



INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

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Providing for Pets After Your Death

BY JOEL HAILEY

There are several methods by which a pet owners can provide for their pets after their own death. Although the creation of a “pet trust” is one method — pet trusts were validated by a 2005 Texas statute — there are actually several alternatives when considering your particular desires and circumstances. In each situation, the language in your will should usually be broad enough to include all pets (e.g., “I give all of my animals living at the time of my death” and “including any companion animals acquired after the date hereof.”)

BEQUEST TO NAMED INDIVIDUAL OR ENTITY

This is the simplest form of testamentary gifting in which you leave one or more pets to a person or entity designated in your will. The will might also

include a monetary gift to the beneficiary to cover animal care expenses. However, in this form of gifting, there will be no way to monitor how the beneficiary spends the money or cares for the pets.

BEQUEST TO CHARITY, ON CONDITION

One purpose of this form of testamentary gifting is to avoid the additional cost incurred in drafting a trust. In this situation, your will provides that one or more pets will pass to a designated charitable organization that benefits animals, along with a monetary sum to the charity that is conditioned on the charity finding a satisfactory home for the pet.

Suggested language is “together with the sum of \$XX,XXX to such entity on condition precedent that if any of my animals survive me, the entity either

accept as caregiver those animals or place those animals in one or more suitable homes with appropriate caregivers.” Your estate’s executor should be authorized to inspect the home or facility where the pets are placed before actually distributing money to the charity.

BEQUEST TO CARETAKER CHOSEN BY EXECUTOR

In this situation, the will provides that the executor will select caregivers and place the pets in suitable homes. It is important that the executor be someone who you firmly believe will be scrutinizing and sensitive to the welfare of your pets.

Also, the will may authorize the executor to deliver to each caretaker a reasonable sum of money to cover estimated animal care expenses during each



pet's remaining lifetime. The will might go even further by stating that this sum is intended not as a gift, but as an "expense of administration" that has a high priority in case of estate insolvency, albeit the legal outcome of this strategy is uncertain. Of course, in this scenario there is no way to monitor how the beneficiary spends the money or cares for the pets, unlike the trust method described next.

BEQUEST TO TRUSTEE OF PET TRUST

This is usually the safest, although a more complex, manner of maintaining pets after your death. In this method, you designate a person as trustee of a trust named in the will to receive in trust the pets and a certain monetary sum for animal care and trust administration expenses. It is recommended that the trustee be someone familiar to you and be reliable with business experience, in which case a trustee's bond can be waived in order to save trust expenses. The will should provide that the trustee be reimbursed for reasonable expenses and may also authorize reasonable compensation for the trustee's services. An alternate trustee should be named in case the first trustee dies or is unable to serve.

The will should emphasize that the pets are the primary beneficiaries of the trust. You will designate a person (preferably other than the trustee, to avoid conflicts of interest) as caretaker who must receive the pets into their home and provide the pets with proper care (which is defined in the will, e.g., the care necessary to maintain pets in good physical and emotional condition, including proper feeding, shelter, space, and regular veterinarian examination). The trustee should be required to inspect the caregiver's home annually and to remove the pets if they are not receiving proper care and place them with an alternate caretaker either named in the will or selected by the trustee. The trustee should be authorized to reimburse the caregiver for reasonable expenses, and if

you desire, the will might also authorize the trustee to periodically pay a certain sum or reasonable amount as compensation for the caregiver's services.

To comply with the rule against perpetuities, the will should provide that the trust terminates on the earlier of (i) the date when all pets are deceased or (ii) 21 years after the death of all persons who are either beneficiaries, individuals named in the trust, or your heirs. Upon termination, all remaining assets should pass to a person designated as remainder beneficiary in the will, or to an alternate person if the first remainder beneficiary is not alive at that time. The will should include a spendthrift provision and may also include trustee powers concerning euthanasia, spaying or neutering, and liability insurance.

CREATION OF INTER VIVOS TRUST

Under this method, while still living, you transfer the pets and a certain monetary sum to a designated trustee of a trust similar to the one described above, which may be either revocable or irrevocable. This, however, requires the red tape of separate bookkeeping during the client's lifetime and tying up of funds that you may need for other purposes. ❖



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