

Winter 2022/2023

## Estate Planning Update Winter 2022/2023 - Get Your Ducks in a Row: Planning With Pet Trusts

National Pet Day is April 11, but for many people, pets are important members of the family every day of the year. Consequently, pet owners are dismayed to learn that their pets are considered tangible personal property, like clothing or furniture, in the context of their estate plan. The good news is that pet trusts are now recognized in all 50 states and the District of Columbia and can be flexible enough to accommodate varying goals and unique circumstances. From donkeys to birds and everything in between, a person can provide for the continued financial support and physical care of a pet.

Although once a tool for wealthy and arguably eccentric clients, the widespread use of pet trusts reflects the integral role of pets in modern families and the increased legal legitimacy of planning for their future care. Generally, a trust may be established for pets living at the time of the trust's creation with an amount of assets reasonable for the care of the pet for the rest of its life. What is deemed "reasonable" will be pet- and family-specific. For instance, a trust for a tortoise could require funds for 150 years, whereas a trust for a dog may require funds for only 10 years.

A pet trust can be created as a stand-alone trust to which assets can be transferred during an owner's life, or it can be incorporated into a will or revocable trust to be funded at the owner's death. A pet trust can include layered oversight by naming caretakers, trustees and trust protectors with distinct responsibilities to care for the pet, manage and disburse funds, and ensure accountability. Within the trust structure, the owner can specify permitted uses of funds, direct intentions for euthanasia, ensure the disposition of remains and direct to whom excess funds are paid upon termination. Flexibility for designating successor caretakers, trustees or trust protectors can ensure that the trust is managed for the life of the pet. Compensation for those providing services can be authorized as well.

Typically, the trust is funded with a certain dollar amount calculated by multiplying the pet's annual needs by its life expectancy. When calculating the appropriate funding level, owners should consider costs for food, shelter, veterinary care, medication, boarding or pet-sitting, and the pet equivalent of toiletries and entertainment, such as grooming, treats and toys. Ultimately, what is "reasonable" may hinge on applicable state law and the pet's specific lifestyle. On one hand, Leona Helmsley's Maltese, Trouble, was not able to enjoy the full benefit of its \$12 million trust when a court ruled that \$2 million was sufficient. On the other hand, over the objections of both the estate's fiduciary and charitable beneficiaries, a court preserved a pet trust holding the owner's home and funds transferred to it for the support of the owner's cats. Owners wishing to create trusts for their pets should be specific with their intentions and deliberate with their decisions.

The funds within a pet trust are fully taxable for estate and inheritance tax purposes. This is true even if the trust's remainder beneficiaries are charitable organizations. Because of this, consideration should be given when directing from what funds death taxes will be paid upon death. Moreover, a pet trust will pay the tax on all its income, in contrast to trusts for individuals, where distributions carry out income to be taxed to their beneficiaries. Although unlikely, it is not inconceivable that federal legislation may lessen the tax burden of pet trusts at some point. Legislation proposed in 2007 failed to gain sufficient traction but would have allowed an estate tax deduction for a portion of a pet trust if the balance of the trust was paid to charity on the

pet's death. The public policy behind the proposal was to provide a tax incentive for people to arrange for long-term care of their pets, reduce the societal burden of caring for unwanted animals and encourage charitable giving. With that said, pet owners will not generally let the tax tail wag the dog; they will provide for their pets regardless of the tax consequences.

Pet trusts are permitted in all the states in which Day Pitney has offices. With some variation among states, pet owners can create trusts for their living pets with amounts that are reasonable for the intended purposes. Because of the nuances that each state's law can carry, an owner who wishes to set up a pet trust should consult with their estate planning attorney to discuss how best to provide for their pet(s).

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