

FIDO, STAY! WITH ME

PET TRUSTS AND PET PROTECTION DOCUMENTS

By Rachel Hirschfeld, Esq.

"The greatness of a nation and its moral progress can be judged by the way its animals are treated." Mahatma Gandhi (1869-1948)

The first question in pet protection documents is “who owns the pet?” Why is that so important? Well, get divorced or split from your domestic partner or roommate and see! Because pets are classified as property in the eyes of the law they are often the foundation of long court battles. So, it’s a good idea to have an agreement governing ownership.

Pet owners can now create legally recognized and enforceable instruments that preserve the continuity of care for pets when their owner is unable to care for them or dies.

Today, American homes house over 88 million cats and 75 million dogs and treat pets more like family than ever before. Because pets are an essential part of their owners’ lives, it is not uncommon to find animals traveling with their owners as well as sharing their beds. In 2007, Americans spent an astounding \$41 billion a year on their pets and by 2010 are expected to spend \$52 billion yearly. -

Sadly, pet owners often do not address the crucial issue of who will care for their pets when they are no longer able to do so. The consequences of failing to provide for a pet’s transitioning and continuing care can be harsh.

Too often, the pet will end up with neither a home nor a family. While, in some instances, family or friends consider the pet a dear member of the household, and will continue to care for the pet, in most cases there is no one left who is able or willing to care for the pet. Generally, pets end up in shelters where in 2007 almost four million dogs and cats were euthanized—nearly 9,600 per day.

In either circumstance, the owner may feel more secure with an enforceable document than with a pledge or handshake as the foundation for a pet’s continued care. Additionally, since pets are property, ownership and the transition thereof makes the switch smoother for all involved with an official record of the owner’s intent.

Types of Pet Protection Documents

1. The Pet Trust

A pet trust provides detailed pet care instructions and directs the disbursement and management of the fund in the trust throughout the pet's life. This allows the pet owner to control amounts and schedule of disbursements.

One of the best reasons to establish a pet trust is that a pet trust can help keep the pet and owner together, whether the owner requires in-home care or moves to an assisted living facility or nursing home.

A further benefit of establishing a pet trust is that the trust funds will not be subject to probate. Therefore, the pet's care is not delayed by court action or inaction. Furthermore, since they are not subject to probate, pet trusts are not public documents.

2. Wills, Health Care Proxies and Powers of Attorney

The efficacy of pet trusts and estate planning documents which include pet protection can be enhanced by drafting wills, health care proxies and powers of attorney with enforceable provisions concerning the care of animal companions. It is important to keep in mind that wills operate only after the pet owner's death, while health care proxies and powers of attorney operate only before a pet owner's death. By contrast, pet trusts operate both during the pet owner's life and after the pet owner's death.

Top 10 Pet Protection Document Tips

1. Ask the Client Who Owns the Pet

All advisors, lawyers, accountants, financial professionals and other counselors and consultants should ask their clients whether they have any pets. Before proceeding, determine who is the owner of the pet. If the pet is owned jointly or there is even a chance that someone else has an interest in the pet, determine this first and work out the ownership before proceeding with any other documents. Thus, a client **MUST** first answer the important question of who owns the pet.

2. Life and Death

The pet owner may become unable to care for one or more aspects of the pet's life, yet not be legally incapacitated as defined in guardianship statutes. For example, an owner may want the pet guardian to act because she has difficulty remembering whether or not she fed her cat. An arthritic greyhound owner may want the pet guardian to begin acting, in a partial role, when he can no longer adequately exercise the dog. If the word "incapacity" is used in the documents to describe the owner's possible mental state, it may trigger, or be used as evidence in, a guardianship proceeding.

3. It's All In The Details

Identify the pet by color, size, shape, breed or mix, markings, any other salient physical characteristics, habits and personality. Leave detailed instructions, based on the pet's routine and preferences, about all aspects of the pet's care, such as food brands and specific flavors; amounts and feeding times; housing; grooming; medical care; toys; boarding; walks; exercise; and socialization. Provide contact information for groomers, walkers and other service providers and determine who should receive veterinarian reports. Direct that pets who have bonded with each other be kept together. Finally, consider including instructions concerning the pet's eventual cremation or burial, and memorial.

4. Decide how much to put in trust

The amount placed in trust can be large or small. First determine how much it costs you to keep your pet. Factors to consider include: type of pet; age; health; anticipated lifespan (especially important for species with long lifetimes such as some birds or reptiles); lifestyle (including the types of expenses usually incurred for food, grooming, boarding, kennel fees, sitters, walkers and toys and travel); number of pets; cost of living and inflation; and possible reimbursement for extraordinary expenses such as the installation of a fence around the pet guardian's property.

However, because disgruntled heirs may challenge the terms of a trust or will which leaves a substantial amount for the benefit of a pet, and because many state statutes permit the court to reduce the amount of funds or property in a pet trust if that amount substantially exceeds the amount required for the intended use, it is important to explain in detail (with examples of past expenses) why the amount left for the pet's care is reasonable.

5. Choosing trustee and defining his powers

The trustee should be an animal lover. Since the trustee's role is to distribute funds to the pet guardian for use for the care of the pet, it is important that the trustee agrees with the owner's spending habits even though the trustee, in his fiduciary capacity, has a legal obligation carry out the terms of the trust.

Consider giving the trustee the power to choose a guardian for the pet in the event that all designated pet guardians are unavailable. Depending on the size of the trust and the relationship of the parties involved, the trustee could even be given the power to purchase a residence for the pet and its guardian. Permit the trustee to remove the pet guardian and replace him with the successor guardian, without the necessity of court intervention. Since some states permit the trust to exist only up to 21 years and many pets could outlive their trusts, the trustee and/or pet guardian (assuming the pet's owner is not able to prepare and execute it because of disability) should be entitled to write another pet protection document or pet trust, consistent with the intent of the existing pet protection document or pet trust, if the pet or its issue are still alive, in order to continue to protect them.

6. Choosing a Pet Guardian

The guardian may keep the owner's pet or care for the pet along with the owner. The owner should choose an individual who knows and likes the pet or likes pets in general. Conversely, the guardian should be someone who the pet likes. It is important to allow the pet guardian to exercise discretion when faced with new circumstances, as long as that discretion is exercised in the pet's best interests. Name as many alternate pet guardians as possible, in case prior pet guardians are unable to act.

7. Pet retirement homes

Regardless of how many pet guardians and back-ups are named, the owner should name a retirement home (and a back-up retirement home) to care for the pet. The organization acts as a temporary or permanent pet guardian in the event all previously named pet guardians are unavailable or unable to act and can assist in finding a new family home for the pet.

8. Provide an incentive

To encourage compliance with the pet owner's wishes, pet owners should consider naming as *pro rata* beneficiaries of the trust remainder any facilities that keep the owner and pet together during the owner's disability and/or until the owner's death

9. Putting plans into effect

The pet owner should be allowed to trigger the enforcement of the pet trust and other pet protection documents at any time.

10. Sign on the Dotted Line

All pet documents should be signed by the owner, guardians and, if there are trustees, by them as well.

No Matter What—We are Family

Pets are increasingly valued members of the modern family and as such, pet trusts and pet protection documents are ideal tools to use to help owners and their pets remain together, to ensure that pets are well-cared for, and to establish procedures for legally transitioning pet ownership.

Rachel Hirschfeld is a nationally recognized expert on pet protection documents whose mission is to ensure that every companion animal has a secure future and that no pet who has found a loving home will ever be abandoned again. You can contact her through her websites, www.pettrustlawyer.com and www.mypetprotection.com.



The Soupbone Angel
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