

Tips to Starting a Companion Animal Trust

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Every pet owner needs to provide for the care of their pet after their death, should your pet survive you, planing should be made in advance for the animal's care. In California we now have Probate Code sec. 15212 which provides for a pet trust. Tips to prepare before you meet with your lawyer:

1.Relevant Terms

Settlor is the person who establishes trust; Trustee is the person (or entity) who will administer the trust; Caretaker is the person named in the trust to care for your companion

2.List of Current Companion Animals

A) name, age, birth date (if known) breed, sex, and physical description; B) photograph; C) name, address and telephone number of current veterinarian; the reason for the specifics is that new pets come and go. there have been cases where owners even call them by the same name.Lastly, consider a provision that includes any animal that you may own in the future, too.

3.Who will Care for your Pet?

Will the trustee of your living trust also act as trustee for the companion animal trust or will there be a different trustee just for your pet? Identify possible caretakers for the pets. Provide all contact information. A separate caretaker can be named in the pet trust in addition to a trustee or the trustee and the caretaker may be one and the same person).

4.Living Trust or Testamentary Trust?

Will the living trust include provisions for the companion animals during the your lifetime if you become unable to care for the pets? If not, a pet trust that is funded on the your death can only provide for pets that survive you (pets that are still alive when you pass away). You can incorporate the animal trust into your general living trust in which case the trustee may act on your incapacity or death. Or you can set up the animal trust to take effect only upon your death (a testamentary trust as opposed to a living trust).

5.Specific Care Instructions

Provide detailed care instructions however, as care needs may change, you may want this to be a separate letter not contained in the body of the trust. It will not be enforceable as a trust document if its not in the body of the trust, but is useful as guidance for the care of the animals. However, certain provisions may be best to state in the trust itself such as if two particular animals must be kept together or if there are certain people you do not want to act as caretaker of your pet(s).

6. Animal Welfare Organizations

An optional provision is to state the name of a supervisor in addition to trustee and caretaker. For example, it can be effective to name an animal welfare organization as “supervisor” and possibly leave that organization an outright gift. Make arrangements with them ahead of time and have their permission. By not naming them as trustee, they will have less or no administrative duties or burdens except perhaps to check up on your pet periodically. If conditions are unacceptable, then since they are named as a supervisor in your trust, they qualify as an “interested person” for purposes of bringing a petition to court over the care of them animal. Another option is to ask if your vet will serve in this capacity.

7. Funding of the Pet Trust

Be sure to identify the source(s) of the funding for the pet trust. Be flexible in case specific assets decline in value after your trust is drafted. Also, be ready to identify who should receive the remainder of the trust funds after the last pet dies.

8. Accountings

If the pet trust assets are under \$40,000 then a mandatory accounting is not required, accountings are an added cost so this exception helps the settlor set up a small pet trusts.

9. Taxes and Other Last words

A word about taxes, pet trusts do not enjoy the charitable tax deduction. A final word: Although the matter of providing for companion animals after death is codified in statute, all the sticky issues with the drafting of any estate planning document still exist. All estate planning must be done with care and with the help of an experienced estate lawyer.

Additional Resources

California Probate Code section 15212