

Pet Trusts – Protecting Your Pet When You No Longer Can

If you're reading this article, chances are pretty good that a pet is an important part of your life. You're not alone; according to the American Veterinary Medical Association, 79.7 million households (65% of U.S. households) have a pet. In addition to providing companionship, pets have been proven to lower blood pressure, anxiety and stress, and to increase exercise, circulation, social interaction and longevity—without any side effects. As evidence of the increasingly important role pets play in our lives, U.S. households are estimated to have spent \$60.59 billion on their pets in 2015.

In the not too distant past, pet owners seeking to provide for their pets when they no longer could encountered many legal barriers. For example, attempts to make gifts to pets were often declared void because pets were considered property and property could not own property. Also, attempts to create trusts for pets often failed when courts ruled that trusts could only be created for people or legal entities.

We've come a long way since those days. As of the writing of this article, 49 states and the District of Columbia have enacted pet trust laws. Wisconsin's pet trust law became effective July 1, 2014. The only state without a pet trust law is Minnesota. This widespread adoption of pet trust laws is an acknowledgement of the important role pets play in our lives.

There are a number of ways to include your pets in your estate plan, but none of them gives you the control and flexibility of a pet trust. For example, you could give your pet to a relative, along with \$5,000, but what assurance do you have that the \$5,000 will be spent on your pet or that your pet will receive the level of care you want it to have? Only a pet trust can provide you with a system of checks and balances to give you peace of mind, knowing your wishes will be followed.

So, what is a pet trust? It is a tool designed to address the financial and physical well being of your pet, both during and after your lifetime. A well-constructed pet trust will ensure that your pet remains with you during your lifetime—even if you become unable to care for your pet—and receives the care during and after your lifetime it would have received if you were able to provide it.

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How does a pet trust work? There can be up to six parties to a pet trust—the creator of the pet trust, the pet, the trustee, the caretaker, the enforcer and the remainder beneficiaries. As the creator of the pet trust, you are in complete control of its terms. You can be as flexible and creative as your imagination allows. Be thorough and specific. Think about all that you provide for your pet now and what you would want someone else to provide your pet if you are no longer able to, and be sure to address each of those needs in your pet trust.

Under Wisconsin law, you can create a pet trust for any animal alive during your lifetime. To avoid modifying your trust when a new pet enters your household, consider being broad (but specific) about the pets you want to include. Also, be sure to address the issue of pets in gestation at your death. A pet trust must terminate upon the death of your pet or, if the trust was created for more than one pet, upon the death of your last surviving pet.

The trustee is the individual or corporate fiduciary (bank or trust company) who will be responsible for the financial assets you place in your pet trust. The trustee will be in charge of investing the assets and making distributions for your pet's care. When deciding how much to fund your pet trust with, be sure to take into account all of your pet's anticipated expenses (*e.g.*, food, grooming, vet care, kennel fees, travel). To reduce the likelihood that a court would remove assets from your pet trust on the basis of excessive funding, be sure the funding amount is justified.

The caregiver is the person who will physically care for your pet. Funds will be disbursed by the trustee to the caregiver or other providers for your pet's care in the manner you specify. For example, you can require the caregiver to provide evidence to the trustee of your pet's well-being before funds are disbursed. If the caregiver has his or her own pets, consider the suitability of the caregiver. Also consider naming a successor caregiver in case the primary caregiver is unable to serve.

Under Wisconsin law, a pet trust can be enforced by a person appointed in the pet trust or, if there is no one appointed in the pet trust, by a person appointed by a court. Any person with an interest in the welfare of the pet can request that a court appoint or remove an enforcer. The enforcer's role is to ensure that the terms of the pet trust are being complied with and the assets are being used for the pet's care.

The remainder beneficiaries are the individuals or organizations who will receive



the remaining assets of your pet trust after your pet's lifetime. This interest of the remainder beneficiaries may be in conflict with your pet living a long life. Accordingly, consider naming someone other than the remainder beneficiaries as the trustee, caregiver and enforcer of your pet trust. For example, you may consider naming an organization that cares for animals as the remainder beneficiary.

Please contact your Reinhart attorney or a member of Reinhart's Trusts & Estates team to discuss how a pet trust could fit into your estate plan.

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