

PET TRUSTS: PROTECTING YOUR PET IF ANYTHING HAPPENS TO YOU

CONGRATULATIONS! Welcome to the Dogs Without Borders family! We couldn't be more thrilled that you've chosen to become a pet parent. Having a dog is one of life's great joys.

However, now that you own a pet, you should consider what would happen to your pet if you were disabled or were to die. Many animals are taken to the shelter each year because their owners did not include instructions for what to do with the animal should they die or become incapacitated, and no money was set aside for the dog's care. When this happens, unfortunately the pet is sometimes euthanized, particularly if it is an older animal. We don't want this to happen to any animal, much less animals that come from Dogs Without Borders.

Protecting your pet or pets in case of disaster is not hard to do, but it does take some planning. Please take the time to properly protect your animal. Doing so could make all the difference to be sure your pet lives its full life in the care of people who love it as much as you do.

PETS ARE PROPERTY

California law states that dogs are considered personal property (according to Cal. Pen Code § 491). A person may not give a gift of personal property. Therefore, if a person tries to leave money to his or her dog, the courts will not enforce the gift. That is why a person cannot simply state in a will, "I leave \$1000 to Samuel, my dog." The court will rule that this is a gift of property to property, like trying to leave your bed to your car. Since the court will not enforce the gift, your animal will not be protected.

USING YOUR WILL TO NAME SOMEONE TO INHERIT YOUR PET

The easiest way to protect your pets is to name someone in your will to take care of them. Be sure not to name the pet individually; instead use a phrase like, "I give ownership and custody of all of my personal pets at the time of my death to Linda, as caretaker." This will be sure that all of the animals you own at the time of your death are taken care of, particularly if it is many years between the time you write your will and the time of your death.

Be sure to talk to the person you intend to name as your animal's caregiver before you make your will or add this change to your current will. This method will only ensure that a person is *named* to take your animal, not that the person agrees to actually care for or protect your animal. Remember, pets are considered property. If you will your car to your friend Linda, she will then have ownership of the car, and can sell it or gift it to someone else if she chooses. Likewise, Linda may simply take the dog to the shelter, so it is imperative that the person you name agree to caring for your animal should you pass on. You should also name a second and maybe even a third person to take care of your pet if the first person named is unwilling or unable to care for the animal at the time of your death.

USING YOUR WILL TO NAME SOMEONE TO INHERIT YOUR PET, AND FUND THE PET'S CARE

Owning an animal and caring for it day-to-day costs money. If you have named someone to take care of your animals in your will, you should consider gifting them money to pay for the feeding, shelter, boarding and veterinary care your animal will need over its lifetime. You may write something like, "I give ownership and custody of all of my personal pets at the time of my death to Linda, as caretaker. I also give \$5000 to Linda to care for my personal pets until the time of their death. This money shall be used to pay for food, shelter, occasional boarding, veterinary care and any other needs the animal may have."

The trouble with this method is that Linda will be given the pet, and the \$5000, but there is no way to guarantee that she will in fact keep the dog, or use the \$5000 on the dog's behalf. There will be no legal recourse if Linda pockets the cash and drops little Samuel off at the shelter on her way to Vegas.

So what's a pet parent to do? Create a pet trust.

USING A PET TRUST TO PROTECT YOUR PET

A trust is a legal instrument that can be used to protect your pet. California and nearly 40 other states now recognize and enforce trusts set up specifically to care for a pet. California Probate Code Section 15212 governs pet trusts and makes them enforceable.

So what is a trust? A trust puts money or property into a metaphorical box. The *settlor* owns the money to begin with, and he or she puts it in the box. The only person who is allowed to open the box to get the money out is called the *trustee*. The only reason the trustee is allowed to take the money out of the box is to provide for the *beneficiary*. So in our case, Samuel the dog is the beneficiary of the money his owner put in the box for him, and Linda would be named the trustee.

The great thing about a pet trust is that the money in the trust *must* be used for the care and feeding of your animal. Therefore, Linda can't take the money and go to Vegas with it, because it isn't actually her money. She can only take the money out of the trust to use to care for Samuel.

CREATING A PET TRUST: STEP 1

Step One in creating a pet trust is identifying the person whom you want to be the trustee. This "person" can actually be a bank or other institution. You should go to the person or institution who you will name as trustee and ask them if they are willing to be trustee should you die. The trustee has responsibilities, including monitoring the trust and some basic accounting, so you want to be sure the person is willing to take on the responsibilities.

CREATING A PET TRUST: STEP 2

Step Two is to create the legal instrument. You can do this a number of ways. The best way is to see an attorney specializing in estate planning who has experience with pet trusts. There are also online sites that have the ability to create trust and will, or your local library will have books about setting up a trust and will. Some people do it themselves with kits sold at bookstores or at specialty do-it-yourself legal stores with the help of a paralegal.

The actual trust is basically just a few pages stating that you (the *settlor*) wish to leave an amount of money for the care and protection of your pets (the *beneficiary*).

CREATING A PET TRUST: STEP 3

Step Three is to fund the trust. A trust must have a *corpus*, meaning the money or property that will be used to support your pet. There are numerous ways to “fund” the trust.

1.) CASH: You can set aside the money by *direct transfer*. Basically you can write a check with the payee as, “Linda, trustee of the Samuel pet trust.” Be sure the memo line indicates that the money is to be used as a contribution to the Samuel pet trust.

2.) PROPERTY: If you have property, you may transfer the title to the property to the trust. Contact your attorney for information about making a quitclaim deed to transfer land or housing to the trust. The trust would then be the owner of the property.

3.) LIFE INSURANCE PROCEEDS: If you don’t have the cash or property to transfer to the trust, or don’t wish to transfer the funds while you are still living, you can name the pet trust as the beneficiary of all or a portion of the proceeds from your life insurance. Let’s say you have a \$250,000 policy. In your will, you can designate \$5000 of the proceeds to go to fund the pet trust. You can also take out a separate policy specifically to fund your pet trust, with the pet trust as the only beneficiary.

4.) OTHER ACCOUNTS: You may have bank accounts, annuities, retirement accounts, stock accounts or other accounts that allow you to name a beneficiary should anything happen to you. You may want to name the pet trust as the beneficiary of one of these accounts. For instance, if you have \$10,000 in a 401(k) account, you can name the pet trust as the beneficiary, and the trust will be funded, even though the \$10,000 remains in the account until your death. Be sure to contact your lawyer, banker, or broker about naming a pet trust as the beneficiary of your accounts, particularly if you are married, as there are special laws about when and how to name someone other than your spouse as the beneficiary on some of these types of accounts.

CREATING A PET TRUST: STEP 4

Step Four is to decide what happens to the money once your pet has died. You will probably want to fund the trust with enough money to be sure the pet can be taken care of, particularly if the pet has large vet bills. Once the pet has passed on, you should decide what to do with the remainder of the money.

Many people choose a favorite charitable organization (such as Dogs Without Borders!) to receive any money remaining in the trust at the end of the pet's life. Other people allow the caregiver to keep the money remaining in the trust as thanks for taking care of the pet. Be sure you really trust the person caring for the animal if you choose this option, as it can give the caregiver an incentive not to care for the animal as well as possible so that he or she may receive the money sooner. You may also choose to have the money go to a spouse, relative or friend at the end of the pet's life.

CONCLUSION

We hope that you have a long and happy life with your new family member. Just as you would want to protect your children or others who depend on you in your estate planning, you should be sure to protect your pet. Please let us know if you have questions about creating a pet trust. And once again- welcome to the Dogs Without Borders family of pet parents. We're happy to have you here!

****The foregoing is intended as information only and should not be relied upon as legal advice. Please consult an attorney or law firm to discuss your estate planning needs, as the laws regarding wills and trusts may be complex. ****

Author Kristy Shannon Grant is an attorney with Gibson, Dunn & Crutcher, and is pet parent to Samuel, whom she adopted through Dogs Without Borders.

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