

Legal Update

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ESTATE PLANNING OPPORTUNITIES FOR PETS

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Our [February 2015 newsletter](#) discussed estate planning opportunities that you may not have considered for disposition of your digital assets. Our April newsletter will discuss a health care power of attorney for the benefit of minor children. This newsletter addresses provisions for pets.

Trust Provisions for Pets

Pet trusts became “primetime news” in 2007 when Leona Helmsley left her Maltese, appropriately named “Trouble,” a \$12 million gift in trust and, among other things, cut out two of her grandchildren as beneficiaries. Litigation resulted regarding the “Trouble Trust,” and the judge ultimately held that the Trouble Trust should only be funded with \$2 million because more would be excessive to fulfill its purpose.

Pet estate planning has continued to grow in importance since the Helmsley story broke. According to a 2011 Harris Poll, more than three in five Americans have a pet, and more than nine in ten Americans consider their pet to be a member of their family. It follows that many would want to provide for their pets in their estate plan if only they knew it were an option or how to do so.

There are several steps you may want to consider taking to ensure that your pet will receive proper care in the event of your incapacity or death. For example, you may carry an “animal card” in your wallet providing relevant information about your pet. In the event of an emergency, the animal card could provide information regarding your pet’s whereabouts, habits, diet, veterinarian, and behaviors around other pets and people. Alternatively, you may want to keep an “animal document” with similar information with your estate planning documents or near the place where you keep your pet’s food.

In addition to an animal card or document, you may also expressly provide the agent of your power of attorney for property with the authority, in the event of your incapacity or another triggering event, to use a designated portion of your financial resources to care for your pet.

You may also consider how your pet will be cared for upon your death. Although some pet owners provide for their pets in their estate plans, many of those provisions for pets are ill-conceived or inadequate. No jurisdictions allow a pet owner to leave property to a pet outright, although most jurisdictions, including Illinois, now recognize pet trusts. They also permit one to leave a bequest to an individual or entity to care for a pet.

In general, pet trusts provide for the care and maintenance of one or more pets in the event of the owner’s disability or death. Generally, the owner sets aside property for the benefit of the pets. The trustee of the pet trust will make payments to a caregiver designated in the trust. Some states set time limits for pet trusts (e.g., the lesser of 21 years or the life of the pet). Such a time limit may put an owner of a pet with a long life expectancy, such as a horse or a parrot, at a disadvantage. Illinois, however, provides for more liberal time limits for its pet trusts under Section 15.2 of the Trusts and

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Trustees Act. Rather than setting a particular time limit, Illinois provides courts with the power to reduce principal of the trust if it determines that the amount substantially exceeds the amount required for the care and maintenance of the pet.

If you decide to setup a pet trust in Illinois, you should set aside a reasonable amount of money for the care and maintenance of your pet to avoid “Trouble” litigation. Additionally, you will need to decide how the trustee will dispose of any funds or assets that remain after the death of your pet: (1) you may designate who shall receive them (often the caretaker of the pet), or (2) the residuary beneficiary of the trust may receive the funds or assets if there are no other provisions to the contrary. If the pet trust does not provide for such beneficiary or the residuary clause does not dispose of the funds or assets, the remaining funds or assets are to be distributed to your heirs under Illinois’ intestacy laws.

Despite your love and affection for your pet, you may view a pet trust as an extravagance. In such circumstances, you may consider a provision in your will or trust that provides an outright gift of the pet to a caretaker coupled with a reasonable sum of money to care for your pet. Such an approach is a simpler alternative to a pet trust and it reduces administrative costs, however, without trustee supervision the caretaker may simply take the money and not care for your pet.

If you would like to make special provisions for your pet upon your incapacity or death, you should consult with an attorney to discuss choosing a caretaker, options for providing the caretaker with resources for the care and maintenance of your pet, and the nature and amount of property you would like to leave under governing law for such purposes.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 jvegosen@fvldlaw.com, Jeff Shelley 312.701.6819 jshelley@fvldlaw.com, or your regular FVLD contact.