

Estate Planning for Pets

Believe it or not, this is a hot topic in estate planning. As the “father” of two German Shepherds, I understand why. For a pet owner that wants to provide for his/her pet after death, the logical solution is to create a separate trust, funded at the pet owner’s death, that provides a stream of income for the care of the pet during its life and, at the pet’s death, after covering the burial costs of the pet if such is desired, to return the unused trust property to the pet owner’s family. However, in Massachusetts and various other jurisdictions, such a solution will not work as Massachusetts law does not permit a trust to benefit a pet. Legislation has been proposed in Massachusetts to permit pets as beneficiaries of trusts, but it has never passed.

So what is a pet owner to do? There are several solutions to the problem which provide some comfort to the owner that the pet will be provided for as the owner desires, but none that requires funds to be used for the pet, as in the case of a trust. The first potential solution is to make a bequest to a caretaker with the understanding that the funds be used for the care of the pet. If you trust the caretaker enough to give your pet to him/her, you should be able to trust that the caretaker will follow your desires and use the funds for the pet; however, the funds are subject to the claims of all of the creditors of the caretaker. Moreover, there is no legal obligation that the caretaker has to use the funds as the owner desires.

A second solution is to create a trust for the benefit of the caretaker again with the understanding that the funds be used for the care of the pet. Again, there is no legal obligation that the funds be so used. This issue can be mitigated if the caretaker is not the Trustee. If another person is the Trustee, such a person can be instructed to only make distributions to the caretaker if such funds will be used for the care of the pet. This would have to be what we call precatory language, the owner’s wish or desire as to the Trustee’s actions, not mandatory language, an enforceable instruction that the Trustee must follow, because a trust requiring funds to be used for a pet is invalid in Massachusetts. This solution should provide greater comfort to the owner as there are now two people who would have to collude to go against the owner’s wishes for the pet to not receive the benefit of the funds. Moreover, utilizing this solution protects the trust funds from the claims of the caregiver’s creditors.

A third and final solution to this problem, although I confess I have not used this solution in my practice, is a contract between the owner and the caregiver. The contract could provide for the payment for services of the caregiver including the reimbursement of all of the caregiver’s expenses incurred on behalf of the pet. The contract would have to be drafted so that it survives the owner’s life and becomes enforceable by the successor in interest to the owner, likely his/her Estate. If the caregiver failed to care for the pet, the Estate could sue for breach of contract and/or hire a successor caregiver.

In my practice, I have found that the first solution is the most common. Most pet owners, or “parents” in some of our minds, share the love for their pet with other family members and the other family members, if given a bequest, would be happy to use the

funds to care for the pet. Surprisingly enough, I have clients that are often more concerned with the care of their pets than their children. Maybe, that's because pets can't talk back?

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