

## Pet Trusts, For Families Who Really Love Their Pets

By Attorney Ben Kiniry

Like my family, you love your pets. Some people have a love for their pets that may even be on par with the love they have for their children. Our pets provide us with companionship, comfort and hours of entertainment. Other pets serve us, such as seeing-eye dogs or the many animals utilized for therapeutic purposes. In short pets make our lives better.

So what happens to our pets when we die? What arrangements will you make for your pets continued wellbeing and security? How can you assure your pets will be well taken care of? The answer may be a Pet Trust. A Pet Trust may sound like an eccentricity reserved for the wealthy, however, I have found they are mainly created for clients who simply believe their pet's well-being is a priority. These families feel strongly about their pet's future. Many pet owners pushed our lawmakers for legislation creating Pet Trusts. In fact, I recently read that over 45 states have Pet Trust statutes in place. The point is Pet Trusts have become commonplace and people with pets should consider creating such a trust for their pets.

The New Hampshire Pet Trust Statute can be located under R.S.A. 564-B:4-408 of the New Hampshire Uniform Trust Code, which is titled Trust for Care of Animal. The first subsection states: "A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon 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, upon the death of the last surviving animal." A Pet Trust can be created in your last will and testament, revocable living trust, irrevocable trust or could even be created as a stand-alone document. How is a Pet Trust Better? I know what you are thinking, how is this different than a child, friend or neighbor taking my pet when I die? Good question.

If you don't have a Pet Trust, you don't have control over your pet's care or how your funds are ultimately spent. An example some clients have brought up (it is always the same front door scenario) is in regards to leaving their pets with a child, friend or neighbor (keep in mind their spouse may not want your pet). The concern is that they will leave their pet and some funds with the chosen caretaker. Then the caretaker (the spouse or roommate) "accidentally" leaves the front door open for their pet to escape into the world, never to be seen again. Oh, and now they have all this money and no pet to spend it on, and no one to call foul on the play (money aside, their pet has been mistreated). Though the example may be on the extreme side, the point is, after you are gone, you simply don't know how your pet will be taken care of. As can be seen below, a Pet Trust offers a solution. First of all, if you establish a Pet Trust, you will appoint someone to be the caretaker for your pet, not just one caretaker, but successor caretakers as well. If you run out of caretakers, your Trustee can be given the authority to appoint additional caretakers. Remember, life happens to people and they may be unable to take care of your pets at some future date. You will also be forced to sit down and consider just how much money will be



required to take care of your pet for the remainder of the pet's life expectancy (take a deep breath here). How many years is your pet likely to live? How much food will your pet require? How much medical care or maintenance does your pet require annually? How about over your pet's lifetime? What if your pet is involved in an accident or is stricken with a disease? Will the caretaker of your pet need to pay for kennels, boarding or similar so your caregiver can go on vacation or just get some respite? Note: Some clients have enlisted their veterinarian to help in considering and calculating these costs (speaking of veterinarians, many clients direct their chosen veterinarian (or his or her practice) will continue to be utilized for the care of the pet).

There are other issues for income producing animals. For example dogs and horses are often bred. Who will continue the business side of pet ownership and who will receive the income? These are additional questions that may need to be answered. All of this may be relatively easy to answer for a guinea pig (just guessing, sorry guinea pig owners), but how about a horse? Given these first few points, what will your caretaker think about the fact you set up a Pet Trust? Well, start with the idea no one else could ever love your pet like you do. Next, consider that taking on the responsibility of someone else's pet could be seen as a burden. If you accept these thoughts as being true, then you will see that your chosen caretaker (and their spouse) will take great comfort in knowing they will not need to pay for all of these costs because you have provided for them, or at the very least offset the cost. Also, if you have named succes-

sor caretakers, your caretaker will know that if life should become difficult, they can transfer your pet to someone you had handpicked.

You will also choose a Trustee and successors as well. The trustee is a third party working on behalf of your pet. The Trustee will hold and invest the trust funds, and ultimately distribute the funds to cover the cost of your pet's expenses (either directly or through reimbursement to the caretaker). The Trustee will also oversee the care of your pet. As can be seen, the individual acting as caretaker does not also hold the funds (think about the fox and the henhouse). The Trustee may have broad authority in dealing with your pets. For example, the Trustee can remove the animal from a caretaker's home if they believe the care is not adequate and move them to a more suitable environment (another caretaker appointed by you). The Trustee's other major duty is to make sure your money is not being spent on items that don't benefit your pet, such as in the case of personal use by the caretaker.

In some cases, funds are placed in the Pet Trust to compensate the caretaker. For example, an end of the year gift could be made. This is a personal decision to be made by you. In some cases, clients have set up a Pet Trust naming the same individual as caretaker and trustee. This is more simplistic logistically. In such cases a neutral third party, called a Trust Protector, is named to oversee the care of your pet and the expenditures of your funds. Part of the Trust Protector's role is to request accountings from the trustee/caretaker to make sure your funds are being utilized appropriately. They also check on the well-being of your pets. If necessary, the Trust Protector may petition the Probate Court to enforce the provisions of the Pet Trust in order to protect your pet's rights. Ultimately, upon the death of your surviving pet, the trustee will distribute the remaining assets of the Pet Trust however you have directed in advance: to the caretaker (if they have done a good job), to a charity, to your kids, or any other way you may have chosen.

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