

Pet Trusts: A Few Considerations by Melanie MacWilliams-Brooks

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Many Coloradans consider their pets as members of their families, and they want to provide for their pets as they would their other family members. Accordingly, many people are concerned about how to include their pets in their estate planning. Fortunately, Colorado allows pet owners to set up trusts for their pets, giving owners flexibility and security in their plans. Here are a few things you should consider when planning for the future care of your pet:

Appointing a Trustee/Caretaker

Pet trusts are considered “honorary trusts” – a term that describes trusts with no human beneficiaries. Unlike human beneficiaries, your pet will be unable to sue the trustee to enforce the terms of the trust. Accordingly, when appointing your trustee, it is imperative that you choose someone you believe will distribute the assets of your trust in accordance with your wishes. You should also consider whether you would like to have a separate trustee and caretaker; or if the trustee will also serve as the caretaker for the pet. Additionally, you may want to name an alternative trustee, should your appointed trustee be unable to carry out his or her duties for any reason.

Determining the Assets that Will Go Into the Trust

When setting up your trust, it is important to consider the likely lifespan of your pet and any if its offspring you intend to provide for. Under Colorado law, your pet trust can provide for the care of a designated pet and any offspring that were “in gestation” at the time the trust took effect. The trust ends when your pet dies – or, if there are offspring involved, when they die.

Accordingly, you’ll want to consider how much food, medical care, boarding, and other expenses your trust will need to provide. To best ensure that your wishes are carried out, give a detailed explanation to your trustee of your expectations with regard to the lifestyle you intend to provide for your pet. For example, if you want your pet to receive a certain kind of food, or boarding at a specific institution, you should note that. Courts have, on occasion, determined that the assets in a trust were excessive in relation to the pet’s needs, and have reduced the amount of the trust. Making your wishes explicit will help to ensure that the court does not perceive a mistake in the amount of assets you leave to provide for your pet.

Designating Remainder Beneficiaries

You may want to designate “remainder beneficiaries” – individuals or organizations that will stand in line behind your pet for the assets in the trust. There are a couple of scenarios in which someone except your pet will receive the assets in the trust: (1) if your trustee fails to distribute the assets as you intended; or (2) if your pet dies before the assets in the trust run out.

In either of these cases, the property in the trust will pass to the remainder beneficiaries, if you have designated any. If you have not designated any remainder beneficiaries, then the property will pass to your successors in interest (such as your spouse or your children). In consideration of the first scenario, you may want to consider designating a remainder beneficiary whom you believe would use the assets to care for your pet.

Inter Vivos or Testamentary Trusts

You must also decide whether you want to create an inter vivos or a testamentary trust. Inter vivos trusts take effect during your lifetime, whereas testamentary trusts are created by the terms of a will and thus do not come into effect during your lifetime. One significant advantage specific to inter vivos trusts is that they are not subject to the process of probate – a process that could be unduly time-consuming in light of your pet's need for daily care. By avoiding probate, a revocable inter vivos trust helps ensure that your pet will not be left on its own for days after your death before receiving the care it requires. Additionally, revocable inter vivos trusts can be changed more easily than testamentary trusts, which require the execution of a new will or codicil. Consider establishing a revocable inter vivos trust with a pour-over provision in your will, which would transfer into the trust the assets you intend to dedicate to the care of your pet after you die. Whether an inter vivos trust or a testamentary trust is right for you will depend on the size of your estate, the kinds of assets it contains, and your plans for yourself and your family.

If you are interested in setting up a pet trust or exploring other legal options to provide for your pet, FGMC is well-equipped to address your needs and develop the best plan to accommodate your pet and your other priorities. Call us today at (303) 333-9810 to schedule a consultation.