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NAELA: Aging in Place and Staying True to Its Mission!

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As NAELA approaches its 20th birthday, we have grown to five-thousand one-hundred and forty-one members as of June 2006. Most importantly we have all grown together. In the early days, NAELA's mission was focused on providing seniors with access to attorneys for elder law services. As part of that undertaking, NAELA focused on educating our members on a new practice area of law - elder law. NAELA and its members literally shaped the field of elder law as we know it today.

The small group of founding members quickly grew to hundreds of members by the end of the

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Cover Photo: Vincent J. Russo, JD, LL.M., CELA, CAP

Health Care SIG: The Truth
about Medicare Part D

Trust SIG: Pet Trusts Benefit
Your Clients and their Pets

Inaugural CAP Conference



Pet Trusts Benefit Your Clients and Their Pets

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ing birds, horses, reptiles, rodents (hamsters, rabbits, gerbils, guinea pigs, ferrets, etc.), and even fish.

Elements of a Pet Trust

The elements of a pet trust are the same regardless of the state where the trust is established. Every pet trust must, of course, name a trustee. The trustee disburses funds to the Caretaker who carries out the grantor's detailed directions concerning the pet's care and maintenance. The trust instrument may also designate a trust protector to disburse funds to the Caretaker.

The more specific the instructions, the easier it will be for the Caretaker to care for the pet. The pet trust should include specific instructions about all aspects of the pet's care, from the brand of food the pet prefers, to the park where he/she likes to walk, to the grantor's preferred veterinarian and groomer. A client with more than one pet can direct that the pets must live together.

It is not necessary to execute a new trust instrument each time a new animal joins the family. The trust may cover all animals that the grantor owns at the time of incapacity or death. If an animal requires special care, however, it is wise to designate the animal by name and description.

Although it is not technically necessary to fund the pet trust, the named Caretaker may not be as willing to undertake the required responsibilities if funds have not been set aside for the pet's care. It is possible to fund a pet trust with a portion or all of the proceeds of a life insurance policy or any other property. As pet trusts will play an important role if the owner becomes incapacitated, it's recommended that the trust be funded during the grantor's lifetime as well and supplemented upon the grantor's death.

Conclusion

Since 63 percent of U.S. households have pets, it is important to include pet-related questions in your client intake process. When you help your clients establish a pet trust to ensure that their furry, feathered and finned family members will receive on-going proper care in the event of the client's death or incapacity, you demonstrate that you understand and care about all of the relationships which are important to your clients.

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Pets are important to your clients. Most pet owners consider their pets as part of their families. A 2001 survey by the American Animal Hospital Association found that 83 percent of pet owners refer to themselves as their pet's "mom" or "dad."

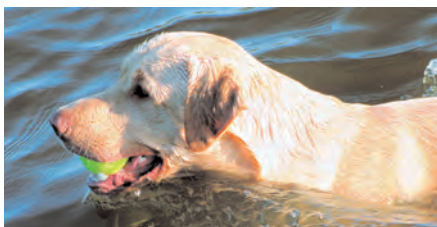
The most effective way for a pet owner to ensure continuity of care for a pet in the event of the owner's incapacity or death is to establish a pet trust.

A Pet Trust Ensures Continuity of Care and Maintains the Pet-Owner Bond if the Client Becomes Incapacitated

The benefits of a pet trust cannot be overstated: the existence of a trust can literally mean the difference between life and death for a pet whose owner has become incapacitated or died. Additionally, a pet trust helps ensure that the pet will be cared for in the manner specified by the owner (who, after all, knows the pet better than anyone else).

Establishing a pet trust also has important benefits for the pet owner, including peace of mind in knowing they have rewarded their pets for their loyalty and affection by ensuring their pet will receive proper care throughout life.

A pet owner's incapacity should not spell the end of this important relationship; this is when the owner most needs the pet's love and companionship. It's well known that pets



have a significant impact on a person's physical and mental health. Whether playing a game of "catch" to help a stroke patient improve muscle

tone or just being a calm, familiar presence for an owner suffering from Alzheimer's, a pet can play an important role in an incapacitated owner's medical treatment and quality of life. A pet trust can establish the life plan for the pet, including instructions for pet visits with an incapacitated owner if the owner's incapacity prevents the pet and owner from living together.

A Testamentary Bequest Does Not Sufficiently Protect the Pet in the Event of the Owner's Death

Your clients may question the need for a pet trust. Many believe that a testamentary bequest to a Caretaker with directions to use the bequest to care for the client's pet will achieve the same goals of ensuring the pet's comfort and continuity of care. Such a bequest may not be enforceable or sufficient to protect the pet when the owner dies; the legatee can simply take the money and dump the pet at the pound.

Who Can Establish a Pet Trust?

Statutes in 31 states expressly provide for the establishment of a trust with a pet as beneficiary. The majority of these statutes were enacted in the last ten years.¹ These statutes are significant because, previously, pets were considered property and could not be beneficiaries of a trust.

Clients in the remaining 19 states are not without a solution. Pursuant to the New York Estates, Powers & Trusts law,² a grantor who is not a New York domiciliary can create a trust-including a pet trust that is governed by New York law, as long as the Trustee resides, is incorporated in, or is authorized to do business in the state, or is a national bank with offices in New York. The Caretaker and other co-trustees can be located in any state, including a state that does not have a pet trust statute.

Pet trusts are not limited to dogs and cats, but may be established for all kinds of companion animals, includ-

Endnotes

1. State	Citation	Enacted	Year Summary
Alaska	Alaska Stat. §13.12.907	1996	Trust terminates after 21 years or when a living animal is not covered by the trust.
Arizona	Ariz. Rev. Stat. §14-2907	1995	Trust is valid for up to 21 years, whether or not the terms of the trust contemplate a longer duration. The trust terminates when no living animal is covered by the trust.
Arkansas	Ark. Code Ann. §28-73-408	2005	Trust terminates upon the death of the animal or upon the death of the last surviving animal.
California	Cal. Prob Code. §15212	1991	Trust's duration is for the life of the animal (domestic animal or pet), whether or not the terms of the trust contemplate a longer duration.
Colorado	Colo. Rev. Stat. §15-11-901	1995	Trust terminates after 21 years or when a living animal is not covered by the trust, whether or not the terms of the trust contemplate a longer duration.
District of Columbia	D.C. Code. Ann. §19-1304.08	2003	Trust terminates upon the death of the animal or upon the death of the last surviving animal.
Florida	Fla. Stat. Ch. 737.116	2002	Trust terminates upon the death of the animal or upon the death of the last surviving animal.
Hawaii	Haw. Rev. Stat. §560:7-501	2005	Trust terminates when no living animal is covered by the trust.
Illinois	Ill Comp. Stat. §5/15.2	2005	Trust terminates when no living animal is covered by the trust. The trust is exempt from the operation of the common law rule against perpetuities.
Indiana	Ind. Code §30-4-2-18	2005	Trust terminates upon the death of the animal or upon the death of the last surviving animal.
Iowa	Iowa Code §633.2105	2000	Trust is valid up to 21 years, whether or not the terms of the trust contemplate a longer duration. The trust terminates when no living animal is covered by the trust.
Kansas	Kan. Stat. Ann. §58a-408	2003	Trust terminates upon the death of the animal or last surviving animal.
Maine	Me. Rev. Stat. Ann. Tit. 18-B, 408	1995	Trust terminates upon the death of the animal or last surviving animal.
Michigan	Mich. Comp. Laws §700.2722	2000	Trust is valid for up to 21 years, whether or not the terms of the trust contemplate a longer duration. The trust terminates when no living animal is covered by the trust.
Missouri	Mo. Ann. Stat. §456.4-408	2004	Trust terminates upon the death of the animal or upon the death of the last surviving animal.
Montana	Mont. Code Ann. §72-2-1017	1993	Trust is valid for up to 21 years, whether or not the terms of the trust contemplate a longer duration. The trust terminates when no living animal is covered by the trust.
Nebraska	Neb. Rev. Stat. §30-3834	2005	Trust terminates upon the death of the animal or last surviving animal.
Nevada	Nev. Rev. Stat. Ann. §163.0075	2001	Trust terminates upon the death of all animals covered by the terms of the trust.
New Hampshire	N.H. Rev. Stat. Ann. §564-B:4-408	2004	Trust terminates upon the death of the animal or last surviving animal.
New Jersey	N.J. Stat. Ann. §3B:11-38	2001	Trust terminates when no living animal is covered by the trust, or at the end of 21 years, whichever occurs earlier.
New Mexico	N.M. Stat. Ann. §45-2-907	1995	Trust is valid for up to 21 years, whether or not the terms of the trust contemplate a longer duration. The trust terminates when no living animal is covered by the trust.
New York	N.Y. Est. Powers & Trusts Law §7-8.1	1996	Trust terminates when no living animal is covered by the trust, or at the end of 21 years, whichever occurs first.
North Carolina	N.C. Gen. Stat. §36A-147	1995	Trust terminates at the death of the animal or last surviving animal.
Oregon	Or. Rev. Stat. §128.308	2001	If the trust instrument makes no provisions for termination of the trust, the trust terminates when no living animal is covered by the trust or when all trust assets are exhausted, whichever occurs first.
South Carolina	S.C. Code Ann. §62-7-408	2005	Trust terminates upon the death of the last surviving animal.
Tennessee	Tenn. Code Ann. §35-15-408	2004	Trust may not be enforced for more than 21 years. The trust terminates upon the death of the animal or upon the death of the last surviving animal.
Texas	Texas Prop. Code Ann. §112.037	2005	Trust terminates upon the death of the animal or upon the death of the last surviving animal.
Utah	Utah Code Ann. §75-2-1001	1998	Trust is valid for up to 21 years, whether or not the terms of the trust contemplate a longer duration. The trust terminates when no living animal is covered by the trust.
Washington	Wash. Rev. Code §11.118.005-.110	2001	Unless otherwise provided in the trust instrument or in the statute, the trust terminates when no animal who is designated as a beneficiary of the trust remains living.
Wisconsin	Wis. Stat. §701.11	1969	If the transferee refuses or neglects to apply the property to the designated purpose within a reasonable time and the transferor has not manifested an intention to make a beneficial gift to the transferee, a resulting trust arises in favor of the transferor's estate and the court is authorized to order the transferee to retransfer the property.
Wyoming	Wyo. Stat. Ann. §4-10-409	2003	Trust terminates upon the death of the animal or upon the death of the last surviving animal.

2. New York Estates Powers and Trusts Law § 7-6.1, reads:

- (a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose or in the trust instrument, or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when no living animal is covered by the trust, or at the end of twenty-one years, whichever occurs earlier.
- (b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of a covered animal.
- (c) Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such direction in the trust instrument, the property shall pass to the estate of the grantor.
- (d) A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property pursuant to paragraph (c) of this section.
- (e) If no trustee is designated or no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the transferor and the purposes of this section.

