate planning attorney to create an enforceable trust that reflects your intent regarding the care of your pet and to minimize the chance the trust is challenged after your death.