Petriarch: the complete guide to financial and legal planning for a pet's continued care

Rachel Hirschfeld

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PETRIARCH: The Complete Guide to Financial and Legal Planning for a Pet’s Continued Care covers a burgeoning area of law in which accountants and fiduciaries have a considerable stake.

Recent estate law changes have greatly transformed how courts deal with domestic animals, improving on their legal status as property. As such, financial and legal advisors face new opportunities and responsibilities in guiding their clients accordingly.

This book provides the information you need to understand these new legal concepts and outlines practical applications that will benefit your clients, their pets, and your practice.

Included on a companion CD are questionnaires, forms, and templates ideal for professional planners, advisors, and clients to create legal documents, such as pet trusts and pet protection agreements, that protect the welfare and security of family pets.

Praise for PETRIARCH:

“[I]t does a thorough job explaining financial and estate planning for pets...this invaluable guide belongs on every professional’s bookshelf.” – Sidney Kess, CPA, attorney, noted lecturer and author

“...a wonderful resource for pack leaders.” – Cesar Millan, Host of National Geographic’s Dog Whisperer

“It’s important for every intelligent, informed person to be on the cutting edge when it comes to protecting the things and people you love. Rachel's book is a terrific guide for anyone who wants to protect their pet when the owner no longer can.” – Donald Trump

“Not only does Rachel offer an easy-to-understand foundation for securing the future of the pet companion, her book also helps us understand the non-legal issues so that both the pet owner and the estate planner can better communicate about the pets’ care when the owner is not around to look after them.” – Brian Liu, Co-Founder and Chairman of LegalZoom.com

About the Author

Rachel Hirschfeld’s work on behalf of animals and her legal innovations that enhance the security of animals – such as the Pet Protection Agreement and the Hirschfeld Pet Trust – have been chronicled extensively by the mainstream media.

Rachel Hirschfeld
More praise for PETRIARCH:

“A well-designed pet trust or pet protection agreement can give you peace of mind and ensure the future care and well-being of your beloved companions. If you share Rachel Hirschfeld’s passion about doing right by your pets, you’ll want to have the benefit of her expert knowledge on the best way to secure that outcome.”

—Wayne Pacelle, President & CEO, The Humane Society of the United States

“As a pet expert, I am pleased to recommend this book to all my clients and friends. This book is a fantastic guide to help pet owners legally plan for the continued care of their beloved pets, when they are no longer able to do so. This book will put many pet owners’ minds at ease.”

—Bash Dibra, Internationally known animal behaviorist, celebrity pet trainer to the stars and author of six books including Star Pet

“Within minutes of meeting Rachel Hirschfeld, you are completely taken in and awed by her unbridled passion for the care and love of animals. When she describes the hardship surrounding pets that have lost the love and care of their owners, immediately you are drawn to her cause. Rachel has dedicated years of her life to perfect estate planning strategies that will save millions of pets from an uncertain future and provide the serenity or relief their owners so desire. With her passion and this book, Rachel will forever change the way the world thinks about its pets and the care they deserve.”

—Lawrence Davidow, Managing Partner at Davidow, Davidow, Siegel & Stern, LLP, Past President and a Fellow of the National Academy Of Elder Law Attorneys

“Dogs are members of our family, so it’s natural for us to want to protect their well-being after we are gone in the same way that we provide for our human family members. This is a wonderful resource for pack leaders.”

—Cesar Millan, Host of National Geographic’s “Dog Whisperer”

well as their clients, this invaluable guide belongs on every professional’s bookshelf.”
—Sidney Kess, CPA and attorney, noted lecturer and author

“This book is an invaluable guide to the new and expanding field of pet law. Not only does Rachel Hirschfeld offer an easy-to-understand foundation for securing the future of the pet companion, her book also helps us understand the non-legal issues so that both the pet owner and the estate planner can better communicate about the pets’ care when the owner is not around to look after them.”
—Brian Liu, Co-Founder and Chairman of LegalZoom.com

“As a businessman it’s important for me and every intelligent, informed person to be on the cutting edge when it comes to protecting the things and people you love. Rachel’s book is a terrific guide for anyone who wants to protect their pet when the owner no longer can.”
—Donald Trump
PETRIARCH
The Complete Guide to Financial and Legal Planning for a Pet’s Continued Care

Rachel Hirschfeld, Esq.
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“Men have forgotten this truth, but you must not forget it. You become responsible, forever, for what you have tamed.”
—Antoine de Saint-Exupéry, *The Little Prince*
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Foreword

It is with great pleasure that I write the foreword to a wonderful book on a subject that is near and dear to my heart. It is no secret that two out of three American families have developed a love affair with their family pet. In today’s world, the status of a pet has now been raised to that of a family member—one who accompanies us on vacations; to athletic events, such as kids’ soccer games; and to outdoor cafes, county fairs, hospitals, senior residences, and various other social scenes (where permitted).

Emotional ties to companion animals are not uniquely “American” because humankind has been domesticating animals for thousands of years, placing them in service to help farm, hunt, and transport people the world over. Even the definition of a companion animal has become as varied as the animal kingdom itself, covering everything from birds, cats, cows, dogs, donkeys, elephants, fish, goats, guinea pigs, horses, monkeys, sheep, snakes, and turtles, just to name a few, to the more exotic species, including primates, large cats, lizards, beetles, and so on.

The most exciting trend in research associated with the animal and human bond is the acknowledgement by those in the scientific community that companion animals enhance our daily lives and the recognition that animals also can communicate their affection and loyalty for us in ways we never
thought possible. Additionally, people are becoming more sensitive about their responsibilities to provide for the care of a devoted pet in the event something does happen to interrupt the pet's otherwise predictable lifestyle.

Those of us who work in the animal welfare field know what happens when a pet is lost or otherwise separated from its guardian or caregiver. Sometimes, the human and animal are reunited but most often they are not, especially if the human has died. Although the reasons for separation of pet and pet guardian vary, oftentimes it is within the direct control of the pet guardian (an open gate, a broken leash, an unexpected illness, and so on), but with thoughtful planning, such situations can be avoided.

Several years ago, during my tenure as Trusts & Estates Counsel at the American Society for the Prevention of Cruelty to Animals, I met Rachel and was immediately moved by her passion for, and dedication to, Soupbone, a wonderful mixed breed dog who she adopted. Soupbone was a loyal and devoted companion. It was because of Soupbone that Rachel began tailoring and expanding her estate planning law practice to include estate planning for her clients that also included their pets.

Her keen interest in providing guidance to the pet lover and detailed instruction to the estate planning professional has and will continue to positively affect the lives of the animals we love. Her mission of providing for the uninterrupted care of our pets will grant us all the peace of mind we seek.

I believe you will find invaluable information in the pages of this book, such that your life and that of family pets will be the better for it. So read on, enjoy, and spread the word!

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Acknowledgments

This book would be incomplete if I did not acknowledge those who unselfishly gave their support to this project.

I want to acknowledge those who influenced my life and especially my love of animals; who provided much-needed support; and who helped me crystallize my thoughts as I worked to add something of value to the animal protection movement. Hopefully, this book will become a foundation for those brilliant and empathetic individuals who can go even further in legal protection for pets’ continued care. Ultimately, it’s my hope that my work will continue in this renaissance period for animals.

Thank you to those who made this happen:

- Simon Hirschfeld, my grandfather, who taught me what love is.
- My mom, Zipora Hirschfeld, who taught me to love life and fear animals.
- My “Italian mom,” who told me that the way to keep my wandering husband home was to get a dog.
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• The AICPA team, including Amy Krasnyanskaya, Amy Stainken, and Erin Valentine.

I feel these acknowledgments would be incomplete if I did not mention the tremendous role that Erin Valentine played in making this book a reality. Erin, your extraordinary editing, your creativity, your encouragement, your love of animals, and your knowledge of the CPA’s needs were vital. You are an integral part of the book.

Every smart professional knows the ultimate goal of any client is ensuring that their assets are protected. In a home, pets are more than assets; they are part of the family.
Introduction

This book is an introduction and guide to a burgeoning area of law in which accountants and fiduciaries have a considerable stake: pet law, including, in particular, pet trusts and a relatively new and revolutionary instrument called the pet protection agreement.¹

This book will introduce you to recent changes in estate law that have transformed the way in which courts now deal with domestic animals. The shift is ongoing, and the trend is toward a much more enlightened view of pets that improves greatly on their legal status as property. These changes bring new responsibilities and new opportunities to accountants and financial and legal advisors who should now consider companion animals in a completely different light and advise their clients accordingly.

This book provides all the information you will need to understand these new legal concepts, and it outlines practical applications that will benefit your clients, their pets, and your practice. Included are questionnaires, forms, and templates that can be used by professional planners, trusted advisors, and clients to create legal documents that protect the welfare and security of family pets and all animals.

¹ ©, TM, and © 2009 Pet Protection Agreement, LLC. All rights reserved. Patent pending.
Plenty of humanitarian reasons exist for you to consider pets when advising clients who are planning their estates. Many of those reasons are mentioned in this book.

Because it is relatively new, the concept of pet trusts has been covered in the mainstream press mostly as novelty or farce—unfairly, I must say. The scant coverage provided has been dominated by infamous cases, such as those of Leona Helmsley and Oprah Winfrey, celebrities who provided millions of dollars in trust for the care of their animals (“while millions go hungry,” you could almost hear the commentators say).

What’s not as widely covered is the silent explosion of like-mindedness among many Americans who may not be as well-heeled as those celebrities but who are, nevertheless, just as interested in providing continuing care for their beloved pets, if only they were aware it was an option available to them.

Two statistics are instructive:

- In 2009, Americans spent $52 billion on their pets, up from the $41 billion spent in 2007. Nearly a 27 percent increase over 3 years.
- Almost 4 million dogs and cats are euthanized at shelters each year, nearly 9,600 per day.

Clearly, the market for pet-related products and services is heading higher at a considerable clip. Although it is likely that the number of animals put down each year comprises mostly ill, lost, feral, or irresponsibly abandoned animals, it is just as likely that a considerable number of domestic pets were unwittingly condemned because their owners did not think, and were not advised, to make arrangements for them, which is where this book—and you—come in.

My wish is to ensure that every pet that has found a loving home is guaranteed a secure future. This book is one way I am working to fulfill that wish. I hope that you will discover in these pages the ways in which you too can benefit from helping to make it all happen.

---

3 Ibid.
This chapter emphasizes the importance of identifying the companion animal’s owner and memorializing the relationship. Because pets are property in the eyes of the law and treated as such by the courts, a trusted advisor must ask his or her clients, “Do you have any pets?” The client, often sure that he or she is the pet’s rightful owner, will answer in the affirmative but might be mistaken.

**Whose Dog Is It?**

Movie buffs probably remember this classic scene from Peter Sellers’s *The Pink Panther Strikes Again*:

Inspector Clouseau: Does your dog bite?
Hotel Clerk: No.
Inspector Clouseau: (bowing down to pet the dog) Nice doggie. (dog barks and bites Clouseau on the hand)
Inspector Clouseau: I thought you said your dog did not bite!
Hotel Clerk: That is not my dog.

For anyone interested in legal protection of their pet’s continued care, this vignette is important, as well as entertaining. In America’s legal system, pets are considered property. Recently, a survey by the Harris Poll showed that people
do not think of their companion animals as property; in fact, 88 percent think of them as family members.\footnote{Pets Are "Members of the Family" and Two-Thirds of Pet Owners Buy Their Pets Holiday Presents, The Harris Poll, #120, December 4, 2007 (www.harrisinteractive.com/harris_poll/index.asp?PID=840).}

Good news exists about pets as property. It’s practically effortless for trusted advisors to ask clients “Do you have a pet?” and “Who owns the pet?” because they already ask about other property as a matter of course. Trusted advisors are already accustomed to asking about clients’ property—home, land, furniture, money, art, boats, cars, jewelry, and other valuables—so that appropriate steps can be taken to protect the property. It should be easy to add animals to that list. At the same time, it’s bad news because pets frequently hold a much dearer place in people’s lives than other types of property.

The status of pets as property has a number of practical consequences. For example, if you leave a pet at the veterinarian’s office beyond a certain period of time or do not pay the bill, the vet can take ownership of the animal, and the animal can end up in the city pound. Chillingly, the ownership of a pet that comes into the care of a shelter often transfers in as little as 72 hours to 1 week, after which time the shelter can legally euthanize the animal.

Most importantly, if Fido is someone’s dog, that person has ownership rights. Otherwise, Fido’s fate may be subject to negotiation and, possibly, a court’s decision. Therefore, it is vital to establish the answer to the question, whose dog (or cat, bird, horse, ferret, and so on) is it?

So, Who Owns the Dog?

Clients may think they know who owns the pet but may be wrong when they respond as follows:

- I own the dog; I rescued Soupbone at the shelter.
- I own the dog; my boyfriend purchased Rover and gave him to me as a birthday gift.
- I own the dog; I took Swizzle to the vet; my mother only bought the food.
- I own the dog; in my divorce, I am getting the kids.
- I own the dog; I had Topper for years before we were married.
- I own the dog; before we were a couple, I had the poodle, and she had the labrador. I stay at home and care for both dogs. My partner and I can live without each other but the dogs can’t!

Resolving the issue of ownership before a dispute arises can solve a myriad of problems and avert future legal disputes and litigation. Establishing ownership is especially vital in three situations:
Property Implications: Who Owns the Pet?

1. **Death.** A person who owns a companion animal can leave the pet to any person or organization of his or her choice. Funds may be allocated for the pet's well-being. However, if the pet is not memorialized as “owned” and by whom, a dispute may result, and Soupbone might wind up with someone who cares little about him. Additionally, in most states, a spouse or partner is considered a legal stranger to one's estate. Although real property (such as a house) can be sold and the assets divided, that doesn't work for living beings.

2. **Disability.** If someone loses memory or mobility, the care of a pet or pets may be compromised.

3. **Separation.** Roommates, spouses, and domestic partners break up. Far too often, animals are simply one more pawn. In the worst cases, animals become one more beloved life to harm or threaten in a cycle of physical and psychological violence, or one more reason to stay too long in a dangerous environment while the decision of ownership drags on. Sometimes, the offender abuses the animal in front of his or her partner or the children, possibly to get even or demonstrate power. Although a person's feelings for his or her pet might be genuine enough, too often the animal can become a pawn in unpleasantness between dueling partners.

   When the issue of pet ownership is included in partners' break up, the situation often becomes so passionately charged that the difficult, unpleasant, and expensive process becomes even worse. Although couples can divvy up home furnishings—deciding that one spouse will get the china and the other gets the big screen TV—an animal can't simply be divided in two; in a break up, one party will keep the pet. Establishing ownership is part of the process of deciding who gets the dog.

**Don’t Let the State Decide a Pet’s Fate**

Traditionally, American courts have treated all animals, including companion animals, as property; they are goods to be bought and sold, acquired, and maintained. This principle is deeply rooted in the law. In fact, the seminal case\(^2\) that sets the standard for treating all types of animals as the property of whoever is in control of them dates back to 1805. This pure property approach is still the law, although some courts look into what is best for the animal when resolving custody disputes over pets. This attitude reflects the growing value of beloved companion animals in our society. The tension between the two approaches—property versus best interest—continues today in courts throughout the country. Courts can use either tactic or a variation of both: stay with pure property or include the best interest of pets when deciding, keeping in mind that pets are property.

Often, courts do not recognize how important a pet can be to its owner.\(^3\) In 1944, a court, faced with a divorce case in which the husband and wife were fighting over who should keep the couple’s Boston bull terrier, at first seemed to denigrate the case, describing it as “trying” on its patience.

Were we to judge the importance of these proceedings by such a fictitious standard of value we would be inclined to resent this appeal as a trespass on the court’s time and an imposition on our patience, of which quality we trust we are possessed to a reasonable degree.\(^4\)

It went on, however, to state that a pet is comforting and a valuable companion:

But we have in mind Senator Vest’s immortal eulogy on the noble instincts of a dog so we approach the question involved without any feeling of injured dignity but with a full realization that no man can be censured for the prosecution of his rights to the full limit of the law when such rights involve the comfort derived from the companionship of man’s best friend.\(^5\)

Nevertheless, the court expressly refused to consider the dog’s best interests, saying “[w]hether the interests and desires of the dog, in such a situation, should be the polar star pointing the way to a just and wise decision, or whether the matter should be determined on the brutal and unfeeling basis of legal title, is a problem concerning which we express no opinion.”\(^6\) The court ultimately awarded the dog to the wife based on evidence that the husband had given the dog to the wife as a gift during the marriage.

Courts may simply refuse to consider what is best for the pet in favor of the view that companion animals are merely property, no different from a couch or book. For example, in 1995, Ronald and Kathryn Bennett fought over custody of their dog, Roddy.\(^7\) In the course of holding that the dog was personal property and was not subject to award of custody or visitation, the court explained that

[w]hile a dog may be considered by many to be a member of the family, under Florida law, animals are considered to be personal property. There is no authority which provides for a trial court to grant custody or visitation pertaining to personal property.\(^8\)

\(^4\) Ibid.
\(^5\) Ibid at 660–61.
\(^6\) Ibid at 661–62.
\(^7\) *Bennett v. Bennett*, 655 So. 2d 109 (Fla. App. 1 Dist. 1995).
\(^8\) Ibid at 110.
Property Implications: Who Owns the Pet?

The court further commented that giving pets “special status within dissolution proceedings” was unwise because courts were already overrun with other matters.

A Delaware case involved a settlement agreement, including visitation that referred to the family dog (named Zach) as a child and the divorcing spouses as parents. The court awarded the husband full custody of Zach and explained that, although Zach obviously meant a lot to both parties, it just did not have the power to approve an agreement providing for pet visitation; its only decision could be to award the dog to one party or the other. Imagine how frustrated and disheartened the couple must have felt when the court said

there is little doubt but that Zach is marital property to be distributed in some fashion by this Court, but I decline to sign an order which is in essence a visitation order in every respect, except as to the biological classification of the ‘object d’etre.’

I do not in any way intend to offend Husband and Wife in the present action. While their dilemma is certainly a viable one, particularly in a marriage where there have been no children, the fact is that this Court is simply not going to get into the flora or fauna visitation business.

Variations on Pets as Property

A pet owner cannot count on much because no single legal standard exists in pet custody cases. Indeed, in addition to cases applying a pure property analysis and those applying a best interest analysis, a third group of cases exists in which the courts said they were basing their decisions solely on the principle that pets are property but actually took the pet’s best interests into account after all.

For example, a 1984 Iowa divorce case revolved around the custody of Georgetta, a dog who the husband had given to the wife as a Christmas present during the marriage. Usually, under these circumstances, the wife would maintain ownership of the dog. But, in awarding custody to the husband, the court took into consideration the fact that the husband, a veterinarian, took Georgetta to work with him every day and spent a substantial amount of time with her.

Still, in affirming the lower court’s decision, the appellate court reminded us that, ultimately, its decision was based on the fact that pets are property:

A dog is personal property and while courts should not put a family pet in a position of being abused or uncared for, we do not have to determine the best interests of a pet.
In a more recent case, an ex-husband sought shared custody of the family dog, Barney, after his ex-wife refused to make Barney available for visitation to which the couple had previously agreed.\textsuperscript{14} In refusing to enforce the couple’s earlier agreement, the Pennsylvania court stated that

[i]n seeking ‘shared custody’ and a ‘visitation’ arrangement, [the husband] appears to treat Barney, a dog, as a child. Despite the status owners bestow on their pets, Pennsylvania law considers dogs to be personal property.

Hammering the point home, the court described visitation of a dog as “analogous, in law, to a visitation schedule for a table or a lamp.”\textsuperscript{15}

However, even though the court rejected the idea that the husband could be entitled to visitation with Barney, it mentioned in a footnote that the wife had purchased Barney two months before the parties’ first separation and that the husband had not visited Barney in four years. Thus, the court appears to have based its decision on what was in Barney’s best interests, even though it said it was basing its decision on who had ownership and possession of the dog.

Generally, it is difficult to prove ownership without memorializing it into a document, such as the pet trust or pet protection agreement. Sometimes, if certificates exist proving purchase or adoption of the pet by a single person, they can be a deciding factor. For example, in one Virginia case,\textsuperscript{16} the court awarded the husband custody of the family dog because he presented evidence that he had located the dog at the animal shelter and adopted the dog.

In another twist, some courts have looked beyond pure ownership to decide who gets a pet and have awarded the pet to whoever gets custody of children. Such a result may serve neither the best interest of the companion animal nor the party to whom the pet would go, if the pet’s interests were considered separately from child custody. This is another example of why settling ownership of the pet, when times are not turbulent, often serves the best interest of the pet and the pet owner.

In a 2004 Virginia divorce case,\textsuperscript{17} both custody of the parties’ child and possession of the family dog were at issue. The husband insisted that the dog could not be awarded to the wife because a third party had given the dog to him as a gift, so the dog was his separate property. The trial court rejected this argument and held that, because the dog had been given for the benefit of the family, the dog should go with the child. Nothing in this decision

\begin{itemize}
\item \textsuperscript{14} Desanctis v. Pritchard, 803 A. 2d 230, 231 (PA Sup. Ct. 2002).
\item \textsuperscript{15} Ibid at 232.
\item \textsuperscript{17} Hodo v. Hodo (Not reported in S.E. 2d), 2004 WL 136093 (Va. App. 2004).
\end{itemize}
reveals whether the court asked if the child was nice to the dog or even liked the dog.

**Pricing Priceless Property**

In yet another recent trend, lawmakers and courts have begun to recognize that companion animals have intrinsic value to their owners beyond their market value. This idea gained momentum nearly a decade ago after a 12-year-old shih tzu named T-Bo was fatally attacked in his own backyard by a larger dog roaming the neighborhood. After T-Bo's owner, Tennessee state senator Steve Cohen, discovered he could recover only the dog's market value, he pushed for legislation increasing the damages allowed for a lost or injured animal. Tennessee statute now allows pet owners to recover noneconomic damages for the loss of a pet, including “reasonably expected society, companionship, love and affection of the pet.”

Some courts have recognized that, although pets are property, they may be especially valuable property worth more than their actual cost or market value. A 2009 New Jersey case epitomizes this trend.

Millions of dogs are euthanized in the United States each year, but that is no reason to say that any dog can be replaced at little cost, so its property value is negligible. Sadly, when a court decides who the pet goes to in a break up, and refers to it as marital property and values it based on the actual price paid or market value, that is insulting to a pet loving owner. Asked to put a price tag on their pets, most pet owners would call them priceless. Half would risk their lives for their pet.

When Doreen Houseman and Eric Dare ended their 13-year relationship, the two agreed that Houseman would get their 7-year-old pug, Dexter. Later, after Dare had cared for Dexter while Houseman was out of town, he refused to return the dog to Houseman. Houseman sued to enforce the agreement with Dare, under which Dexter was to live with her. Instead of forcing Dare to return Dexter to Houseman, the trial court ordered Dare to pay Houseman $1,500 (which the parties had paid for their purebred pug). However, the appellate court concluded that a pet, like a family heirloom or valued work of art, has “special subjective value” that cannot be compensated by money alone.

**Proof of Possession**

A few important lessons can be drawn from these cases. First, no matter how pets are valued, they are still considered property. Second, because animals are property, courts will consider a number of factors in determining ownership

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18 T. C. A. § 44-17-403(2)(d).
20 Ibid at 545.
of a companion animal when they chose not to consider the pets’ best interest. These factors include the following:

1. Who owned the pet before the relationship?
2. Whose name is on the purchase agreement or adoption contract?
3. Who is the animal registered to in local records?
4. Whose name is on the animal's tags and microchip registration? (Sometimes, when you adopt an animal from a rescue group, local and microchip registrations remain in the rescue group's name.)
5. Who paid for pet-related expenses, such as food, the vet bills, grooming, the walker, and so on?

Receipts play an important role in making this determination. Just as parties can examine the factors a court would consider to determine ownership of an animal under a pure property analysis, they also can examine the issues a court would weigh when taking into account the pet's best interest. These factors include the following:

1. **Consistency.** Consistency is very important to most animals. Change is not a pet’s friend. Pets like routine and predictability. Going back and forth between two people is very stressful and may be the cause of behavior problems.

2. **Emotional bonding.** If the pet has bonded to one person more than the other, it’s typically better if that person becomes the primary pet guardian. Who will the pet run to when called? Litigants have even hired veterinarians who specialize in animal psychology to testify as expert witnesses to persuade a judge that one or the other spouse has the closer bond with the pet and should, therefore, be awarded custody.

3. **Primary pet guardian.** In determining who should be awarded custody, the court may want to consider which party has paid attention to the pet’s basic daily needs (food, shelter, physical care, exercise, grooming, flea control, and so on); who takes the pet to the veterinarian; who provides for social interactions (in the case of dogs) with other dogs or people, or both; who exercises the pet; and who maintains appropriate supervision to assure that state and local regulations are complied with (licensing, not allowing the pet to run free, and protecting against circumstances that would endanger the pet’s life or health).

4. **Financial and other resources.** The court may review which party has the most secure financial situation or most animal-friendly living environment. This may include looking into who has the time and space to
proper care for the pet (if, for example, a dog weighing 200 pounds who has thrived in the country would now be confined to a studio apartment in a big city, that dog may not thrive in an urban setting). The court may keep in mind that proper care includes not only basics (such as feeding, grooming, and health care) but also play and exercise at levels that are appropriate for the pet. In this regard, a pet owner’s habits and inclinations (in addition to available time) also play a role.

5. Other considerations. The pet’s age and health are relevant, as well.

**Considering the Best Interest of the Companion Animal**

Several courts have, in fact, looked at the pet’s best interest when resolving custody disputes over companion animals. Although this approach appears to represent a minority position at this time, it indicates that the legal system’s view of companion animals as no different than inanimate property is slowly changing.

An early example of this is what happened to two roommates (Gregory and Zovko) who lived with a pet cat named Grady. Although Gregory owned Grady before he moved in with Zovko, while they were roommates, Zovko was the one who cared for the cat. When the two decided that they would no longer be roommates, Zovko sued for custody of Grady. In awarding Grady to Zovko, the court said that it was deciding “what is in the best interest of Grady.” Clearly, for this judge, the pet’s happiness and well-being took priority over property rights.

Another case involving two former roommates led to a similar result. In a 1999 New York case, Raymond brought her cat, Lovey, into a shared housing situation but later moved out, leaving the cat behind. When Raymond subsequently sought to regain possession of Lovey and bring Lovey to her new home, the court used a strict ownership of property analysis and awarded custody to Raymond. The appellate court took into consideration the best interest of the elderly cat:

Cognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily, on the record presented, we think it best for all concerned that, given his limited life expectancy, Lovey, who is now almost ten years old, remain where he has lived, prospered, loved and been loved for the past four years.

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23 Ibid at 308–09.
Although this does not often happen, in this case, the New York court considered the animal’s age, where it would be happiest, and where it would be loved.

**Guardians for Animals—21st Century Evolution**

Sometimes, in the course of deciding what is in an animal’s best interest, the court will appoint a pet guardian for the animal. A guardian (also known in legal circles as a *guardian ad litem*) is the person who has the legal authority to care for the personal and property interests of another. The pet guardian has the same rights and responsibilities of a pet owner, and both terms are used interchangeably.

Just as a court might appoint a guardian to represent the interests of a child or disabled adult who is unable to represent his or her own interests, on occasion, courts have gone so far as to do the same for animals. In a notorious case, a Virginia federal court appointed a pet guardian for the dozens of pit bulls owned by NFL player Michael Vick, who served a federal prison term for his involvement in a dog fighting ring. But a case doesn’t have to be in the headlines before a court will appoint a pet guardian for a companion animal.

In a recent Tennessee case, Ronald W. Callan, Jr., a man in his early 20s, committed suicide, leaving behind his 13-year-old golden retriever, Alex, and $2 million for Alex’s care.

The man’s divorced parents fought over who should get Alex. After the father (as administrator of his son’s estate) refused to allow the mother to see Alex, the mother asked the court to appoint a pet guardian to represent the dog in the case. As was the case in this instance, sometimes three parties are represented by lawyers in front of the court: Ronald’s father, Ronald’s mother, and Ronald’s dog.

The pet guardian, Paul N. Royal, who the court appointed for Alex, took his job seriously; he attempted to find a situation that would be in the best interest of the dog by interviewing all parties and evaluating their relationships with Alex. In his report to the court, the pet guardian recognized the strong emotional bond that the parties had to Alex. The court also took both the situation and Royal’s work seriously, valuing his service at $1,870. The court recognized the importance of Alex to both parties in its consent order, which contained a detailed shared custody schedule that, among other things, directed each party to take Alex to the vet twice weekly for his shots and any other required treatment:

The petitioner, Esther Snow Gnall, shall have the right to have the dog, Alex, at her home or any other suitable location for alternating two week periods . . . provided that she makes arrangements to pick up Alex at the business offices of the defendant, Ronald W. Callan . . . and provided further that she arranges for Alex to be taken to his veterinarian . . . twice weekly during those weeks for his shots and any other treatment.

The defendant, Ronald W. Callan, Sr., shall have the right to have the dog, Alex, at his home or place of business or at any other suitable location for alternating two weeks . . . provided that he makes arrangements to pick up Alex at the home of petitioner . . . and provided further that he arranges for Alex to be taken to his veterinarian . . . twice weekly during those weeks for his shots and any other required treatment.26

The bottom line is that the court did not treat Alex like a piece of furniture but like a child. Here, the court decided on care for Alex in great detail. The judge even awarded visitation rights, showing that some courts address this issue in pet custody disputes. Nevertheless, pet owners who do not want to roll the dice on a judge’s decision should take care to memorialize ownership of their beloved companion animals.

Property cases teach us that, although some courts are beginning to become more involved in the details of pet custody and visitation, the courts don’t treat issues involving pet custody in a consistent or predictable manner. It is not possible to know how a dispute will be decided. A pet owner should choose someone to be the pet guardian and should document that choice in a pet trust or pet protection agreement.

The role of pet guardian is critical to the success of the pet owner’s strategy for ensuring a happy and healthy future for his or her beloved pet. Although there are some cases when the statutes and the courts have intervened and the process has produced a fortunate outcome, it is not a very good idea to rely on this happening. The prudent pet owner, with the guidance of a knowledgeable advisor, has some excellent available alternatives.

Conclusion

Pet owners who are prepared to fight for a pet are growing exponentially. Some disputes over pet custody are fought with the same bitter determination, and high legal fees, as child custody cases. What’s worse, resolving these disputes in the context of break up proceedings can lead to very unpredictable and extreme results.

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Today, no set standard exists for awarding custody of animals in connection with the break up of a relationship. The pet as property approach is still the majority viewpoint, although, more recently, some courts have resolved custody disputes over pets by considering the pet's best interest. Although these recent cases indicate that the legal system's view of companion animals as inanimate property is changing, why let the state decide a pet's fate? Why not avoid disputes and uncertainty altogether?

It is better to memorialize ownership and care of pets before a dispute arises than to take the risk that the question will be decided by a judge, who may not be an animal lover, may have little patience for parties quibbling over pet-related issues, and may rule in a way that might not satisfy either party or take the pet's best interest to heart.

More and more advisors are asking, and should ask, clients about all property, including family pets. Once advisors know that their clients have companion animals, help is on its way, and one can ensure that they remain in control of their pets’ fate by advising them to create the pet trust or pet protection agreement. All trusted advisors should ask their clients, “Do you have a pet?” If they do not ask, they have left a treasured property out of financial and estate planning.
This chapter will explore the history of pet trust law, so that we can better understand the context of today’s rules.

Every time you see an oil painting of a king or queen of England, can you see the dogs? Nobility clearly loved their dogs. They always had them around and even commissioned portraits of them. Go to the Louvre in Paris, the Victoria and Albert Museum in London, or the Museum of Contemporary Art in Chicago, and there is King Charles I with his King Charles spaniels.

Royalty kept pets for pleasure and companionship, and King Charles I (who reigned from 1625–1649) loved his dogs so much that he wrote a law stating that King Charles spaniels were allowed in all public places, including Parliament. After that, though, it took centuries for the legal system to recognize the importance of the family pet. Over the years, pet owners’ attempts to provide continuing care for their beloved companion animals were generally unsuccessful.

1800s England: The Earliest Cases

Gifts for the benefit of pets should not be permitted—that was the 19th century English court’s mindset. These early courts were often unsympathetic to pet owners’ concerns for their beloved pets, finding, in case after case, a
variety of ways to explain why a pet owner’s wishes should not be carried out. For example, in a case dating back to 1750, the English court’s attitude was that a gift for the feeding of sparrows was “odd” or “whimsical” and that this type of use, although neither “superstitious” nor “illegal,” was “indifferent” and should not be enforced.1

Another pitfall was the Rule Against Perpetuities,2 which requires that a pet trust have a discernable end time. Thus, documents that could potentially be valid in all other aspects were unenforceable because they failed to specify a definite term. Specifically, the Rule Against Perpetuities prohibits a pet trust from going on longer than 21 years after the death of the youngest person included in the pet trust. Furthermore, when a pet trust provided instructions for disbursement of the remainder of the estate, this could make the term uncertain. The court would then invalidate bequests by citing the Rule Against Perpetuities.

It was almost 100 years later, in 1842, that an English court authorized a bequest for the care of a black mare.3 The owner wrote explicit details as follows:

I hereby bequeath, that at my death, £50 per annum be paid for her keep in some park in England or Wales; her shoes to be taken off, and she never to be ridden or put in harness; and that my executor consider himself in honor bound to fulfill my wish, and see that she be well provided for. . . . At her death all payment to cease.4

We can feel the owner’s love and concern for his mare’s future. Yet the reason this case was enforced was that it included a time limit, with payment to stop when the horse died. It had nothing to do with concern for the animal; that was years to come.

In 1888, a pet owner directed his trustees to maintain his companion animals for their lifetime but “no longer than fifty years.”5 The court sanctioned this document because it was limited in time and it was not “obnoxious to the law.”6

Generally, as long as the pet trust did not breach public policy and morality, the court would consider enforcing it. For the most part, however, English courts were indifferent to the strong sentiment that led pet owners to provide for their pets’ continuing care. In just a few cases, courts found that pet owners and advisors validly created gifts that were conditioned on pet guardians taking

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2 Section 1(c) of the Uniform Statutory Rule Against Perpetuities (amended 1990).
3 Pettingall v. Pettingall, 11 L.J.-Ch. 176 (1842). 
4 Ibid.
5 In re Dean, 41 Ch. D. 552, 560 (1888).
6 Ibid.
proper care of the pets. Additionally, today, the uniform codes exempt such trusts from the Rule Against Perpetuities, which normally limits pet trusts to 21 years.

20th Century United States

Historically, there was no guarantee that pet owners’ wishes would be honored or that the animals would be cared for at all. For decades, trusted advisors struggled to help animal lovers who wanted to provide for their companion animals. However, the best they could offer at the time was to counsel their clients to transfer ownership of their pets and funds for the pets’ care to someone in whom they had complete faith. That faith had to be well-earned because pet trusts for animals were not always enforced. If the entrusted friend or family member did not use the funds as instructed in the pet trust, there was little anyone could do about it.

The first recorded case in which an American court validated a gift for the benefit of a specific animal occurred in 1923.\(^7\) The court upheld the gift on the ground that a pet owner’s wish to create continuing care for her dog was of a “humane purpose.”\(^8\) However, this favorable treatment of a postdeath gift for a pet was not the norm.

In *Restatement of the Law, Trusts* (1935)\(^9\) and again in the *Restatement of the Law Second, Trusts* (1959),\(^10\) the American Law Institute set forth rules to which drafters of pet trust documents could refer. The restatements did not specifically address the issue of trusts for pet animals. Instead, they imposed conditions that must be met to transfer a specific pet and the funds for its care from a pet owner to a pet guardian. These conditions were as follows:

1. The transfer from a pet owner to a pet guardian must be for a specific noncharitable purpose.
2. The transfer must not designate a definite or definitely ascertainable beneficiary.

A transfer for the benefit of a pet animal satisfies both of these conditions because the care of a pet is a specific noncharitable purpose, and a pet is not an ascertainable beneficiary (that is, a person with standing to enforce a trust).

According to the restatements, even if a transfer met these requirements, it did not create an enforceable pet trust. As a result, “the transferee [was] not under a duty and [could not] be compelled to apply the property [for the care of the pet animal].”\(^11\) In other words, the new pet owner had the right to use the funds for the pet but was under no obligation to do so.

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\(^7\) Willett v. Willett, 247 S.W. 739, 741 (Ky. 1923).
\(^8\) Ibid.
\(^9\) Restatement of the Law, Trusts (1935).
Additionally, the restatements did not provide the new owner with any guidance about how to exercise this power to use or not use the funds for the pet’s care, except to impose two limitations: one based on traditional legal rules and the other based on public policy. These limitations were as follows:

1. The use of the property for a pet animal could not be authorized or directed for a time beyond the period of the Rule Against Perpetuities.
2. The trustee could not use the funds for the pet animal if the court deemed the purpose capricious.

The drafters of *Restatement of the Law Third, Trusts* (2007) provided the following illustration of the operation of these rules:

A bequeaths his dog, Fido, to B together with the sum of $1,000 'in trust' to use the money for the support of the dog for twenty years. B cannot be compelled to use the money for supporting the dog, but he has power to use the money for this purpose and incurs no liability by doing so. If B refuses or neglects to support the dog, he holds the money upon a resulting trust for A's estate.

To some, these restatement guidelines and limitations may be considered better than prior random precedent. Nevertheless, they continued to yield unenforceable arrangements; pets still could not be guaranteed a secure future. The same rules applied after the restatements as before. This clearly did not succeed in giving the pet owner peace of mind or protecting a surviving pet. If the trustee did not carry out the pet owner's wishes, the pet would pass to the heirs or beneficiaries of the estate, the same as the couch and other property.

**20th Century Evolution**

Courts continued to stymie pet owners' plans on various legal grounds. The following are some reasons arrangements failed:

1. *Gifts to pets*. Courts voided gifts to pets, frustrating the intent of many owners. Thus, if a pet trust stated “I leave my beloved dog, Soupbone, $10,000.00,” the dog was the beneficiary of a gift, and the pet trust was invalid. Funds or property may not be left to the pet itself because, in the eyes of the law, pets are property; much like a rusted bicycle, pets cannot legally own anything.

2. *Charitable purpose*. Pet trusts are invalid if they have a charitable purpose. Trusts for pets are considered charitable if they are written for the benefit of animals in general (pet trusts must be for a specific animal or animals). This distinction between a specific animal and animals in general...
general touches on the issue of indefinite time because charitable gifts trigger the possibility of being open-ended, which offends the Rule Against Perpetuities requirement to limit a pet trust’s term.

Gifts for the care of specific animals, because they do not benefit the community in general, are consistently held to be noncharitable. Alternatively, gifts for the benefit of an indefinite number of animals are typically upheld and enforced as charitable gifts rather than valid as pet trusts.

3. **Time limit.** Pets may not be the yardstick by which you measure a life in a pet trust document. Prior to the enactment of pet trust laws, the term for the pet trust were measured by a human life.

4. **Funds.** A pet owner’s intent to care for an animal may be defeated for a number of reasons involving funding:
   a. **Excessive funds—only a mother would understand.** Courts may reduce the amount a pet owner left for a pet’s care. There were several instances in which courts determined that the pet owner left excessive funds for the care of family pets and reduced the gift to what the court decided was a more reasonable amount.

   For example, in one 1974 case, the court reduced the amount left for the animal’s care based on the supposition that the owner mistook how much money would be needed.\(^\text{13}\) Again, in 1984 the court applied its “inherent power to reduce the amount involved... to an amount which is sufficient to accomplish [the owner’s] purpose...”\(^\text{14}\) The restatements provided no guidance about how to determine whether a transfer was unreasonably large, leaving things vague and uncertain.

   An adept advisor might have counseled a pet owner to be conservative in determining the amount left for the pet’s benefit. The pet owner might have considered leaving less for the pet than would have been used during the pet owner’s lifetime. If the pet owner transferred a large amount of funds, the court could deem the purpose capricious. In the back of one’s mind, there is always the fear that the court could reduce the gift to an amount it considered more reasonable.

   b. **Capricious use.** Heirs could claim that the use of valuable property for the pet’s care is wasteful. In that instance, the court may well determine that the pet owner was impulsive, unreliable, fickle, or erratic when leaving funds for the care of a beloved companion animal. If that was the court’s determination, it could rule that funds left to a pet in a will were of a capricious nature.


Although the court reasoned, during this period, that, in and of itself, the care of pets is not capricious, if a large sum were transferred for the pet’s care, the court could judge that it was of a capricious intent. When determining that pet trusts are invalid for capricious purpose, the court bases its reasoning on one or more of the following:

(1) Against public policy.

(2) Inefficient use of valuable resources.

(3) Frivolous use for an animal when the needs of humans are considered more important. (This argument is rarely used but, nevertheless, is a possible pitfall.)

(4) Excessive in the court’s opinion.

If the court rules that the bequest was capricious, the recipient pet owner’s power to use the funds ends. Both the pet and the funds then pass to the estate and through the estate to the heirs and beneficiaries, regardless of whether the heirs are a good fit for, or even like, the pet. Sadly, those heirs could simply dump that beloved pet in the city pound.

Conclusion

For over 200 years, despite pet owners’ love for their companion animals and their efforts to protect and provide for the continuing care for them, pet owners encountered many legal barriers to creating enforceable documents to safely transition their pets when they could no longer take care of them. As a result, many family pets were left homeless (or worse).

The silent explosion in like-mindedness among many Americans who were interested in providing continuing care for their dearly loved pets was reflected in legislation, as represented by the Uniform Probate Code (UPC)\(^1\) and the Uniform Trust Code (UTC)\(^2\) in 1990 and 2000, respectively. These codes, which have been adopted in many states, include provisions designed to recognize the concerns of many pet owners. These provisions allow an individual to leave funds that must be used for a pet’s care and authorize “a trust for the care of a designated domestic or pet animal and the animal’s offspring.”\(^3\) Additionally, a “trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.”\(^4\) In the following chapter, we will see the effect the UPC and UTC already have had on pet trusts.

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\(^1\) Section 2-907 of the Uniform Probate Code (UPC) (1990).
\(^2\) Section 408 of the Uniform Trust Code (UTC) (2000).
\(^3\) Section 2-907, cmt. of the UPC (1990).
\(^4\) Section 408 of the UTC (2000).
Historically, pet owners’ attempts to leave funds and instructions for the care of their pets were thwarted by the legal system. Their efforts to provide for their companion animals were ruled either invalid or legally unenforceable. However, times have changed—and for the better! County by county and state by state, things are falling into place for advocates of pet protection.

As recently as 2008, New York City’s Staten Island borough saw the first successfully probated case of its kind when Surrogate Robert J. Gigante validated a will that decreed 25 percent of the pet owner’s estate for the exclusive care of her cats, thus allowing the creation of a pet trust. A close friend of the pet owner was named trustee of the pet trust and would continue to receive $500 per year to manage the trust in the cats’ best interest. In fact, New York law\(^1\) now states that the trustee, in this case also in the role of pet guardian, has a fiduciary duty to use the funds exclusively for the cats. This court decision is a positive example that the legal system is beginning to put more weight on the value of animals, the wishes of pet owners, and the relationship they share with humans.

How did we evolve from judicial scorn to judicial support of pet trusts? The transformation began in earnest in 1990 when a major breakthrough occurred.

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The Uniform Probate Code (UPC), which deals with the issue of inheritance in the United States, allowed the establishment of statutory pet trusts for “the care of a designated domestic or pet animal” after the pet owner’s death. The pertinent section is still in effect today. A pet trust that is initiated through a will is referred to as a statutory pet trust.

Ten years later, in 2000, the Uniform Trust Code (UTC) authorized trusts created to provide for the care of an animal during the pet owner’s lifetime. This is uniquely important because after the year 2000, pet owners and their trusted advisors could create pet protection documents that are valid not only after the pet owner’s death but also during the pet owner’s lifetime.

Additionally, the uniform codes exempt trusts from the Rule Against Perpetuities, which normally limits pet trusts to 21 years, although the pet trust initiated by mention in a will (the statutory pet trust) is not exempt but relies on states to decide. Statutory and traditional stand-alone pet trusts are based primarily on these two uniform codes. Surprisingly, each of these codes contains no more than a page of rules pertaining to pet trusts. By 2009, 42 states plus the District of Columbia had enacted pet trust statues based on these codes.

**Pet Trusts That Are Only Valid After the Pet Owner’s Death**

All of the documents whose aim is to protect an animal’s ongoing care after a pet owner’s death (pet protection agreements, stand-alone pet trusts, and statutory pet trusts) share common attributes.

The UPC applies to statements in a will that spell out what happens to a pet and the funds a pet owner has left for its care after the pet owner has died. The following are highlights of selected regulations of the UPC as they pertain to statutory pet trusts:

1. **Enforceable.** Trusts for the transfer of a pet are enforceable in a will.
2. **Intent.** Courts must generously interpret the trust to carry out the pet owner’s intent, and outside evidence is admissible in order to determine the pet owner’s wishes.
3. **Valid without a named trustee.** The pet owner is authorized to designate a person or organization to enforce the trust. In a statutory pet trust, in the event the owner failed to name a trustee or the trustee is unwilling or unable to serve, the courts are empowered to appoint someone.

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3 Section 408 of the Uniform Trust Code (UTC) (2000).
4 Section 1 (c) of the Uniform Statutory Rule Against Perpetuities (amended 1990).
4. **Time limitation.** A statutory pet trust sometimes terminates upon the earlier of the death of the last pet covered by the pet trust or 21 years after the establishment of the pet trust. The figure 21 is bracketed in the UPC, thus enabling an enacting state to select a different time period.

5. **Pet’s offspring.** In most states with statutory pet trusts, the pet’s offspring are excluded from coverage.

6. **Purpose of funds.** No portion of the funds may be used for any purpose other than the pets’ care, unless the pet owner stipulates otherwise. Pet guardian compensation may be included in a pet’s care. Additionally, today, the codes exempt such trusts from the Rule Against Perpetuities, which normally limits pet trusts to 21 years.

7. **Funds.** A court may reduce the amount of funds transferred into the trust if it concludes that “the amount required for intended use” exceeds the amount the pet needs.

8. **Accountings.** In most states, no reports, filings, or accountings are required, unless the trust or the court so orders.

9. **Remainder assets.** If there are assets after the pet’s death, they are allocated as the pet owner directed in the wording of the trust. If the pet owner neglected to name beneficiaries, the court will pass remaining resources to the heirs.

10. **Beneficiary.** Statutory pet trusts for the care of an animal, however, are enforceable even if there is no human beneficiary. Pet beneficiaries are granted the classification of legal person for the limited purpose of serving as a beneficiary under a statutory pet trust.

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### Pet Trusts That Are Valid During the Pet Owner’s Lifetime and After Death

The first national system to govern trust law was the UTC. Section 408 of the UTC, “Honorary Trusts; Trusts for Pets,” allows for the possibility that a “trust may be created to provide for the care of an animal alive during the [pet owner’s] lifetime” as well as after the pet owner’s death. Therefore, pet owners are legally empowered to provide for their pets in the event of unforeseen circumstances. What if a pet owner is away from home on a trip that is extended? What happens if the pet owner is unavoidably delayed because of a hurricane or an earthquake? Suppose the pet owner is hit by a car and hospitalized? There’s no end to all the things that life may throw at us;

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5 Section 1(c) of the Uniform Statutory Rule Against Perpetuities (amended 1990).
thanks to the UTC, pet owners can create pet trusts to ensure that their own misfortunes won’t disrupt Fido’s or Fluffy’s daily routines.

The following is a selection of some elements found in the UTC. The full text of these codes, the text of statutes that have adopted the codes in whole or part, and a comparison of the features of the codes and statutes are all included in the appendixes.

1. **Pet owner’s lifetime.** A trust may be created to provide for the care of an animal that is alive during the pet owner’s lifetime.

2. **Enforceable.** The optional element is eliminated, making honorary trusts for pets enforceable.

3. **Intent.** Courts must generously interpret the trust in order to carry out the pet owner’s intent. Additionally, to help the court establish the exact nature of the pet owner’s wishes, outside evidence is admissible.

4. **Valid without a named beneficiary.** A person may be appointed by the court to enforce a trust created for the care of an animal even if one has not been named in the trust.

5. **Pets as beneficiaries.** An animal cannot be the beneficiary; a human being or organization must be the beneficiary.

6. **Valid without a named trustee.** The failure to name a trustee does not invalidate a statutory pet trust. Courts are authorized to appoint someone to enforce the trust if the pet owner has failed to appoint a trustee.

7. **Time limitation.** The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal, upon the death of the last surviving animal (in most instances).

8. **Second generation of pets.** Animals in gestation but not yet born at the time of the trust’s creation also may be covered by the trust’s terms.

9. **Multiple pets.** A pet trust may be created to benefit one designated animal or several designated animals.

10. **Interested parties.** A person with an interest in the animal’s welfare may request that the court appoint a person to enforce the trust or remove a person who is not following the pet owner’s instructions. This provides the oversight necessary to ensure that the trustee is adequately performing the required duties.

11. **Funds.** Trust funds and property may only be applied to their intended use.

12. **Excessive funds.** The court may decide that the amount of funds exceeds what the pet needs and may adjust the sum accordingly if the trust was funded by, or initiated through, a will.
13. *Remainder assets.* Except as otherwise provided in the terms of the trust, funds not required for the pet’s needs must be distributed to the pet owner (if alive), otherwise to the pet owner’s intended beneficiaries or heirs.

The UTC of 2000 was in many ways more advanced than the UPC of 1990, in terms of protecting pets. These positive developments indicate how the legal environment progressed during those 10 years.

**Failure and Success—Examples of the Laws**

The evolution of contemporary pet trusts is marked by some legal failures and some successes. This section describes some milestone cases along the path to the enlightened perspective reflected in today’s law.

**Failed Bequests**

Courts historically cited several reasons for disallowing pet trusts in wills. Often, when pet owners tried to protect their pets in wills or pet protection documents, either the documents were poorly written or the courts were legally bound to rule against the pet owner’s intent. The reasons for ruling against pet trusts providing for pets include the following:

1. *The pet cannot own the house.* Pets cannot own property; rather, pets are property, like the living room couch. However, don’t tell that to a pet owning client because the response might be, what do you mean he’s just a dog; he’s my baby?! Much like the couch, however, the dog cannot own the house (or the funds). Pet owners who tried to leave the house to their pet were often merely trying to ensure that the pet would not have to move from the place it was comfortable. The courts frustrated the intent of many pet owners by holding that, because pets are classified as property and property cannot legally own property, a direct gift to an animal nullifies the pet protection document. The property must belong to a trust, which, unlike an animal, is a legal entity that may own things.

2. *A human or organization must run the trust.* Just as a dog cannot call the veterinarian, make an appointment, or drive over to get his or her yearly shots, he or she also may not supervise a trust. A pet protection document must include a human beneficiary or organization to perform the trustee’s duties (unless it’s a statutory pet trust). Trusts that directly named an animal as the beneficiary but were silent on the subject of trustee may have been challenged on the basis that a necessary element was missing.

3. *Honorary not binding.* Although courts in a few widely-scattered cases held some attempts to ensure the continuing care of pets valid, they usually stopped short of concluding that the arrangements were legally
enforceable. In many early decisions, courts determined that pet protection documents were only honorary, meaning that the gift was binding only on the trustees' conscience; it did not impose a compulsory condition on the trustee, leaving the pet vulnerable. If the trustee was willing to carry out the purpose of the trust and act in accordance with its terms, the court could have declared the trust valid. If the trustee did not act in harmony with its terms, the court could have proclaimed the pet protection document void. The trustee and, therefore, the trust was bound by honor, not by law.

4. A pet trust cannot be a charitable trust for purposes of tax benefits. A pet trust may not be a charitable trust. A gift for the benefit of an indefinite number of animals, which, by its very nature, is created to benefit the public at large, is typically upheld as a charitable trust; thus, it is invalid as a pet trust. A gift for the care of a specific animal or animals is held to be a noncharitable, enforceable pet trust. That does not mean that one cannot arrange for charities to be the ultimate beneficiary of a pet trust. If the pet owner wishes, a charitable organization can be named as a remainder beneficiary to receive the unused portion of the funds upon the termination of the trust, but the trust must either be a pet trust or charitable trust. The pet owner does not have the same tax advantages in a pet trust as he or she would have in a charitable trust (see chapter 8). The federal tax code does not permit an income or estate planning deduction for gifts to a charitable trust when the trust distributions are solely for the benefit of a companion animal.

5. Funds for pet. Who has the right to decide if a pet owner left too much money for his or her pet's care? Unfortunately, if the trust is contested, the court has the right to decide. Imagine an officer of the court knocking on a pet owner's door and saying, "Let me see how much you're spending on your pet. Oh no, you can't spend that much. You are buying too many toys for your pet!" The irony is that a pet owner may be prosecuted for not spending enough on a pet's care during the pet owner's life, but once the pet owner is unable to care for the pet or dies, the court has the right to determine whether the pet owner designated too much to spend on his or her pets.

If the pet protection document is funded by or enacted through a will and if, in the court's view, the amount of property left to the trust is unreasonably large, a judge may reduce the amount to what the court considers reasonable for the pet's use. On several occasions, courts have determined that a pet owner left excessive funds for the pet's care and reduced the gift to what it considered to be a more reasonable amount.
For example, in 1974, based on the court’s reasoning that the pet owner miscalculated how much money would be needed to care for the animal, the Lyon’s pet trust was reduced. Similarly, in a 1984 case involving the Templeton Estate, the court applied its “inherent power to reduce the amount involved...to an amount which is sufficient to accomplish [the owner’s] purpose.” Additionally, unhappy remainder beneficiaries and heirs could allege that the use of property to care for specific animals is an inefficient use of valuable resources. Last but not least, the judge’s ruling in the Leona Helmsley estate case ultimately cut by 80 percent the amount that Helmsley left for her beloved companion, Trouble. The decision was based on the UPC, as enacted in New York, providing authorization for a court to reduce the amount of funds if “that amount substantially exceeds the amount required” to care for the animal.

Success Stories

Even before the introduction of the codes, a few courts ruled favorably on efforts to protect pets, as can be seen from these examples:

1. **Humane purpose.** The first reported case in the United States addressing a gift for the benefit of a companion animal in a will was the 1923 landmark Kentucky case of *Willett v. Willett*. The court held that a gift to care for a specific animal was a humane purpose. After this ruling, courts had a basis on which to validate a pet trust in a will. The relevant provision reads as follows:

   [One thousand dollars], which is to be used for the support of our dog ‘Dick’, if the interest is not sufficient for him to be kept in comfort, that is being well fed, have a bed in the house by a fire and treated well every day, that the principal be used to such a sum so it will last his lifetime. . . . Dicky must have three meals daily.

   In the course of upholding the validity of the gift, the court rejected two arguments. The first argument was that the gift was invalid because the pet owner failed to name a trustee. The appellate court rejected this argument quickly by citing the long established rule that

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9 Section 2-907(c)(6) of the UPC (1993).
10 *Willett v. Willett*, 247 S.W. 739, 741 (Ky. 1923).
11 Ibid at 739.
“equity never allows a trust to fail for want of a trustee.” 12 The second argument was that a dog cannot be the recipient of a gift in a will. The appellate court began its analysis of this issue by interpreting the will as establishing a trust with $1,000 for Dick. Dick’s support was to come from the interest generated from this fund, but the principal also could be used, if necessary. The court reasoned that, as a result, the pet owner made a gift for the pet’s use and benefit and did not make a gift directly to the pet.13

The court recognized that the pet owner’s gift was not charitable in nature because it was directed to one animal rather than to a sufficiently large class and determined that taking care of Dick was a humane purpose. The court defined the word humane as including the kind and compassionate treatment of animals and, accordingly, held that the gift for Dick’s benefit was effective.14

2. Possible longevity of pet trusts. A pet owner sought to create a trust for the care of a companion animal for the rest of its life. The 1950 Ohio case of In re Seabright’s Estate15 discusses the following gift in the pet owner’s will:

I give and bequeath my dog, Trixie, to Florence Hand . . . and I direct my executor to deposit in the Peoples Federal Savings and Loan Association . . . the sum of $1,000.00 to be used by him to pay Florence Hand at the rate of 75 cents per day for the keep and care of my dog as long as it shall live. If my dog shall die before the said $1,000.00 and the interest accruing there from shall have been used up, I give and bequeath whatever remains [to remainder beneficiaries].16

The court looked at the exact terms of the gift and calculated that at a rate of $0.75 per day, the $1,000 would be exhausted in just over 4 years. Because this is considerably shorter than the 21-year maximum allowed in Ohio (prior to the enactment of the UTC) it was honored by the court, reasoning that it contained an implicit “time limit.”17

Following a similar line of reasoning, courts have usually held trusts were not valid if they provided support for the duration of the pet’s life because the pet might live too long, and the trust might go on for more than the established 21 years. That did not deter the court in the In re

12 Ibid at 740.
13 Ibid.
14 Ibid.
16 Ibid.
17 Ibid at 425.
Contemporary Law

*Lyons Estate* case mentioned previously, though. There, the pet owner’s will contained the following provision:

> It is my expressed direction that all dogs and horses upon the farm at the time of my death, shall be kept there and cared for until their deaths. To enable my Executor to carry out this provision I authorize him to use any of the principal or income from my estate as may be required to properly maintain and operate my farms and in his sole discretion, if he deems necessary, I direct that the payment of any of the above bequests be postponed, without interest.\(^{19}\)

Additionally, the court was called upon to determine the legitimacy of this provision. Specifically, the court reviewed how much was needed for this purpose. The court reasoned that the income amount of $40,000 to $50,000 exceeded the amount that was necessary to care for the 9 animals: 4 horses and 5 dogs.\(^{20}\)

Although the will did not name a specific beneficiary, the court ruled that it was reasonable to permit this pet trust because the pet owner’s intent was clearly to create one. Additionally, without giving any reason at all and even though the time limit was pegged to the lives of the animals (clearly in violation of the 21-year rule), the court simply adjusted the time limit of the trust to 21 years, rather than invalidate it all together.

3. **Owner’s intent.** A 1950 New York case involved a will that provided that a designated beneficiary was to receive her horses, Bessie and Daisy, along with $14,000.\(^{21}\) The pet owner then stated that it was her “wish and direction” that the money and its income be used for “their care and maintenance.”\(^{22}\) Before the pet owner died, however, the horses were sold and later died. Regardless, the court allowed the proposed pets’ guardian and beneficiary to take the $14,000. Although Bessie and Daisy did not benefit from the court’s interpretation of the case, it is clear that if the horses had still been alive, the beneficiary would have received the money and could then carry out the owner’s intent by using the funds for Bessie’s and Daisy’s care.

4. **Funds for pets.** This issue has evolved both dramatically and, from a historic perspective, rapidly. In 1966, a $5,000 expense for pet dogs

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\(^{19}\) Ibid at 475 n.1.

\(^{20}\) Ibid at 477.

\(^{21}\) *In re Johnston’s Estate*, 99 N.Y.S.2d at 221.

\(^{22}\) Ibid at 221 – 22.
was so strange and improper that it led to a lawyer’s suspension from the bar.\textsuperscript{23} Yet some 40 years later, a court approved a $2 million bequest for a dog.\textsuperscript{24}

In the 1966 case \textit{Matter of Rogers}, the pet owner directed her executor to make arrangements for the permanent care of her two dogs, a chow and a weimaraner.\textsuperscript{25} The pet owner also granted the executor the discretion to determine the amount of funds to be paid. The attorney who drafted the will was also the executor of the estate and, after the owner’s death, proceeded to make the agreed-upon arrangements for the animals’ care.

In this case, the validity of the gift was not questioned. Instead, the dispute focused on whether the executor should be suspended from the practice of law because his expenditures were unreasonable and unnecessary.\textsuperscript{26} The court examined some of the executor’s expenses pertaining to the dogs, which included the following:

\begin{itemize}
  \item Monthly payments to the executor’s son to care for one of the dogs
  \item A fence to keep the dogs safely in the yard
  \item Five thousand dollars for a car to take the dog to the park
  \item A dog house
  \item A washing machine
\end{itemize}

After review, the court determined that it was a matter of opinion whether most of these expenditures were appropriate.\textsuperscript{27} Based on testimony that the car also was used to go on family picnics and vacations, the court found that the purchase of a car to give the dogs rides to rural areas was excessive.

The court concluded that the purchase of many of these items was not a reasonable exercise of the executor’s fiduciary duty. For that reason, the court suspended the executor’s license to practice law for 60 days.\textsuperscript{28} In this case, the pet owner’s requests were honored by the court, even though the executor was less than honorable.

By contrast, in the Helmsley estate case, the court ultimately set aside $2 million for the care of Leona Helmsley’s beloved Maltese dog, Trouble.\textsuperscript{29} This is the most any court has ever designated for the care of

\textsuperscript{26} Ibid at 711.
\textsuperscript{27} Ibid at 713.
\textsuperscript{28} Ibid at 714–15.
\textsuperscript{29} \textit{In re Helmsley, supra}.
a companion animal. Pet owners’ attorneys will cite this case when their clients provide generously for their pets in their estate plans.

State of the States

Did judges overturn both traditional free standing pet trusts and statutory pet trust provisions because they were hard-hearted? More often than not, judges might have sympathized with pet owners’ requests, but their hands were tied by the laws in effect. Fortunately, current law unties judges’ hands. Judges now have the discretion to deliver decisions that conform to a pet owner’s intent.

States That Have Enacted Statutes

Since 1990, each state has had the opportunity to choose whether it wishes to enact pet trust statutes. When writing the two uniform codes, the commissioners left it up to the states to pass their own versions. Their reasoning for not making pet trust statutes a federal law was that it might have been too unconventional or radical a thought for some states at that time.

Consequently, states run the spectrum, from those that have no statutory pet provisions to those that have adopted them in a variety of forms. From the will, the statutory pet trust triggers a pet trust according to state law. It is a bare-bones plan that does not permit pet owners to leave any instructions regarding the pet’s care. Funds that pet owners leave for a pet’s care, in most instances, must be used for that purpose, but in all states, a statutory pet trust does not allow the pet owner to direct how those funds should be spent.

The following are examples of how various states have chosen to implement the codes. They all aim to protect pets in some ways and assure pet owners a better chance of safeguarding the continuing care of their companion animals. Yet, they’re all different and come in an amazing variety. By 2009, 42 states and the District of Columbia had enacted pet trust statutes for wills. The following are unusual clauses found in a few state statutes:

- **Arizona.** The trust may be performed by the trustee for not longer than 90 years, regardless of whether the terms of the trust contemplate a longer duration. Extrinsic evidence is admissible in determining the transferor’s intent.

- **California.** The pet trust remains legally binding until the last animal dies, unless the pet owner provides otherwise. Accountings must be given not only to those who would get assets when the last pet dies but also to any nonprofit charitable corporation whose main activity supports animal care and is an interested party.
• **Colorado.** A trust for the care of designated domestic or pet animals and the animals’ offspring in gestation is valid. The determination of the animals’ offspring in gestation is made at the time the designated domestic or pet animal becomes a beneficiary of the trust.

• **Connecticut.** Requires that the pet owner designate a trust protector, whose sole duty is to act on behalf of the animal. Accountings are required.

• **Delaware.** The term *animal* includes any nonhuman member of the animal kingdom but shall exclude plants and inanimate objects.

• **Idaho.** Pets are protected in this state through what is referred to as a *purpose trust*. It is never referred to as a *pet trust* in the statute, which can confuse people. This state provides that a document can be created that ensures that any funds set aside for companion animals must be used for that pet’s care.

• **New Jersey.** Although a trust for the care of a domesticated animal is valid, it is not clear whether *domesticated* includes all pets. Most other statutes use the term *domestic or pet animals*. This is an important distinction. Many pet animals, such as snakes or fish, may not be considered by a court to be domesticated in the sense that a dog or a cat is domesticated.

• **Oregon.** An oral or written declaration is liberally construed in favor of creating a trust. The pet guardian is entitled to reimbursement from the trust for the cost of caring for the animal.

• **South Carolina.** A trust may be created to provide for the care of an animal or animals alive or their offspring in gestation during the pet owner’s lifetime.

• **Washington.** Allows a trust for any nonhuman animal with vertebrae. This may be broader than the definition of domestic or pet animal used in most other state statutes and minimizes the confusion that otherwise may occur in cases of unusual pets.

• **Wisconsin.** Authorizes honorary pet trusts for the benefit of pets but does not make them enforceable. The trust is based on the conscience of the future pet guardian, who is neither bound by law to care for the pet nor to use the funds for the pet’s care.

No mention is made of animals in Wisconsin’s statutory pet trust. However, a resulting trust is created in favor of the pet owner’s intent to protect the pet, and the court is authorized to order the pets to be transferred to the next owner. The statute further instructs that “[a] trust described is invalid
to the extent it was created for a capricious purpose or the purpose becomes capricious."

Wisconsin courts have the authority to determine whether stipulated care for the pet is capricious.

Based on the number of cases and statutes in other jurisdictions upholding the use of an owner's funds to care for animals, it is unlikely that Wisconsin's courts would find a reasonable gift for companion animals capricious. If, however, the pet guardian does not use the funds for the pet within a reasonable time, the funds return to the owner's estate, unless otherwise indicated in the pet owner's will.

**Compare Time Limits**

By 2009, most states had enacted statues recognizing trusts. These state statutes include a variety of time limits. States can choose among several possibilities, including the following:

- Twenty-one years or when a living animal is no longer covered by the trust
- Companion animals are covered until they die
- The pets' offspring are included, extending the term of the trust even furthermore

For example, Alaska, Iowa, Michigan, Montana, New Jersey, New York, Tennessee, and Utah only permit the pet trust to exist for whichever comes first: 21 years or when a living animal is no longer covered by the trust. If a pet trust is enacted by mention or funded by a will or if it states that it runs for "my pets' lives" or "until all my pets die," the court may either invalidate the statutory pet trust or adjust the time limit accurately to reflect the governing state statute. This presents a grave problem in the case of birds and other long living animals. Too often, nothing can be done to protect those animals who outlive the document.

An alternative strategy is found in the way Alabama, Arizona, Arkansas, California, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Kansas, Maine, Maryland, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia,

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30 Wis. Stat. Ann. §701.11(1) (West Supp. 1999). The *Restatement of Trusts* states that if the court rules that the purpose of the pet trust is capricious then the trustee is prevented from using it for that purpose. *Restatement (Second) of Trusts* §124 (1957).

Washington, and Wyoming\textsuperscript{32} handle time limits. In these states, companion animals are covered until they die.

Colorado\textsuperscript{33} and South Carolina go further and include the animals’ offspring in gestation. The determination is made at the time the designated pet becomes the beneficiary of the statutory pet trust.

Idaho’s statute\textsuperscript{34} leaves the determination of the duration of the trust to the person who will carry out the terms or the trust. It states that if the pet owner does not mention a specific termination time, then the pet trust is valid for the life of the pets.

\textbf{En Route to Enactment}

Imagine water dripping on a rock, one drop after another. Finally, the drops wear a hole in the rock. This can take an awfully long time. That’s what it can feel like for pet owners who cry out for the safety of their beloved family pets while waiting for the House, Senate, and their governor to sign a state's pet trust statute into law. For pet owners longing to ensure their pet will be cared for, it can seem like an eternity.

Why does it take so long to pass a pet trust statute? Success is far from simple. In New York, for example, the process often begins with the animal rights committee of the city or state bar association. Assuming this committee agrees to push the bill, the full bar association must go along with the bill. With luck, a powerful sponsor is lined up. Then, a state legislator must agree to submit the bill. Both houses of the state legislature must pass the bill, and the governor must sign it.

Although the preceding paragraph sums up the process in a few sentences, each step can be extended, requiring continued lobbying. All the parties concerned may have various priorities, and pet trusts might not be at the top of the list. Before enacting its pet trust statute in 2009, California was en route for years. Massachusetts,\textsuperscript{35} meanwhile, is still stuck in this process.


\textsuperscript{34} Ida. Code $\S$ 15-7-601 (2005).

About the Process

The following range of reactions from delegates discussing the possibility of passing Maryland's state pet trust statute is enlightening and amusing.

In February 2008, a bill allowing the creation of trusts for the care of pets was introduced to the House of Delegates. Well-known for his dry humor, Joseph F. Vallario Jr., Chairman of the Judiciary Committee that reviewed the bill, laughed and said, “Believe me; I hesitated a little bit with this bill. But I became convinced it was in the interest of pets who don’t have a voice in this House.” Delegate Heather R. Mizeur said to applause that she would vote against the measure because “…we’re not giving some of these same protections to Maryland families in this state that we’re willing to give to their pets.”

“For thousands of Marylanders who, like me, consider their pets akin to family members,” delegate A. Wade Kach said, “this legislation offers peace of mind that the arrangements we make for our animals will be legally binding.” Eventually, the bill passed the House by a vote of 105–28, but not before some delegates engaged in a little good-humored back and forth over the issue. Eventually, the bill become law, was passed by the state Senate, and signed by the governor.

At the time this book was published, Oklahoma was hoping to pass a pet trust statute in the upcoming legislative season.

States Without Statutes

Although many states are stepping up to protect pet owners’ interests, others have yet to take action. As Professor Gerry W. Beyer, an expert in the field of pet trusts, said, “Statutory pet trusts are nice, even if you’re leaving only a nominal amount of money, because this makes it easy for the lawyer—he doesn’t have to draft a full trust. You can put in just a line or two and have it be effective.” Because state law fills in the gaps on such details as when the trust ends and how it is enforced, you only need to include a simple provision in your will, such as, “I leave $1,500 in trust for the care of my cat, Milo.” Such simple provisions, though, do not allow pet owners to leave detailed instructions for their pets’ care. Additionally, waiting for the will to be probated can take months or years. Therefore, relying on a provision in a will is far from ideal for a beloved pet.

36 Maryland Est. & Trusts §14-112 (2008). The Maryland bill was based on Section 408 of the UTC.
37 H.B. 2426, §29. The bill passed the House in February 2009. It is currently awaiting Senate passage and the governor’s signature.
39 Ibid.
Much further from ideal is the outcome for a dog like Soupbone if his owner made arrangements for him in the will in a state that does not have a pet trust statute. What if the will stated who should receive Soupbone and the funds to care for him? Because the state does not have a pet trust statute, it is not possible to ensure that the funds will be used for Soupbone's care.

In states without pet trust statutes, leaving instructions in a will, such as “I leave both my dog, Soupbone, and $25,000 to cover Soupbone's care to my friend Suzanne Moore,” could result in Suzanne dropping Soupbone at the pound and rushing off to Paris with the funds. While Suzanne is living it up, Soupbone might not be living at all. An old dog like Soupbone is unlikely to be adopted. More likely than not, he would be euthanized. Even if he is adopted, without funds, Soupbone has little chance of living the life his owner had intended.

But it's not all bad news. Ways exist for pet owners to make sure their pets are cared for regardless of whether their state has enacted legislation authorizing the creation of a statutory pet trust, such as the following:

- The first option is to create a stand-alone pet trust (outside the will).
- The second option is to create a pet protection agreement.
- The third (but not ideal) option is to create a will in a state that has a law that is more beneficial for pets’ care (this is discussed in greater detail in chapter 7).

**Conclusion**

The rapidly growing movement to recognize trusts for the continuing care of companion animals is reflected in the abundant legislation passed since 1990. It is an extraordinary achievement that, in such a short time, 42 states plus the District of Columbia have enacted statutes that positively affect companion animals and that stand-alone pet trusts and pet protection agreements are valid in all states. Pet owners can now feel more secure that people receiving the funds for the care of their pets are legally bound to use those funds for their pet's care. Lawmakers are listening to pet owners regarding their beloved pet's care.
The Pet Trust and Pet Protection Agreement

This chapter discusses the elements of pet trusts and pet protection agreements. Once they have read this chapter, educated consumers will know what to look for, and trusted advisors will know how to guide them. It's by no means complete, but it's a start. This is about how to get the help the pets need and how to tell people what the solutions are, not the problems. It keeps pets out of shelters. In Joe Torre’s words, they are “Safe at home.”

People live longer, have more pets, and treat them more like family than ever before. Pets are a central and vital part of their owner’s lives. Despite four significant trends—the aging of the U.S. population, an increase in pet ownership, the growing importance of pets in their owners' lives, and an increase in spending on pets—pet owners often do not consider what will happen to their companion animals if their owner dies or becomes disabled. And advisors, still unaware, don’t ask.

When advisors have a better understanding of the avenues available for protecting a client’s beloved pet, they will be more comfortable including questions about the pet in their conversation with a client. Along with the ability to answer the questions comes the opportunity to enlarge and develop their practice because over 70 million households in the United States have
pets. According to Queen Rania of Jordan, "Americans spend [$11 billion] on their pets in three months."\(^1\)

Sadly, the consequences of a pet owner’s failure to provide for his or her pet’s continuing care can be stark. Too often, the pet will end up in a shelter, where, at best, it will not receive the care the pet owner would prefer; at worst—and in most cases—the pet will be euthanized.\(^2\) In view of these grim facts, the Humane Society of the United States, the American Society for the Prevention of Cruelty to Animals (ASPCA), and shelters all over America encourage pet owners to consider the consequences of failing to adequately provide for their pets when planning the protection and preservation of their property—the pet.\(^3\)

Generally, an advisor can broach the issue of a pet’s continuing care merely by asking, “What are you going to do with your pets? Shouldn’t there be a user’s guide for them?” The pet trust and pet protection agreement (collectively referred to as pet protection documents) establish continuing care for animals when pet owners are unable to care for them. Both are standalone documents that are valid during the pet owner’s lifetime, as well as during mental or physical disability and after the pet owner’s death. Besides offering legal protection, they become a manual of care. Pet protection documents protect all the pets a pet owner has at the time of the writing, as well as in the future.

It’s important to note that if a pet owner leaves funds or property for his or her pet’s care, one or more beneficiaries, such as family or a charity, should be designated to receive the portion that is not spent during the pet’s lifetime.

**The Pet Protection Agreement**

The pet protection agreement is a check the box, fill in the blanks, unique product. It is a legally enforceable document between a minimum of two individuals or entities: the pet owner and pet guardian (which may be an organization), both of whom must sign it. The pet guardian becomes the pet’s owner upon an event such as when the pet owner is unable to continue to care for his or her pet. A pet protection agreement may designate any number of pets but only one pet guardian for them. Each pet doesn’t require a separate agreement but each pet guardian does because the pet guardian must sign it. An optional party is the distribution representative, who, if appointed, distributes funds to the pet guardian. Surprisingly, funding is an optional element.

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2. Almost 4 million dogs and cats are euthanized at shelters each year—nearly 9,600 per day. Humane Society of the United States, HSUS Pet Overpopulation Estimates.
The pet protection agreement is designed to incorporate the very best features of trusts, contracts, and wills and overcomes their weaknesses in the following manner:

- Like a trust, funds can be released incrementally and for a specified purpose, and a legal obligation exists to comply with instructions.
- Like a contract, the pet protection agreement includes consideration and acceptance. The promise to perform is passed from one pet guardian to a series of successor pet guardians until, if needed, an organization of last resort takes on the responsibility for the pet. Funds can be disbursed during life. Like a contract, the pet protection agreement survives legislative edict.
- Like a will, the pet protection agreement can disburse funds upon death of the pet owner, and the funds may become a debt of the estate. If funds are left by mention in a will, they will pass through probate. If the funds are not passed through the will, they will not be reviewable by the court. The process of finalizing a pet protection agreement with notarized signatures is the same process as is required for a will.

The pet protection agreement can be completed online at www.Petriarch.com in 15–20 minutes (the agreement is also included on the enclosed CD-ROM), with or without the help of an attorney.

The pet owner is free to include comments and instructions in the pet protection agreement. Although a pet protection agreement has a dedicated space for this, often a pet owner will not take advantage of this option. This provides an excellent opportunity for the attorney or advisor to assist the pet owner in creating a comprehensive plan. No matter what the pet owner writes, his or her words will not compromise its validity because of the legalese included in the text.

The pet protection agreement includes a very limited power of attorney and health care proxy whose terms are restricted to the needs required for the continuing care of the owner’s pets; an organization release form also is included. The pet protection agreement was designed with estate planning knowledge and pet loving heart. Despite its simplicity and affordability, the pet protection agreement is an effective way to satisfy the pet owner’s concerns.

**The Pet Trust**

Two types of pet trusts exist:

- The statutory pet trust enacted by mention in a will, valid in 42 states and the District of Columbia, and discussed fully in chapter 4.
The traditional stand-alone pet trust discussed subsequently, valid in every state, and hereafter referred to as the *pet trust*.

**Pet Trust Requirements**

The following are requirements for a pet trust.

**Attorney**

A pet trust requires the services of an attorney because it is written from scratch. It is a made-to-order document based only on trust law. An attorney who understands the special bond a pet owner has with his or her pets is most effective.

The advantage of going to an attorney is that he or she can argue the case for the pet owner’s wishes in the pet trust by detailing why the pet owner made his or her decisions and selected the persons behind instructions for care. If a challenge is expected, then a pet trust is a must. Estate planning attorneys are generally adept at protecting pet owners’ wishes in the face of argumentative heirs and will insert contingency clauses, including penalties to those who attack the pet trust. Presenting the argument and justifications for the pet owner’s wishes in the pet trust will give it the best chance of being understood and respected by a court if it is subsequently challenged by disgruntled heirs or others with standing to do so. It will help establish the intent of the pet owner and provide evidence that the pet owner had the capacity to make those decisions.

**Funds**

The pet trust must include funds or property. Funds can be provided to the pet trust by wiring funds to the trust’s bank account or writing a check to the trustee of the pet trust. If real estate is transferred into the trust, it must be retitled into the name of the pet trust. Funds titled to a pet trust are not subject to probate, and disbursement of those funds for the pet’s care will not be delayed. An added advantage of a pet trust is that its terms remain private.

**Trustee**

A pet trust must have a trustee. In his or her fiduciary capacity, the trustee has an obligation to carry out the terms of the pet trust. Unlike the pet guardian in a pet protection agreement, who takes ownership of the pet and is responsible for the care of the pet, the trustee is the one who oversees the trust’s assets (including the pet) and disburses them to the pet guardian according to the pet owner’s instructions.

According to premier New York estate planning and elder law attorney Sharon Kovacs Gruer, Esq.:
A trustee must keep trust funds in a separate account, designated for the trust, and the funds would generally be protected from the trustee's personal creditors if the trustee found himself or herself in financial trouble. With a pet protection agreement, on the other hand, the funds set aside for the pets may be subject to the claims of the creditors of the person holding the funds. This can be avoided by leaving insurance or other funds that do not go through probate.

The trustee (although he or she may never have contact with the pet) should be an animal lover who is willing to administer the trust's funds for the pet's benefit according to the pet owner's instructions. The trustee and the pet owner sign the pet trust.

The pet owner can grant the trustee the right to name the people or organization who will care for the pets. Alternatively, the pet owner can specifically name these persons. The pet owner can appoint many individuals, even passing each pet to a separate person with individualized instructions. All of these people (often referred to as caregivers) can be named in one pet trust. The pet owner should provide a mechanism for the trustee to name remainder beneficiaries or a class of beneficiaries, such as animal shelters or cancer research.

The trust protector, an optional role, invests the trust's assets. For larger trusts, it is recommended that a trust protector be nominated to provide both specialized investment skills and an added layer of oversight over the trust funds. The trust protector is not a required role. The trust protector will pass the funds to the trustee who, in turn, gives them to the pet guardian. The key function of the trust protector is to invest the funds. The trust protector need not be an animal lover (as the trustee) or have any personal connection with the pet; it is only important that the trust protector be financially skilled.

**Other Documents**

It is wise for an attorney to write additional documents that help smooth the transition of funds so that the pets can be cared for during a pet owner's life. These documents are the power of attorney, health care proxy, organization release form (relinquishing any claim to title), and will. It is wise for an attorney to write these and include clauses specifically pertaining to the care of pets and the existence of pet protection documents. Although a pet trust is valid as a stand-alone document, it works best when intertwined with other estate documents. For instance, in the case of a pet acquired from a shelter, sanctuary, breeder, or breed rescue this might be important because the organization may still legally own the pet despite the adoption process. This is rare, but the phone call is worth the peace of mind. Ask if the organization still owns the pet. It is necessary to establish true ownership and avert potential
confusion and problems when the pet trust or pet protection agreement is enforced. When this occurs, it is necessary to get an organization release from the acquiring organization.

**Contrasting the Alternatives**

Table 5-1 is a quick introduction to the three most used documents for including a pet in estate planning: the will, the pet trust, and the pet protection agreement (this table is also provided on the CD-ROM). The benefits and pitfalls of each will be discussed in the following sections.

The pet trust and pet protection agreement may be used alone. Each of the three documents may be used in combination with the others. However, when a pet owner wants to provide for the care and well-being of companion animals, a will by itself is not the answer. A will is insufficient because instructions in a will are unenforceable, and it could be months or even years before it’s read. This is, as a matter of fact, the topic of the next chapter.

Until recently, pet owners encountered many legal barriers when attempting to transfer ongoing care for their pets to another person. Fortunately, many excellent options exist today with the advent of recent laws, statutory developments, and the creation of the pet trust and pet protection agreement. Today, pet owners can create legally recognized and enforceable instruments that provide care for their pets in the event of the pet owner’s disability or death.

**Common Factors of the Pet Trust and the Pet Protection Agreement**

The pet trust and the pet protection agreement are almost identical. These two legal documents, which are valid in all 50 states, provide unlimited space for instructions regarding the pet’s care and expenditure of funds. The pet trust and the pet protection agreement are valid during the pet owner’s lifetime, as well as after the pet owner’s death. Both establish uninterrupted care for pets when the pet owner is no longer able to be there for them.

Both the pet trust and the pet protection agreement contain the following common provisions:

- Identifies the pet owner
- Appoints the pet guardian or trustee and their successors
- Signifies agreement of both the pet owner and pet guardian or trustee by their respective signatures
- Establishes a community of care and a method of checks and balances
- Notifies designated persons
The Pet Trust and Pet Protection Agreement

- Ensures funds are available immediately and ongoing
- Allocates remaining funds at the pet’s death
- Directs pets care, including instructions regarding health, exercise, and diet

Table 5-1: Planning Options Comparison

<table>
<thead>
<tr>
<th></th>
<th>Will (Statutory Pet Trust)</th>
<th>Pet Trust (Traditional Stand-Alone)</th>
<th>Pet Protection Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must be drafted by an attorney</td>
<td>Yes</td>
<td>Yes</td>
<td>No attorney needed</td>
</tr>
<tr>
<td>Funds must be used for pets</td>
<td>Not always</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Court may reduce funds</td>
<td>Yes</td>
<td>Not usually</td>
<td>Not usually</td>
</tr>
<tr>
<td>Must include funds</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Legal in all states</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Valid after pet owner’s death</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Enforceable during pet owner’s lifetime</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Binding care instructions</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Service, medical providers, and community of care</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Keeps pets together</td>
<td>Not always</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Signed by pet guardian to confirm agreement</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
History of the Pet Protection Agreement

I was in law school and had every intention of becoming an entertainment lawyer when I graduated. After all, I love theatre, movies, and books. My cell phone rang as I walked in to take my first exam in May 2000. It was my mom’s driver, calling to tell me she had been moved into an assisted living facility. Her life was taken from her. She was moved out of her lavish 5th Avenue apartment with concierge, doormen, private restaurant, and staff, and now my very private mom had a shared bath. So, I asked the dean of my law school, “What kind of law permits that?” He told me trusts and estate law.

That summer, I took a trusts and estates class. For homework, each student had to write a will. The will I wrote contained 3 pages dividing my assets among my children, grandchildren, and charities and 30 pages of instructions for the care of my shelter/rescue dog, Soupbone, who needed very special attention to maintain his in remission status for cancer, kidney failure, and heart ailments. It had taken 5 years to devise a delicate balance of nutrients and doctors. Thanks to these efforts, Soupbone enjoyed a carefree life, but what if something happened to me? Those 30 pages were about his continued care and the assurance that his life would be the same with or without me.

Although I got an A+ on the project, the professor told me that all the instructions about Soupbone’s care were unenforceable. “Outrageous!” I thought. That’s when I wrote a pet trust for Soupbone that the ASPCA refers to as “the ultimate critical care pet trust.” It is included on the companion CD-ROM for your reference. At the time, pet trusts were new law and cutting edge. They still are, now that I think about it. As the years passed, I graduated law school and gained a clientele.

Because many clients couldn’t afford the time or cost of a pet trust, I started doing them pro bono (that is, for free). Clearly, the needs of many pets for continuing care were not going to be met, and that needed to be changed!

This experience led me to create the pet protection agreement,1 a unique document that incorporates the best qualities of a will, a pet trust, and a contract. Swizzle and Topper, my rescue dog and cat, were the muses for the pet protection agreement. The pet protection agreement, which is a quick and effective way to guarantee the well-being of all pets for the rest of their lives, generally costs less than 5 percent of the cost of a simple pet trust.

I realized that the most expensive part of the pet trust was me. If only I could get “me” out of the picture. Well, because a document can ask the right questions, pet owners can answer those questions without me. They don’t need me to fill in that their dog, cat, bird, horse, rabbit, snake, or elephant loves the beach and hates Uncle Joe. Thus, the pet protection agreement was born.

1 ©, TM, and © 2009 Pet Protection Agreement, LLC. All rights reserved. Patent pending.
Identify the Pet Owner

One of the great things that the pet trust and the pet protection agreement do is establish ownership. Trusted advisors need to ask about all property. It's becoming more commonplace to remember the once-forgotten beloved pet. “Who owns the pet?” is the first question answered in pet protection documents. Because pets are legally classified as property, it's important to establish and document pet ownership. Just as a deed proves ownership of a house, one needs to document ownership of a pet. In order for the pet guardian or trustee to be the new owner, the document must both establish and clearly define the terms of the transfer of ownership.

Joint Owners

Joint ownership should be discouraged. It often leads to court battles when relationships dissolve. Choose one person to be the pet owner. The other can be named pet guardian and assume the role of pet owner. The failure to do so can be time consuming and expensive.

In a recent New Jersey case, a couple spent over $40,000 in legal bills battling for custody of their pug, Dexter. In a landmark decision, the court ruled that although the pet was property, it had unique value and custody would be shared, with each party having the dog for alternate five week periods. The judge, in giving both parties equal time with the pug, emphasized that his decision was for joint possession, not custody. This three year battle could have been avoided. An advisor would do well to discuss this topic with clients at the same time the discussion of other property arises. The interesting part of this is that the couple was not famous or wealthy entrepreneurs but average people (a police officer and teacher) who fought for their pet with the same passion that a parent would for a child.\(^4\)

“I’d Rather Be in Philadelphia”

One of the estate planner's jobs is to protect people's assets. The trouble is, in too many cases, people overlook the terrible possible outcome if they don't protect their pets. “I don't really need a pet trust because my family will take care of Fido and Fifi,” they say. Usually, though, they don't enlist an attorney to create a pet trust because of time, cost, or just plain denial or ignorance. This lack of foresight characterizes what happened in New Orleans during Hurricane Katrina and its aftermath.

Katrina victims who lost their pets in the nation's biggest natural disaster are still fighting after all these years about who owns the pet. Veterinarians’

offices, animal shelters, and other such places were under water, and ownership records were unavailable to prove who owned a pet. If pet owners had had pet trusts or pet protection agreements and had followed instructions to give copies to everyone who might have a role in the pet’s life, documentation might have been available to help reunite animals to their rightful homes. Reuniting pets with their true homes could have become happy events rather than contentious ones, even if the animals’ temporary foster families had developed a deep love for the pet. Many lawsuits could have been averted after the storm if pet owners would have had pet trusts or pet protection agreements because they could have resolved issues about pet ownership.

Imagine this: Jasmine, a Katrina victim, is separated from her beloved dog, Sundance. Sundance is later picked up swimming in the streets. In the immediate aftermath of the storm, Jasmine moves to Philadelphia, and Sundance’s rescuers ship him to a group in New York. Everyone who sees Sundance wants to adopt him, but because Jasmine has a pet trust or pet protection agreement, she can prove that she owns Sundance. Jasmine is reunited with Sundance in Philadelphia.

Identify the Pet Guardian

Regardless of which instrument is used to ensure the companion animal’s secure future, the document must give authority to an appointed agent to act. This agent is the pet guardian. When establishing a pet protection document, the pet owner should carefully consider who will physically assume care of the pet if the owner is no longer able to fulfill that role. The person chosen should be someone who is trustworthy and able to care for the pet in a manner consistent with the love, affection, and care the pet owner provided. The pet owner should make sure the potential pet guardian is willing to accept this responsibility. A handshake and a promise aren’t enough. Procrastination is too common, and often, people will avoid deciding who should care for their pet. Even if the choice is less than ideal, consider whether the court would do a better job.

This is where the rubber hits the road. Clients say, “I will come back when I decide who the pet guardian will be.” You can’t really blame them. It’s a tough choice to make, and many don’t have anyone who would take on the role. The bar is always set too high. They put themselves as the standard of care, and they wonder who will treat the pet as well as them. The answer is, of course, nobody.

Here’s the way to help make the decision:

- The ambulance is carrying you to the hospital. You know your pets need food. You have time to make one call. Who would you call? Make that person the pet guardian.
• Well, he's not answering. Who would you call next? Now, that person is the pet guardian or successor pet guardian.

• She's not picking up either? Oh no! Who do you call next? That's the next pet guardian.

The list goes on until someone answers. Your cell phone or address book has the answer. It's better that the pet be with someone of your choice rather than carried off to a shelter or left alone in the house.

The Pet Guardian Can Be a Family Member

In some families, the pet is a valued member of the household, and the children or some other relative or friend will continue to care for the pet. Although well-meaning family members and friends can be a source of tremendous support in times of need, they may not be able to follow through on informal commitments they have made, due to reasons beyond their control, such as allergies, difficult work schedules, lease restrictions, family responsibilities, or a personality conflict between their own pet and the pet owner's pet. They may forget their promise or may have misunderstood the responsibility the promise entails. In other families, there may be no family members left or no one who wants to be bothered caring for the pet. Even when a friend or family member offers to care for a pet in the event of the owner's disability or death, the pet's ownership will be secure with a legally enforceable document.

The Pet Guardian Also Can Be an Organization

Various organizations will provide care for an animal, often in exchange for compensation. The organizations can help with adopting out the pets. Additionally, they can advocate for and care for pets on an interim or permanent basis. The amount of compensation often depends on whether these payments are made when the agreement is signed or when the pet is transferred to the organization's care. Usually, the cost of this service will be lower if the payment is made at signing.

Pets Are Family to Each Other

Pets that have been raised together or have otherwise bonded with one another are generally happier if kept together. A pet owner with more than one pet should make it clear whether keeping the pets together is optional or mandatory. When necessary, the pet owner should find a pet guardian who will care for multiple pets.

6 Ibid.
Successor Pet Guardian

The pet guardian may become unable to care for the pet. To ensure that the pet is neither neglected nor at the mercy of the court, the pet owner should select as many successor pet guardians as possible. If a pet guardian is unable or unwilling to care for the pet, a successor pet guardian may very well wind up with the job, especially in the case of pets that have a long life expectancy. A pet that has outlived one pet owner also may outlive two! As with the selection of the pet guardian, the pet owner should discuss the matter with the appointed individuals, who should understand and agree with the terms and responsibility.

Sometimes Pets Need to go in Different Directions

Although it is true that pets that are raised in each other’s company are often happier when kept together, sometimes this isn't true. Two pets with the same pet owner may need to go separate ways. An exotic snake may not necessarily go to the same place as the kitten. In these situations, the alternatives depend on the nature of the pet protection document. A pet trust can name trustee(s) but pass pets to separate pet guardians with individualized instructions. A pet protection agreement, on the other hand, is used to designate a pet guardian for one or more pets. If multiple pet guardians are required, each should be specified in a separate pet protection agreement.

Organization of Last Resort

Pet owners are urged to name shelters, sanctuaries, or breed rescues as a retirement home to care for pets in the event that neither the pet guardian nor any of the successors are able to fulfill that role. These shelters, sanctuaries, and breed rescues offer a number of advantages. First, pets are never left without a pet guardian because an organization can act as a temporary or permanent pet guardian. Second, they could have standing in the courts. Finally, the organization can assist in finding a new family home for the pet. The organization of last resort can be the pet’s home when there is no other home for the pet.

Describe and Identify the Pet

Any document that is written with the intention of protecting the welfare of a pet should accurately describe that pet. The purpose of a pet protection document, after all, is to benefit the pet. Whether through fraud or misidentification, there could be a mix-up. Carefully documenting the pet’s characteristics will help avoid this possibility. Furthermore, if the pet’s attributes are documented by an online pet identification and recovery filtering system, such as the Soupbone Alert System at www.Petriarch.com, an additional benefit of instant registration exists with no added effort.
Jackson’s Menagerie

Michael Jackson fans honor his memory with music and dance, and pet lovers remember his devotion to his animals and the problems that followed. According to Discovery News, one of Michael’s first hit singles, “Ben,” was a tribute to his pet rat. His pet family grew as he gained fame, fortune, and the space necessary to keep them. Michael rescued a chimp named Bubbles from a cancer research clinic in 1985. After that, Bubbles was treated like a friend and was constantly at Michael’s side. Finally, in March 2008, financial considerations made caring for the menagerie impossible. Animal sanctuaries took four giraffes, nine parrots, three pythons, two caimans, and two anacondas. All are reported to be in good health. Michael Jackson chose their new homes carefully and donated generously to shelters and sanctuaries all over the world.

What You See

To assist positive recognition, the pet should be identified in detail by color, size, shape, breed (or mix thereof), age, markings, sex, spayed or neutered, and any other physical characteristics (such as eye color, six toes on left back paw, and so on). In the case of the pet protection agreement, this is done through a series of multiple choice and prompted fill in the blank questions. For a pet trust, this is drafted by an attorney.

What You Don’t See

You can’t see the pet’s name. It is important, so write it down. Attaching a photo to the document is always a good idea. A microchip, tattoo, and DNA profile not only help identify the pet, they can be the animal’s phone call home, but only if the information is current and can be found. When people adopt a registered animal, they need to make sure the registration information is up to date.

For the chipped pet, in the best of all possible worlds, the new owner’s name, address, and phone number have been updated from the place of adoption to reflect new pet ownership. Then, if the pet is brought to an animal control facility or a vet’s office, it might get scanned. The microchip is activated when the scanner reads the number in the chip. Pet and pet owner are reunited. Tails wag, people smile. At least that’s how it’s supposed to work. However, microchips (devices about the size of a grain of rice) are not standardized. No universal technology exists for the chip itself, the scanning device, or the placement on the pet’s body. It is crucial, therefore, that the brand of the product be included as part of the pet’s description to specify which scanner to use. The recovery rate for lost pets with microchips is surprisingly
low but certainly higher than zero. Remember, pets get lost at the most inconvenient times and places.

DNA testing is a nonsurgical tool. A sample of the animal’s DNA is taken by a simple swab. If there is ever a question about identification that cannot be resolved by appearance, a new DNA sample can be matched to the reference sample and a positive identification made (or not). DNA proof has been involved in legal cases involving stolen pets, pet-on-pet attacks, pet-on-human attacks, and human-on-pet attacks.

**Personality**

In some cases, merely recognizing the pet by unique physical attributes is sufficient. In other cases, the pet may not be easily distinguishable from other animals of the same species. If there are any unique personality traits or behaviors that could help distinguish the intended pet from similar animals, including these details could go a long way toward making the identification easier. Identifying the pet in detail is critical. It also serves as a precaution that can help prevent the pet guardian from fraudulently replacing the original pet with a new one in order to extend rights to benefits.

**Include Future Pets**

It is important to use the term “all my pets” in pet protection documents. This ensures all pets owned will be covered in the future, even if they are acquired after the document was written. Including future pets, as well, in the terms saves the effort of having to change the documents or create new ones whenever a new pet enters or leaves the picture, even though this should be done anyway.

**Define the Pet’s Care**

The pet owner should leave detailed instructions in the document regarding the pet’s care, much as a parent leaving for a long trip (or even for only an hour) would provide to a babysitter. These instructions should cover such topics as food preferences (including the brands, amounts, and feeding times); housing; grooming; toys; and boarding. Additional details may include daily routines (including walks, other exercise periods, and socialization). Thoroughness will ease the transition between the pet and pet guardian. Pets love routine. Details will help the pet guardian keep the pet as happy as possible. If something is left unsaid, the pet guardian will have to either know what to do or guess. If there is something that shouldn’t be left to chance, don’t leave it to chance. Remember, even if the nominated pet guardian knows everything there is to know about the pet, if someone else has to take over, he or she may not know.
Funds

Funding is optional and can be as simple as a percentage of an insurance policy, bank account, or even a portion of the sale of a home. Following are some examples of how to achieve this:

- Pet trusts can be created during life or at death as follows:
  - Pet trusts created during life. If you create a pet trust while you are alive, you can fund it with both current gifts of cash and property. You do so by either wiring funds to the trust’s bank account or writing a check to the trustee of the pet trust. If you plan on transferring real estate to the trust, you must retitle the real estate into the name of the trust. You also can make the trust a beneficiary under your will and, thereby, transfer additional property to it after your death, but this is not recommended (see chapter 7).
  - Pet trusts created at death. You can create a pet trust under your will, so that the trust would take effect after your death. Specifically, your will would detail the trust’s terms for the pet’s care, as well as the amount of money or other assets that would fund the trust, but this is not recommended (see chapter 7).

- The following are alternative means of funding pet trusts:
  - Life insurance. If you don’t have sufficient funds to provide for your pet, you may want to purchase life insurance and name the pet trust as the policy beneficiary. You may even want to consider having the pet trust own the policy if you create the trust while you are alive because this will reduce your potential estate tax.
  - Pay on death accounts, annuities, and retirement plans. If you have funds in accounts such as pay on death accounts, annuities, and retirement plans that allow you to designate who shall receive the property after your death, you can name the pet trust as the beneficiary of all or a portion of these funds. However, you should consult with your tax advisor about the most tax effective way to do this to reduce any potential income tax consequences for your estate or the pet trust.

The pet owner can be very creative as long as the directives with respect to the pet’s care are not unreasonable in light of the amount of funds available to the pet guardian. A detailed document will help the pet guardian justify expenditures in case questions arise.

- Means of funding pet protection agreements are as follows:
  - Bank account. There should be a small joint savings or checking account for the pet owner and pet guardian to share. This is the same
account that is discussed subsequently under the “Emergency Funds” section.

— Instruments outside the will. Just as with the previously discussed pet trusts, insurance policies, retirement funds, IRAs, brokerage accounts, and annuities should name the pet guardian as beneficiary. This can be a percentage of the total sum.

How Much Is Enough?

A wide variety of factors and considerations come into play to carry out the pet owner’s desires. This section discusses the issues the pet owner should address. The companion CD-ROM contains detailed cost schedules for guidance.

How many assets are available? How much money will it take to care for the pet? Does the pet guardian need it or expect it? Think about the following when determining how much money or property to set aside:

- Type of animal (especially important for pets with long lives, such as turtles and parrots)
- Age
- Life Expectancy
- Number of pets
- Veterinary care
- Socialization
- Service providers (such as sitters, boarding, groomers, walkers, and so on)
- Food and diet
- Daily routines
- Toys and accessories
- Lifestyle (the standard of living one wishes to provide the pet)
- Cost of living and inflation
- Compensation for people involved in caring for the pets
- Travel
- Burial or cremation and memorial
- Beneficiaries and charities

Emergency Funds

Consider a small joint bank account in the names of the pet owner and pet guardian to give the pet guardian instant access to funds in case of emergency. Assuming the duties of pet guardianship may require the outlay of some personal money, and some immediate funds may be welcomed. This is also a good test of the proposed pet guardian’s ability to responsibly manage funds.
Leave as Much as You Want

Most advisors will caution, “Do not invite a court challenge to the documents by overfunding them because large sums of money can be tempting to relatives.” The pet owner should leave any amount desired but explain it. Additionally, specify how the funds should be distributed (for example, annually, quarterly, bimonthly, or as needed). Use the pet trust if you need to argue the case here and now. Explain yourself clearly. If a challenge is expected, then a pet trust is a must. Estate planning attorneys know how to protect pet owners’ wishes with contingency clauses and penalties to those who attack a pet owner’s directives.

Many people consider pets to be part of their family, and they take care of them accordingly. On September 11, 2009, msnbc.com published a story about a woman in China who purchased a Tibetan mastiff for approximately $600,000. When someone pays that amount of money for a pet, you can assume that the pet had a very comfortable lifestyle. Of course, price isn’t the only important factor because a family pet obtained for free from a shelter can also have a very comfortable lifestyle. The fact that someone would pay over a half million dollars for a pet, however, illustrates how much a person can value a pet and may want to spend on its lifestyle. A pet owner can use the pet trust or the pet protection agreement to describe the standard of living envisioned for his or her pets and to provide the funds necessary to maintain it.

How May it Be Spent?

A pet owner may detail how the money must be spent and list expenses, such as the following:

- A house for the pet guardian and my pets
- Open heart surgery, if needed.
- A fence for the entirety of Jane’s backyard.
- Mary should buy a van to drive my horse, Jake, around the country so he doesn’t stay on the farm when she travels. Upon Jake’s death, the van and the remainder of all funds shall be donated to the Horse Shelter Rescue in such-and-such state.

The management and disbursement of funds throughout the pet’s life may be made in varying amounts and stages. A number of ways exist to structure distributions. The easiest way is to provide that a flat amount be paid on a periodic basis with additional funds as needed. If the pet owner simply leaves a set amount to be disbursed regularly and this amount is too small, the pet guardian will not have sufficient funds to cover the pet’s expenses; however, if the amount is too large, the pet guardian or others may be motivated by greed rather than the best interests of the pet.
**Distribution Representative: Trustee and Trust Protector**

When the pet guardian either chooses not to handle the funds or would be a poor choice to handle the funds set aside for a pet’s care, it may make sense to have a person other than the pet guardian manage the money. That person is appointed as the distribution representative (optional for the pet protection agreement) or trustee (required for the pet trust). Both positions are responsible for handling the funds and giving them to the pet guardian as instructed. Similar to the successor pet guardian, a successor distribution representative or trustee can be named to manage the funds. For the pet protection agreement, if no distribution representative is named, the pet guardian will be in charge of managing the funds, as well as spending them for the pet’s care. For the pet trust, an optional trust protector invests the trust’s assets.

**The Trustee**

In his or her fiduciary capacity, the trustee has an obligation to carry out the terms of the pet trust. Unlike the pet guardian in a pet protection agreement, who takes ownership of the pet and is responsible for the care of the pet, the trustee is the one who oversees the trust’s assets (including the pet) and disburses them to the pet guardian. The trustee of the pet trust should be an animal lover who is willing to administer the trust’s funds for the benefit of the pet.

**The Trust Protector**

For larger trusts, it is recommended that a trust protector be nominated to provide both specialized investment skills and an added layer of oversight over the trust funds. As explained earlier in the chapter, the trust protector is not a required role. The key function of the trust protector is to invest the funds. The trust protector need not be an animal lover (as the trustee should be) or have any personal connection with the pet; it is only important that the trust protector be financially skilled.

A further benefit of establishing a pet trust is that the trust funds will not be subject to probate. As a result, the funds in the pet trust will not be considered when determining probate fee, disbursement of funds for the pet’s care will not be delayed, and the terms of the trust will remain private.

**Compensation**

Not everyone needs compensation; however, keep in mind that even though it’s optional, it helps. The question of compensation is strictly personal and situational.
Beneficiaries
A pet owner who leaves funds or property must leave a beneficiary to take any remaining property upon the death of all pets. Remainder, beneficiaries can be anyone: family members, friends, charities, or even strangers. If there are multiple beneficiaries, they should be specified by name and percentage interest, and fractional parts should be designated (for instance, 10 percent of my insurance policy or 5 percent from the sale of the house).

If the pet owner leaves specific amounts and there is not enough money, someone will be short changed or left out. On the other hand, if there is more money than expected, the court may get involved to help decide what is to be done with the excess. In either case, it could wind up in court, and this is not a desirable outcome.

It is recommended that the remainder beneficiaries include one or more charities that benefit animals. Presumably, such organizations will carry on the pet owner’s wishes and advocate on the pet owner’s behalf. For a pet trust, the pet owner should provide a mechanism for the trustee to designate remainder beneficiaries or a class of beneficiaries, such as animal shelters or cancer research.

Disgruntled Heirs
Practically speaking, as the amount of caretaking funds for the pet increases, so does the likelihood that disgruntled heirs will challenge the funds. Although it may seem like common sense to say that the “cage should go with the bird,” the scope of assets to be used for the pet’s care may be, in the eyes of many pet owners, much broader and of greater value than to others. The pet owner can be very creative, as long as the directives with respect to the pet’s care are not unreasonable in light of the amount of funds available and are flexible enough to cover unforeseen contingencies. The attorney should argue the case, at length, in a pet trust.

Veterinarian and Health
The pet owner may want to establish specific standards for the pet’s medical care, such as how often the pet is to receive veterinary check-ups and who is to receive reports of those visits. The veterinarian is one of the focal points in the pet’s community. Generally, the vet has the pet owner’s contact information, but what if the pet owner is unavailable? What if, for example, the pet owner has dropped the pet off, but three days later the pet is still there and the pet owner can’t be found? With the appropriate documentation, the veterinarian will know who is next in line to call and will have everyone’s contact information. This veterinarian will harvest goodwill, make new friends, and know where to send the bill. If he or she can’t reach anyone at all, he or she will
know that the pet owner approved an organization of last resort or shelter and will know where to take the pet.

If the pet owner specified that he or she wants the most care possible, the veterinarian will be confident in following the pet owner’s wishes. Finally, with the additional Soupbone Alert System that is offered with the pet protection agreement, the veterinarian can always be comfortable knowing that if a lost pet is left on the doorstep, he or she can help it get back home.

If there is already a pet protection agreement in place, the information could be e-mailed to the veterinarian’s office, printed and brought there, or (with the pet owner’s consent) accessed at www.Petriarch.com from the veterinarian’s office. When there is no pet protection agreement, the veterinarian’s office can help create one as part of the intake process. Remember, as a member of the pet’s community of care and one of its principal caregivers, the veterinarian should have a copy of the pet protection agreement.

**Euthanasia, Hospice, and Medical Efforts**

One potentially controversial issue is euthanasia, particularly if the pet guardian or trustee is also a beneficiary who stands to receive a portion of the remainder upon the pet’s death. Cases exist in which pet owners wish their pets euthanized upon the pet owner’s death. Be sure to include any strong opinions about euthanasia, and remember to euthanize only for reasons of the pet’s health and quality of life.

The pet owner’s directions about extraordinary or heroic medical efforts to save a pet should be clear. Maybe the pet guardian should move heaven and earth to save the pet, or maybe the pet should simply rest in peace or enjoy its final days in the care of a loving hospice. No right or wrong answer exists; this is not a test.

**Burial, Cremation, and Memorial**

The pet owner may have preferences concerning the disposition of the pet’s remains after its death (that is, cremation versus burial or even the use of a particular pet cemetery). The terms of a pet protection document could expressly include such provisions.

**Community of Care**

Pets have a relationship with the people who care for them. This is their community of care. Pet protection documents should name the members of the pet’s community of care and their roles. If something happens to the pet owner, they can contact each other. The pet protection document may list others who may care about the pet, even though they have no named role in
The Pet Trust and Pet Protection Agreement

the document. This enlarges the community of care for the pets. The following list is not comprehensive and should be added to, if appropriate:

- Veterinarian
- Walker
- Groomer
- Sitter
- Day care
- Family
- Friends
- Neighbors

Recent ownership issues faced by Katrina victims who had to leave pets behind have raised awareness about this. Many displaced Katrina pets were adopted because ownership information, care instructions, and emergency contact information were not available.

**When Does the Document Begin? When Does it End?**

A pet protection document starts whenever the pet owner cannot care for the pet, whether that condition is temporary or permanent. The arthritic owner of a greyhound may want the pet guardian to begin acting in a partial role when the pet owner can no longer adequately exercise the dog. Another pet owner may want the pet guardian to act because the pet owner has difficulty remembering whether or not he or she fed her cat. It could be as simple as a hospital stay. It is not only about sickness and death, and certainly not always about incapacity. The pet owner may specify a triggering event.

**A Word About the Word Incapacity**

*Incapacity* is a legal term that defines a condition that allows others to make financial and personal decisions for a pet owner (including moving the pet owner to a hospital, nursing home, or other care facility). “Unable to care for” is more accurate and less explosive. If the word *incapacity* is used in the documents to describe the pet owner's possible mental state, it may trigger, or be used as evidence in, a guardianship proceeding for the pet owner, not the pet.

**Terminate**

Pet protection documents allow continued care for pets and their offspring. They don't end until the last pet has passed away, unless otherwise stated. A pet trust should specify when it is to terminate and who is included (pets in
gestation, the next generation, and so on). The trustee should be empowered to write another pet trust or pet protection agreement, consistent with the intent of the existing pet trust, or to terminate the pet trust if it is financially reasonable to do so.

**Final Instructions**

The pet owner and the pet guardian must both sign the pet trust or pet protection agreement in front of witnesses and a notary. If a distribution representative, trustee, and trust protector are appointed, they also should sign the document in front of witnesses and a notary. The pet owner, pet guardian, distribution representative, trustee, and trust protector may sign on separate days and even in a different state than each other. This document can be passed from person to person and state to state until it is finally signed by everyone and returned to the pet owner (in the case of the pet protection agreement) or the attorney (in the case of the pet trust).

Why signatures? Because nobody can sit down and say, “What dog? I was supposed to get a dog? I don’t want that dog.” That’s probably what Leona Helmsley’s brother said. Once all the signatures have been gathered, the pet owner or attorney (with the pet owner’s approval) should make copies and send them to those mentioned in the document, regardless of whether they have signed it, so they will know who to call if the pet owner is unavoidably delayed. This formalizes the community of care for the pet. People not mentioned in the documents (including friends, family members, neighbors, the police, the fire department, and other service providers) may be given copies, as well. It’s surprising how many people will take a heightened interest in the pet.

**Conclusion**

Approximately 6–8 million animals are handled by animal shelters in the United States each year. Even though some are reclaimed or adopted, nearly 4 million dogs and cats are left with nowhere to go. Shelters cannot humanely house and support all these animals until their natural deaths; they would be forced to live in cramped cages or kennels for years, lonely and stressed, and other animals would have to be turned away because there would not be room for them. Over two-thirds of Americans who own pets consider their pets to be family members, making a pet trust or pet protection agreement a logical imperative.

No one likes to see pets consigned to shelters when their owners have passed away. It’s painful to think of leaving family behind. The greatest sense of security for a pet owner is knowing all beloved members of the family have been provided for, whether they are two-legged, four-legged, or feathered. Their devotion is unconditional and should be returned. Remember, “[m]en
have forgotten this truth, but you must not forget it. You become responsible, forever, for what you have tamed.\textsuperscript{7}

It’s a mistake to think that only the wealthy need documents to protect their pets. An estate planner who helps to adequately secure a pet’s future is doing a great service for his or her clients, their companion animals, and society. For the professional in an advisory position, planning for a pet helps strengthen a fiduciary relationship. Pets are friends and confidants for many of a trusted advisor’s clients; they are the ones who shower the clients with unconditional love. It’s understandable that pet owners would want to ensure that their companion animals will be properly cared for after their death or during times in their lives when they might not be able to care for their pets.

It’s a jungle out there, and that’s not referring to the animals. Advisors should warn clients that heirs and beneficiaries get restless while waiting for a pet to die, and they may decide not to wait at all and to contest the amount left for the pet’s care for any number of reasons, none of which are in the pet’s best interest. Accordingly, many issues need to be considered when drafting a pet trust and the pet protection agreement, both of which overcome heir and beneficiary issues.

Introducing man’s best friend to the planning process often dispels fear and stress and breaks down barriers. It opens up a comfortable atmosphere for broad discussions about the estate plan. Of course, not many people will leave more to their animals than their human heirs, but even a modest pet protection document can significantly benefit both client and advisor. What used to be eccentric is now the norm: pets live with people, often as family members. A professional advisor can assist pet owners and put their minds at ease. In fact, for many advisors, such planning can even foster new clients and a new area of work because it’s the “new thing.”

\textsuperscript{7} Saint-Exupéry, Antoine de, \textit{The Little Prince} (France: Gallimard, 1943).
Among the documents that an advisor might recommend for a client's financial and estate plans, two are especially important: a power of attorney and a health care proxy. Both documents enable a designated agent to act on the principal's behalf under the circumstances prescribed by the principal.

When working with clients to prepare these vital documents, advisors should ask whether the client has any pets. If so, the advisor should suggest adding language that can be used to further legally ensure a pet's continued care. Although they often are confused, both of these documents are generally relegated to the following specific purposes and are enforceable only during the pet owner's life:

- **Power of attorney.** A power of attorney is the document by which a person (the principal—in this case the pet owner) gives another person (the agent) the power to make decisions regarding the pet owner's financial and property affairs. A power of attorney can be granted for any time period and for any purpose that the pet owner desires. Advisors should counsel clients who have pets to provide for their companion animals by appointing an agent to have access to funds for the pet's care and the pet owner's medical records. If a pet trust or pet protection agreement has been created, the power of attorney should mention its existence.
• **Limited power of attorney.** A limited power of attorney is used to appoint an agent to carry out specific duties on the pet owner’s behalf (for example, the sale of a home or care of pets). Whatever the reason for a power of attorney, it ends with the death of the pet owner. At that point, the law looks to the will.

• **Health care proxy.** A health care proxy allows a person to appoint someone to make health care decisions on their behalf and to access medical records. Many people are shocked, when summoned to the hospital after a loved one has taken ill, to find that they cannot obtain information on the patient’s condition or course of care if they have not been appointed as an agent. This includes spouses. A health care proxy should include a reminder that there is a pet at home who needs cares.

• **Limited health care proxy.** Like the limited power of attorney, the limited health care proxy is used to appoint an agent to carry out very specific duties on the pet owner’s behalf. It could be simply, for example, authorizing access to medical records. In some situations, these records are needed to prove that the pet owner is unable to provide care for his or her pets.

Both the limited power of attorney and limited health care proxy are used to ensure that a pet’s needs will not be overlooked in the stress and confusion that follows unexpected events, such as an accident, illness, or natural disaster. Without these documents, many loving pet owners have inadvertently sentenced their animals to life in shelters or even death.

In both documents, the pet owner gets to choose who will act on his or her behalf, define his or her authority, and specify the limits of authority. This facilitates the process, ensures immediate rights to access funds and hospital records, and makes certain that agents may provide necessary care for the pets.

Let’s look at some scenarios:

• A dog owner may want the dog walker to assist in caring for the pet if the owner cannot climb the stairs outside his home. The dog owner is in full capacity of his mind. When the dog walker comes, the dog owner needs him to go to the bank to get money for food for the dog. In order for the dog walker to access the bank account, it is easier if a power of attorney is in place.

• Another pet owner may want the pet guardian to act because she has difficulty remembering whether she fed her cat. When her friend comes over to change the cat litter, they go to the closet for cat food and there
is none. The friend can use a power of attorney to go to the bank to get money for the cat food.

When considering an estate plan, attorneys may write a will to leave the pet to a chosen heir. It’s important to remember that unanticipated situations can occur while the pet owner is still alive; in those situations, a power of attorney or health care proxy smooths the process. Clients, unaware that these documents are essential, may tell their advisors that a will is sufficient and they don’t need a power of attorney or health care proxy because they have one or more of the following misconceptions:

- They believe that everything is taken care of if they have a will.
- They believe that nothing is going to happen to them while they are alive, so they don’t need a power or attorney or health care proxy.
- They believe that their pet will die before them.
- They believe someone will step in to save the day (save the pet).

The truth of the matter is that a trusted advisor has heard these justifications, reasons, and excuses and can advise clients on the importance of these documents. Just as one is advised on an airplane to put the breathing device on first so that he or she can help others, including his or her children, the power of attorney and health care proxy will take care of the pet owner, and the pet will have a better chance of survival.

In general, these documents will preserve the integrity of the client’s life so that when or if the client is able to continue his or her decision-making abilities, he or she can revoke the agent’s power of attorney and health care proxy, and the transition will be uninterrupted for the pet owner. The pet’s life will hardly skip a beat. It is vital that the author of the power of attorney and health care proxy documents use care in word choice. Sample clauses are included subsequently.

**Power of Attorney**

A power of attorney is used to delegate authority to an agent during one’s lifetime as it relates to funds and property. Because pets are property, it is important for the trusted advisor to include clauses in the power of attorney pertaining to companion animals. The property in question is a living animal and must continue to live, especially if the pet owner isn’t in a position to provide the required care. A power of attorney should be drafted so that it remains in effect even if the principal is unable to make decisions.

1 In New York’s new power of attorney, a drafter may add provisions to the “Modifications” section. Section 5-1503 of the New York General Obligations Law (NYGOL).
Brook Astor Case

This power can be abused, as we recently saw in the Brook Astor case. Astor, who died at age 105 in August 2009, was a New York City socialite who devoted much of her time and money to charity (her third husband left her $120 million). She had one son, Anthony D. Marshall, to whom she gave a power of attorney to manage her affairs. According to the New York Times, on October 8, 2009, Astor’s 85-year-old son was found guilty of abusing that power by giving himself a raise of over $1 million and trying to help himself to more than $60 million of his mother’s money. Prosecutors contended that Ms. Astor’s Alzheimer’s disease was such that she could not have had the intellectual capacity to agree to that raise and that his actions were not in her best interest. The jury reached a verdict of guilty of first degree grand larceny and conspiracy, which carries a maximum prison sentence of 25 years.

Although the preceding case is not the usual example, it does happen. Regardless, clients should be encouraged to sign a power of attorney. Clients often feel vulnerable, but it’s better than the costly and unpleasant alternative of a court stepping in and appointing a stranger to make decisions and choose a representative of the court to oversee the pet owner’s finances.

The Agent

Under a power of attorney, an agent is safeguarded when he or she acts in the pet’s best interest. Of course, the agent has a fiduciary responsibility and, thus, the pet owner is protected. States are beginning to reduce abuses. New York, for example, has just changed its rules, effective September 1, 2009, and the rules are extremely complex. The authority to fund and create trusts is now removed from New York’s power of attorney. It appears as a specific provision in the major gifts rider to the short form statutory power of attorney (SMGR) to “create, amend, revoke, or terminate an inter vivos trust.” The SMGR must include gift giving authority. Anyone interested in creating a power of attorney should check with counsel. One of the problems with many do-it-yourself powers of attorney is that the specific powers are not enumerated.

What powers should be included? Included in the power of attorney should be the directions to deal with the pet and to expend funds to make

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2 Section 5-1502(C) of NYGOL.
3 The major gifts rider must be executed in the same manner it is executed in a will (which includes being acknowledged and witnessed by two witnesses). Section 5-1514(A)(9)(b) of NYGOL. http://www.olsontfp.com/pdf/new-york-statutory-major-gifts-rider-form.pdf
4 Some gifts of up to $500 each to individuals and charities in a calendar year, which continue a custom of the principal, can be made by the agent without a major gifts rider. Section 5-1501(I)(14) of NYGOL.
sure that the pet is provided with the desired level of care. The power of attorney also may give the agent the authority to draft pet documents. Such language provides an additional reminder of the existence of a pet trust or pet protection agreement and the need to care for companion animals.

**Power of Attorney for the Pet Trust**

Although a pet trust should mention the power of attorney and name the agent, it is insufficient and should be accompanied by a stand-alone power of attorney. A power of attorney will work hand-in-hand with a pet trust.

The following paragraphs are included in the Hirschfeld pet trust that directs whom the pet owner has chosen as agent. Many pet owners feel comfortable choosing their accountant, attorney, or another person with whom they share a professional relationship. Advisors need to be sure that the power of attorney provides authority for the executor, trustee, or agent to fund the pet trust.

**ARTICLE XXXVI**

**AUTHORIZE POWER OF ATTORNEY**

I hereby give specific authority to and direct my agent acting under the Power of Attorney or guardian TO FUND my inter vivos pet trust for all pet(s) I have at the time I am unable to care for my pet(s). It is my intent that the pet trust is funded first and that my Power of Attorney or guardian must sell anything I own to accomplish that funding such that my cat, ____________, and my dog, _____________’s level of care is never compromised this includes but is not limited to any other of my pets. The amount my pet trust must be funded is the amount listed in ARTICLE III above.

This authorization and release specifically requests that copies of all reports, records or documents must be sent to ____________________ and ____________________, ESQ., my attorney.

Alternatively, a pet owner often will choose the pet guardian to act as agent to access funds, as well as care for the property, which is the pet. The following is an example:

**ARTICLE V**

**APPOINTMENT OF PET GUARDIAN**

______________________________, Grantor, shall be the initial Pet Guardian hereunder and shall serve [with] or [without] compensation. If I, ______________________[Grantor -
Pet Owner], am unable to care for my pet(s), Trustee shall give my pet(s) to _____________________________, presently residing at _____________________________, home _____________________________, work _____________________________, and cellular _____________________________, as Pet Guardian of my pet(s).

If _____________________________ is unable or unwilling to accept my pet(s), or fails to render proper care to my pets, Trustee shall give my pet(s) to _____________________________.

The Pet Guardian has the power to care for all my pets, follow the instructions in the Pet Trust, access and expend the funds set forth in the Pet Trust for the care, safety and maintenance of all my pets, prepare a new pet trust that contains terms similar to the present one being executed, and prepare a pet trust to expand the essence of this pet trust to the extent that this pet trust is silent on an issue or if it falls short and thus ceases to exist, and to place my pets with temporary or permanent pet guardians if appropriate.

The following paragraphs, taken from the Hirschfeld pet trust, can be inserted into any pet trust for use during a pet owner’s lifetime for the care of his or her pets:

ARTICLE III

FUNDING THE TRUST

I intend this Trust to be funded at the earlier of my inability to care for my pet(s) as defined above or upon my death. My agent acting under the Power of Attorney, or the Trustee of The _______________________ Revocable Pet Trust, is directed and authorized to fund this pet trust, in the event of my inability to care for my pet(s), in the amount of _______________________, thousand ($__________.00) dollars.

In the case of my death, the executor of my Will or Trustee of The _______________________ Revocable Pet Trust is directed and authorized to fund this pet trust in the amount of _______________________, thousand ($__________.00) dollars in 20____ dollars (using the CPI Index in such calculation of amount). If prior to death this Trust was previously funded with _______________________, ($__________.00) dollars or with any amount, then at my death the balance should be funded.
Power of Attorney for the Pet Protection Agreement

The limited power of attorney included in the pet protection agreement gives the agent just three powers:

- To carry out the instructions given in the pet protection agreement
- To gain access to and spend the funds that have been allocated for the care, safety, and maintenance of the pet
- To access medical records needed to prove the pet owner’s temporary or permanent inability to care for the pet.

The pet protection agreement is like a multivitamin. It includes everything the pet owner needs for his or her pets pertaining to the power of attorney and health care proxy. Because of the complexity and revamping of recent rules, even though the pet protection agreement includes necessary clauses (see the following) for power of attorney, a free-standing power of attorney should still be included and it should be drafted by a trusted advisor in the pet owner’s state.

The following legalese language is from a pet protection agreement:

**LEGALESE:** You don’t need to do a thing here – just sign at the end.

WHEREAS, it is understood that the Pet Owner has great affection for his or her beloved pets and,

WHEREAS, the parties herein have established the Pet Protection Agreement for the benefit of these pets and,

WHEREAS, the Pet Protection Agreement provides the wherewithal to ensure the care and comfort of all pets, pursuant to the terms herein set forth and,

WHEREAS, these pets must always be treated as companion animals for the duration of their lives.

NOW, THEREFORE, for TEN ($10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to enforce the Pet Protection Agreement at the earlier of the Pet Owner’s death or inability to care for the pets.

The Pet Owner intends, and the Pet Guardian agrees, that these pets will be cared for and supported in a fashion that the Pet Owner has directed and

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5 Provisions regarding health care billing and payment matters should allow access to health care records in accordance with the Health Insurance Portability and Accountability Act (HIPPA) requirements. Section 5-1502(K) of NYGOL, Internal Revenue Code, and HIPAA privacy rule.
instructed in the Pet Protection Agreement, and which is commensurate with the lifestyle to which the pets have become accustomed, and for which funds may have been provided, and which ensures that the pets will be well fed, well groomed and well cared for.

The Pet Guardian must return all pets to the original Pet Owner upon request. This Pet Protection Agreement is for all the Pet Owner’s pets now and in the future, unless a pet is listed and specifically covered by a separate Pet Protection Agreement.

This Agreement may be construed to create a trust relationship between the Pet Owner and the Pet Guardian and, if applicable, the Distribution Representative.

If a Distribution Representative is named in the Pet Protection Agreement, then the Distribution Representative shall hold the funds for the care of the pets and distribute the funds to the Pet Guardian as checked on page ______.

The amount of funds, if any, for the care of the pets shall be funded at the earlier of Pet Owner’s death or inability to care for the pets and may include any earlier funds set aside for the pet’s care.

If the funds consist of property it shall be used for or sold at the earlier of Pet Owner’s death or inability to care for the pet and the funds shall be used for the care of the pets. Liquidation of funds may be necessary and are authorized.

The Pet Owner authorizes payment of fees to appointed and suggested organizations. If there are insufficient funds for such organization’s fees, then these fees shall come from the Estate.

The obligation to transfer funds for the care of pets shall be binding upon Pet Owner’s heirs, successors, assigns, personal representatives, executors, agents, and trustees. This shall constitute a claim against the Pet Owner’s estate.

At the earlier of the Pet Owner’s death or inability to care for the pets, the Pet Guardian shall have the power and obligation to:

(a) care for all my pets, and
(b) follow the instructions in the Pet Protection Agreement, and
(c) access and expend the funds set forth in the Pet Protection Agreement for the care, safety and maintenance of all my pets, and
(d) prepare new Pet Protection Agreements that contain terms similar to the present one being executed, and
(e) prepare a Pet Trust to expand the essence of this Pet Protection Agreement to the extent that this Pet Protection Agreement is silent on an issue, and

(f) place my pets with temporary or permanent Pet Guardians if appropriate.

Upon the death of all the pets the remainder of funds shall be distributed as noted in the Pet Protection Agreement or, if not noted, then in equal amounts to all persons and organizations mentioned in the Pet Protection Agreement who have cared for the pets.

1. The Pet Protection Agreement shall be governed by and construed according to the law of the Pet Owner's home state at the time this Pet Protection Agreement was entered into, and the courts of the State shall have the jurisdiction over any dispute arising hereunder.

2. The headings in the Pet Protection Agreement are for convenience only and are not a part of the Pet Protection Agreement.

3. The Pet Protection Agreement shall commence at the earlier of Pet Owner's death or inability to care for Pet Owner's pets.

4. The Pet Protection Agreement shall not be terminated until the death of all the pets owned by Pet Owner at the time of Pet Owner's inability to care for pets or Pet Owner's death and includes all Pet Owner's pets in gestation.

5. The Pet Protection Agreement may be signed by people on separate days and even in different states.

6. The obligation to care for the pets in accordance with Pet Owner's instructions herein, shall be binding upon all signatures, heirs, successors, assigns, personal representatives, executors, agents, and trustees.

7. No Pet Guardian or Distribution Representative shall have the right to act in contravention of the terms of the Pet Protection Agreement, unless in emergency situations and then only if in the pets' best interest.

8. Notices sent to any party named in the Pet Protection Agreement shall be sent in writing to the address set forth herein unless there is knowledge of an alternative valid address.

In addition to the preceding legalese in the pet protection agreement (found at www.Petriarch.com and on the enclosed CD-ROM), a limited power of attorney section also is included. See the following three additional included rights:
LIMITED POWER OF ATTORNEY

THIS LIMITED DURABLE POWER OF ATTORNEY is intended to constitute a GENERAL POWER OF ATTORNEY pursuant to the law of the Pet Owner's home state in the event the Pet Owner is unable, for any reason, to care for the pets.

I, _________________________ (write your name here), the Pet Owner, under the Pet Protection Agreement hereto: do hereby appoint, ______________________________, as my agent. Should the named agent be unavailable or unable to serve, I appoint ______________________________ as successor agent. At such time as I am able to care for the pets, I can reclaim my pets.

This Power of Attorney is limited to my agent acting, in my name, place and stead in any way which I myself could do if I were personally present with respect to the following matters, to the extent that I am permitted to act through an agent to:

a. follow the instructions in the Pet Protection Agreement, and
b. access and expend the funds set forth in the Pet Protection Agreement for the care, safety and maintenance of all my pets, and
c. access medical records to prove temporary or permanent inability to care for my pets.6

SIGNATURE AND ACKNOWLEDGMENT: IN WITNESS WHEREOF, I have hereunto signed my name on ______________, 20______.

Pet Owner signs here: ➔

Witness Signature
Witness Print Name
Witness Address

Witness Signature
Witness Print Name
Witness Address

Witness Signature
Witness Print Name
Witness Address

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6 Although the power of attorney may include some health matters, a health care proxy never authorizes an agent with financial rights.
STATE OF _____________________ )
) ss.
COUNTY OF _____________________ )

On __________, 20____ before me, personally appeared ______________, Pet Owner, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she or he executed the same in his or her authorized capacity, and that by his or her signatures on the instrument the person or entity the person or entity on behalf of which the person acted, executed the instrument in the city of ________, county of ________, state of ________.

Notary ________________________

AGENT’S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

It is not required that the principal and the agent(s) sign at the time.

I ____________________________________ have read the foregoing Power of Attorney. I am the person identified as agent for the principal named and I acknowledge my legal responsibilities.

IN WITNESS WHEREOF, I have hereunto signed my name on __________, 20_____.

Agent signs here: ➔

Witness Signature
Witness Print Name
Witness Address

Witness Signature
Witness Print Name
Witness Address

STATE OF _____________________ )
) ss.
COUNTY OF _____________________ )
On __________, 20 ____ before me, personally appeared ______________, 
Agent, proved to me on the basis of satisfactory evidence to be the person 
whose name is subscribed to the within instrument and acknowledged to me 
that she or he executed the same in his or her authorized capacity, and that 
by his or her signatures on the instrument the person or entity the person or 
entity on behalf of which the person acted, executed the instrument in the 
city of __________, county of __________, state of __________.

Notary ______________________

The preceding power of attorney includes the right to access medical funds. 
This is imperative because when an agent goes to the bank to get funds for the 
care of the pet, he or she will need to show that the pet owner is unavailable 
because of medical reasons.

Because the health care agent is permitted to access medical records, this 
helps determine the pet owner's limited ability (at the very least) to feed his or 
her pet. This can be the catalyst that launches the period of the pet guardian's 
responsibilities.

**Health Care Proxy**

Every pet owner's health care proxy should include notice that there are pets 
that need care. What if the pet owner is in the hospital? Who is aware that pets 
need help? Maybe no one knows. Hospital staff are the first ones to be aware 
that there are pets at home when they read the health care proxy. Raising 
awareness is the first order of business.

A health care proxy should be dropped off at the nearby hospital. The pet 
owner's doctors should have copies and so should the agent and successor 
agents. By including “I have pets at home that need care,” the pets have a better 
chance of being noticed during time of crisis. Family and friends may be too 
emotional at the time and may forget, but the hospital staff are reading this 
document to find out about the patient, such as does he or she want to donate 
organs, does he or she want to be resuscitated, and so on. Things the hospital 
staff needs to know are included in the health care proxy. Who is the agent? 
Who makes decisions? Who is feeding the pets? The hospital staff realizes that 
there are pets that might die if care is not provided.

**Health Care Proxy for the Pet Trust**

The health care proxy should include notice of the existence of all pet 
documents and pets. In the midst of caring for the patient, the caregivers and 
health care proxy agent should be reminded that there are also animals that
need care. It is advisable to laminate the health care proxy instructions on a wallet-sized emergency notification card and to include the sentence, “I have pets at home that need care.” If there is more than one pet, the pet owner may want to specify the number of pets and include a description to ensure that all pets are located.

**Health Care Proxy for the Pet Protection Agreement**

Further, regardless of whether a pet trust, pet protection agreement, or will exist, taking care of the pet may require separate power of attorney and health care proxy documents. The pet protection agreement is the only one that includes language to help with this. The scenarios listed on the following page illustrate why these additional documents are necessary.

After reviewing some worst case scenarios, it would be useful to look at a case in which the pet protection agreement, with its included limited power of attorney and limited health care proxy smoothed the way for the care of a pet.

Picture a man who is struck by a sudden and devastating illness. He is expected to recover, but in the near term, he cannot care for his beloved dogs. The previous year, he had discussed with his sister, an animal lover, his desire that she care for his pets if anything happens to him. She agreed to his request and they signed a pet protection agreement naming her as the pet guardian and his agent.

After the man is hospitalized, the sister moves the dogs to her home and begins to care for them. Eventually, one of the dogs requires an expensive medication that she cannot afford. She takes the pet protection agreement, with its limited health care proxy, to the hospital where, instead of getting the runaround at the desk, she is given documentation that proves her brother is in the hospital and cannot currently provide care for his pets. She takes these documents to her brother’s bank and presents them with the pet protection agreement and its limited power of attorney. Again, instead of endless hassles, she is given access to the funds her brother has allocated for pet care.

This is the kind of outcome we all want to bring about for our much loved animal companions. Yet, even advisors who encourage their clients to consider their pets in the estate planning process sometimes forget that the pets may need care while the client is still alive but unable to provide it.

**Conclusion**

Think of the pet trust as the haute couture—the Versace, if you will—of legal documents used to protect pets. It is custom designed by an attorney to perfectly fit the pet owner, the pets, and the circumstances. It also carries the price tag of a designer garment. Those who choose to create a pet trust need to be aware that, unlike the pet protection agreement, the pet trust does not
Worst Case Scenarios

A woman, driving with her dog in the car, has a traffic accident. The woman is taken to the hospital, and the dog, with a broken leg, is taken to a veterinarian. Without a pet protection agreement and its limited health care proxy, the woman’s family cannot get the documents needed to prove to her bank that she is in the hospital. Without access to the funds she has set aside for pet care, they may have no answer when the veterinarian inquires, “How are you going to pay for this?”

A woman walking to her mailbox on a snowy day falls and injures herself. It takes several hours for a car to come down her rural road and spot her. She has already slipped into a coma by the time she is brought to the hospital. Over the next several days, as doctors work to save her life, nobody realizes that she has three pets at home without food or water. If she had a pet protection agreement or health care proxy in place, she would have been encouraged to carry a laminated card in her wallet that spells out her health proxy instructions and states “I have pets at home that need care.”

A man requires nursing home care. None of the family members really want to take care of his cats, but one relative finally agrees to take them home. A month later, the family member decides that pet care is too much work; he has no idea who else might take the pets. Without a pet protection agreement and the limited power of attorney, the cats end up in a shelter and eventually euthanized. Not only would the cats have benefitted from the existence of a limited power of attorney and a trusted agent, the family would have benefitted too because there would be no need for unpleasant arguments over who, if anyone, should care for the pets.

automatically include a limited power of attorney or limited health care proxy. The addition of these provisions should be discussed with the attorney.

The pet protection agreement is more like a great dress off the rack. It is affordable, and you look terrific in it. The pet protection agreement is revolutionary because, for the first time, it allows animal lovers of every income range to spell out, in legally binding documents, their desires for the care of their pets. When a pet owner dies, his or her pets should not also have to die.
Wills: Gambling with a Pet’s Future

“Leaving a pet in a will is a death warrant.”
—Hon. Anthony A. Scarpino, Jr., Westchester County Surrogate, New York

When people think about estate planning, the first (and sometimes only) thing that comes to mind for most people is a will. Animal lovers proudly proclaim, “I took care of my pets; they are in my will!” This chapter is an overview of what a will may include, some things that it can and cannot do, as well as its benefits and drawbacks for both the pet owner and beloved pet. A case study on the Leona Helmsley will and estate is included to illustrate the concepts discussed.

Leaving a Pet in a Will

A will can specify how property should be distributed, direct who receives the property, and appoint guardians for those who cannot speak for themselves, but drawbacks exist. For instance, a will won’t keep itself up to date. If any aspect of the will is likely to create conflict, dissatisfaction, anger, or jealousy, the will might be contested. If there is any worry about this, it’s a very good idea to discuss it with an estate planning attorney who can provide advice about what should be done now to head off future problems.
A will offers an opportunity to trigger a statutory pet trust (defined and discussed chapter 4). Alternatively, the will may transfer funds or additional property to a traditional stand-alone pet trust or pet protection agreement after the pet owner's death.

Consider one of the following clauses:

- “I leave $10,000 in trust for my dog, Swizzle. Swizzle must be walked 3 times each day.”
- “I bequeath my dog and cat to Jan Williams, and I leave 10 percent from the sale of my home for the care of my pets.”
- “I leave my pet to my wife.”

Fairly simple will provisions, such as the preceding, can be effective. Let’s look more closely at these clauses and examine their similarities and differences:

- One leaves cash; the others leave physical property or nothing.
- One leaves a set amount; the others leave a percentage or nothing.
- One names the pet; the others do not.
- Two clauses contain a single pet; the other includes many.
- One uses the word trust; the others omit it.
- One names a person; the others do not.
- One contains instructions for the pet’s care; the others do not.

These clauses seem to say different things, and people would expect them to have different results but they do not. However, in all of these clauses, either the pets will be totally vulnerable or the pets will be protected, like a baby bundled safely in a car seat. The Love Continues™ because their pet owner has provided for them. The ultimate result depends on where the pet owner is domiciled on the date of his or her death.

If, on the date of death, the pet owner is domiciled in the District of Columbia or 1 of the 42 out of 50 states that does authorize a statutory pet trust, then

- a pet guardian is appointed by the court if one was not mentioned in the will by the pet owner.

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1 Love Continues™ is the trademark for Petriarch.com. It represents their mission “to ensure that every pet that has found a loving home is guaranteed a secure future.”
2 The Black’s Law Dictionary definition of domicile is a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even if the person lives elsewhere.
• the pets and the funds must stay together.
• the pet trust will be honored.

If, on the date of death, the pet owner is domiciled in one of the eight states that does not presently authorize a statutory pet trust, then

• the pets belong to the named pet guardian.
• the pet guardian is not obligated to care for the pets.
• the funds belong to the pet guardian without condition or restriction.

The preceding conditions also apply if, on the date of death, the pet owner is domiciled in one of the eight states that does not presently authorize a statutory pet trust but has written a valid will while domiciled in a state that authorizes a statutory pet trust because the will is treated as if it were written in a state without a statutory pet trust. If the pet owner lives or dies in a state that does not have a statute authorizing statutory pet trusts, all is not lost. The traditional stand-alone pet trust and the pet protection agreement are available to provide the security the will cannot provide.

**False Sense of Security**

A will does not avoid probate, move quickly, or keep matters private. After all, a will is published by the court and is a public document that is in the court records. Additionally, the will is not effective in the event the pet owner is alive but unable to care for his or her pet; it takes effect only after death. Other drawbacks of a will include the following:

• *Instructions.* Instructions in a will may as well be written in invisible ink. They are not enforceable and may be ignored by both the court and the pet guardian or trustee because a will only disburses. Instructions in a will are unenforceable.

• *Funds.* The court may reduce amount of funds left for a pet’s care.

• *Disability.* A will operates only after the pet owner’s death. Conversely, pet trusts and pet protection agreements operate both during the pet owner’s life (including any period of disability or incapacity) and after the pet owner’s death.

• *Signature.* The pet guardian must sign the pet trust and pet protection agreement but need not sign the will. In a will, the pet guardian may not even know of his or her role and responsibilities with respect to the pet.

• *Termination.* The statutory pet trust ends at different times in different states. For example
— at the death of the last surviving animal alive during pet owner’s lifetime,
— when the animal’s offspring in gestation dies, or
— at 21 years (which could be devastating for long living animals).

The statutory pet trust is a basic plan that does not require the pet owner to make many decisions. Although statutory pet trusts offer an improvement over the choice animal lovers had before, using the will as the sole method for planning a pet’s future is not the best option available. Consider a pet protection agreement or traditional stand-alone pet trust to secure the pet’s safety, and of course, make sure the will directs the executor to find them, if needed.

Complications of Leaving a Pet in a Will

A casino is the perfect place for gambling, but the will is not. Everyone should have a will, so that everyone’s voice can be heard and their intentions respected. Mostly, this will work in a will; however, it is difficult to use a will as the exclusive method of providing for the continuing care for a pet or domestic animal. This doesn’t work for pets because it provides no guarantees. The following sections outline potential complications.

Domicile: Don’t Let the State Decide the Pet’s Fate

In a state authorized to automatically trigger a statutory pet trust, a will may become ineffective in this regard if the final domicile of the pet owner at the time of his or her death is in one of the states with such a statute. To guarantee that the pet’s future care is secured would require the pet owner to predict the state of domicile at his or her death.

However, many seniors are moved for the purpose of their care without consideration about the implications of the statutory pet trusts. Most move without thought to their will, which they believe is complete. Often, they don’t even think about updating it to conform to the new state to which they have moved.

What happens if a pet owner lives in a state that authorizes a statutory pet trust and puts the necessary clauses into a valid will but moves to a state that does not authorize one? For instance, take someone who moves from New York to Oklahoma. The law firm of Holmes, Holmes & Neisent P.L.L.C. in Oklahoma City answered the issue of domicile in the following way:

If the issue narrowly posed is ‘Would the State of Oklahoma apply the New York Pet-Trust statute if a New York resident signs a Will stating ‘I give $10,000 and my dog, Fido, to John Doe’ and then dies a domiciled resident of Oklahoma?’ the answer is no.
Title 84 O.S. §20 states: ‘Except as otherwise provided, the validity and interpretation of wills is governed, ...when relating to personal property, by the law of the testator’s domicile.’ While Oklahoma would not directly apply the New York statute, it is possible an Oklahoma Court would create an honorary trust by inferring the testator’s intent that the New York statute would have created a Pet Trust had they retained New York as their domicile.

If the testator may be moving to Oklahoma it would be advisable to make reference to the actual New York Pet Trust statute and wiser still to create an actual testamentary trust.

So, for example, a pet owner may write a valid will in New York but die as a resident and domiciliary of Oklahoma. New York has a pet trust statute but Oklahoma does not. If the pet owner is a domiciliary of New York at the date of death (in other words, New York remains the pet owner’s true, fixed, principal, and permanent home to which the pet owner intends to return and remain), New York’s statutory pet trust will apply; if the pet owner is a domiciliary of Oklahoma, then because no statute exists, it’s only a handshake and a promise. A pet protection agreement and a stand-alone pet trust are

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3 See Section 3-5.1(b)(2) of the New York Estates, Powers and Trusts Law (“Subject to the other provisions of this section … [t]he intrinsic validity, effect, revocation or alteration of a testamentary disposition of personal property, and the manner in which such property devolves when not disposed of by will, are determined by the law of the jurisdiction in which the decedent was domiciled at death”) and Section 3-5.1(d) (“A testamentary disposition of personal property intrinsically valid under the law of the jurisdiction in which the testator was domiciled at the time the will was executed shall not be affected by a subsequent change in the domicile of the testator to a jurisdiction by the law of which the disposition is intrinsically invalid.”). See also Practice Commentary to Section 3-5.1 of the New York Estates, Powers and Trusts Law (McKinney 1998) (“Under subparagraph (d), if a disposition is valid in the testator’s domicile when he writes it, it does not become invalid because he dies domiciled in a jurisdiction where such a provision is invalid. This provision … is used only to validate, not to invalidate, will provisions.”)

The result reached under New York law follows the general rule, as expressed in Section 269 of the Restatement of the Law (Second) of Conflict of Laws:

§ 269. Validity Of Trust Of Movables Created By Will

(b) as to matters that affect only the validity of the trust provisions, except when the provision is invalid under the strong public policy of the state of the testator’s domicile at death,

(i) by the local law of the state designated by the testator to govern the validity of the trust, provided that this state has a substantial relation to the trust, or

(ii) if there is no such effective designation, by the local law of the state of the testator’s domicile at death, except that the local law of the state where the trust is to be administered will be applied if application of this law is necessary to sustain the validity of the trust.

Comment (g) to that section states

When law not designated by the testator to govern validity of the trust. When the testator does not designate a state whose local law is to govern the validity of the trust, or when the designation will not be given effect . . . , the trust will be upheld if it is valid under either the local law of the state of the testator’s domicile at death or the local law of the state where the
free from this problem because the pet owner’s domicile does not invalidate these documents.

**Probate**

Probate is a court procedure that oversees the administration and disbursement of an estate. Every will has to be approved and stamped; a will does not take effect until this is done. A major drawback to establishing a statutory pet trust through a will is the delay as the will drags through probate, which is a process that can take several months for even the simplest estate. Horror stories about bureaucratic delays associated with probating a will abound.

**Those Unable to Speak For Themselves: Children and Pets**

All states allow for trusts for children, but only some states afford the same rights for pets. Although courts will not reduce amounts left to children, of America’s 50 states, 42 states and the District of Columbia have statutes that authorize pet trusts, and in 33 of these states, a court may reduce the amount of property transferred for the care of a pet owner’s companion animals. Additionally, guardians can be appointed in a will for both children and pets. When a will names a pet guardian, the state has the right to approve the choice and reserves the right to choose someone it considers more appropriate. It may or may not abide by understandings with family members, friends, or others.

When a will does not name a guardian, a guardian will always be named for a minor child by the court. Whether a guardian will be named for a pet depends on whether the state has a statutory pet trust. This is the fork in the road for pets. If the pet owner is domiciled in a state that authorizes a statutory pet trust, the court is authorized to appoint a pet guardian. In the other states, the pet gets passed in the same manner as other untitled property. The difference is that pets breathe and need immediate care, whereas other property can wait for court rulings and probate procedures.

**Without a Will**

Regardless of whether a will exists, the state will be a participant in the process. If no will exists, the state has a plan; however, it is not necessarily

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trust is to be administered, provided that this would not be contrary to the strong public policy of the state of the testator’s domicil at death . . . .

The reporter’s note further explains that the validity of a provision in a will pouring over property into another trust is determined by the law that would be applied by the courts of the state of the testator’s domicile at death. *See also Rougeron v. Rougeron*, 17 N.Y.2d 264 (1966) stating that, under New York law, “as to personal property legal domicile at death determines what law is to be applied and what court has jurisdiction.”

Finally, *Rougeron v. Rougeron* states, in relevant part that “[a]ll these in one way or another confirm that as to personal property legal domicile at death determines what law is to be applied and what court has jurisdiction.

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what anybody who worked hard to acquire wealth might have had in mind. These laws (probate) are the blueprint that controls the disbursement of property. Additionally, the court will choose a person to handle the estate. Normally, the assets are passed to the next of kin following a proscribed formula (intestacy).

**Case Study: Leona Helmsley**

I remember the day I met Leona Helmsley. It was in the lobby of an apartment building my dad had just bought at 929 Park Avenue in the heart of one of the most opulent residential districts in New York City. Dad was doing one of the brilliant visionary things for which he was known. He was going to let the people who lived in the building become his partners. It was the first luxury co-op conversion in New York.

He introduced me to an up-and-coming real estate broker who was going to sit in the lobby and sell the idea. She did it, and he was so impressed. Not only could she sell, but she actually understood him and didn't laugh. That was Leona Helmsley in 1964.

Throughout her lifetime, Leona Helmsley was a meticulous, brilliant business woman and a doting wife to Harry. She and her constant companion, a pampered Maltese named Trouble, became the trademark of the biggest real estate empire and hotel chain in New York City, and under Leona’s control, the business grew and flourished. She oversaw every detail of the operation and spared no expense to keep it first class. At her death at age 82, her apartment was like a shrine to her late husband, with his pictures and mementos hanging in virtually every room.

Of course, Helmsley’s staff alleged that Leona and her husband, Harry had used company funds to renovate their sprawling mansion, Dunnellen Hall, in Greenwich, Connecticut. … Among the charges billed to the company were a million-dollar dance floor installed above a swimming pool; a forty-five-thousand-dollar silver clock; and a two-hundred-and-ten-thousand-dollar mahogany card table. In 1988, the U.S. Attorney’s office charged the couple with income-tax evasion, among other crimes. (Harry Helmsley avoided trial because of ill health; he died in 1997, at the age of eighty-seven.) At the trial, a housekeeper famously testified that Leona had told her, "We don’t pay taxes. Only the little people pay taxes," and the public warmed itself on a tabloid bonfire built under the Queen of Mean. Leona was convicted of multiple counts and served eighteen months in federal prison. In time, following her release, she became largely a recluse, and she died at Dunnellen Hall on August 20, 2007.4

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It is undeniable that Leona was found guilty of tax evasion, and she paid for that offense. However, it is sad that most often, when her name is printed, it is accompanied by “the Queen of Mean” and an employee’s testimony that Leona said, “Only the little people pay taxes.” That statement could have several meanings, and it sells tabloids.

If ever there was a will that could reflect everything that could go wrong and every fear one could have felt, it is the will of Leona Helmsley. Her power, intellect, and almost infinite wealth were enough that she owned the Empire State Building, yet weren’t enough to spare her from having her directions disregarded. While she was alive, this never could have happened. Few would have had the nerve to try, and those who tried would have lost.

Here are the directions Leona Helmsley wrote in her will:

F. I leave the sum of Twelve Million Dollars ($12,000,000) to the Trustees of the LEONA HELMSLEY JULY 2005 TRUST, established under an instrument dated on or about the date of this Will, to be disposed of in accordance with the provisions of that Trust agreement. I leave my dog, Trouble, if she survives me, to my brother, ALVIN ROSENTHAL, if he survives me, or if he does not survive me, to my grandson DAVID PANZIRER. I direct that when my dog, Trouble, dies, her remains shall be buried next to my remains in the Helmsley Mausoleum at Woodlawn Cemetery, Bronx, New York, or in such other mausoleum as I may be interred pursuant to this will.

G. I have not made any provisions in this Will for my grandson CRAIG PANZIRER or my granddaughter MEEGAN PANZIRER for reasons which are known to them.

In breaking down the text, these words will

• fund the stand-alone pet trust through the will (as is valid under New York law) for the care of her dog, Trouble.
• transfer $12 million into the stand-alone traditional pet trust for her dog’s care and animal charities.
• name her brother, Alvin, and if Alvin does not survive Leona, then her grandson, David, as pet guardian and successor pet guardian to personally care for Trouble.
• provide that Trouble be buried in the same mausoleum as Leona.
• exclude two of her four grandchildren.

How did she miss all the things that went wrong?
What Dog?

A pet owner’s worst fear is that when the time comes for the pet guardian to assume care of the beloved pet, the reaction is “What dog, she had a dog?” Helmsley encountered this very problem:

In her will, Helmsley asked that her brother, Alvin Rosenthal, take care of the dog, but a source said he ‘doesn’t want it.’ Renowned for ruling her hotel empire with an iron fist while she was alive, Helmsley has had a hard time calling the shots from beyond the grave.5

In a will, unlike a pet trust or a pet protection agreement, when a pet guardian is appointed, no requirement exists to accept the relationship, acknowledge it, or be aware of its existence. Both people Helmsley appointed as pet guardian refused to care for her dog.

A valid stand-alone traditional pet trust clearly exists here, but neither Alvin nor David signed any documents confirming their awareness of Leona’s intentions. Both could justifiably claim to be surprised and freely decline the appointment without guilt, which is what both of them did. Leona certainly believed they would take care of Trouble, but she was wrong. Even if there was a handshake and a promise, it was certainly not enough. Appointing a series of successor guardians would have helped, and naming an organization of last resort would have provided that there would always be a pet guardian.

Where’s Trouble?

If the right documents are not in place, pet owners run the risk of being separated from their pets against their will in the event that they become ill or otherwise unable to care for their pets. It is possible that this was the case for Helmsley:

Other Helmsley employees and friends got fed up with Trouble’s bothersome biting, and she reportedly wound up being taken away from the ailing Helmsley recently as Leona became too physically and mentally sick to take care of her.”6

Clearly, Leona would have preferred the company of her beloved Maltese, Trouble. It seems they were separated, however, when she began showing signs of senility. It is unclear from reports whether this was done at Helmsley’s request or if it was a decision made by others. If a pet protection agreement or stand-alone traditional pet trust was in place that directed that they be kept together and provided for the pet’s care and guidance to cover all possible contingencies of Leona’s dementia, incapacity, and death, then this situation

could have been avoided.\footnote{Section 7-8.1 of the New York Estates, Powers and Trusts Law.} We don't know where Trouble went during this time, but we know she was not in Leona's room together with her for a time leading up to Helmsley's death. That's too bad because Leona may very well have benefitted from Trouble's presence, which will be shown in chapter 9.

\textbf{Where's the Money? (Part One)}

Leona funded a stand-alone traditional pet trust through her will and directed that $12 million was to be transferred to it upon her death. In June 2008, however, a deal was struck between the Manhattan Surrogate Court, the New York State Attorney General’s Office, the trustees of Leona’s $5 billion to $8 billion estate, the executors of her will, and the disinherited grandchildren. In it

- funds for Trouble were reduced to $2 million.
- Helmsley’s disinherited grandchildren received $6 million tax-free, thus resolving their allegations that Helmsley was not mentally competent in 2005 when she signed her will.
- the grandchildren agreed to remain silent, refrain from objecting to the will, and turned over all records and papers.

When a pet trust that is funded by mention in a will (testamentary pet trust), the pet trust will go through probate along with the will after death. That gives the court an opportunity to change the financial terms of the trust, as it did with the Leona Helmsley estate. On the other hand, if the pet owner funds a pet trust while still alive (inter vivos pet trust), the trust will not need to go through probate. The court won’t get involved, so there will be more assurance that the terms will be carried out and the pet will receive the desired care. One tactic is to create and fund a revocable trust for the care of the pets. The trust can be cancelled if the pet owner needs the money. If the revocable trust is still in place upon death, it will become irrevocable and be beyond the reach of court ordered changes.

In her will, Leona directed that all her homes be sold; however, her homes were where Trouble lived. Obviously, Trouble would need a home if Alvin and David didn’t take her in. Leona, known for her acute attention to detail, probably considered this eventuality. Leona left sufficient money to buy a multimillion dollar house and left enough for its maintenance and the staff to run the house.

The pet trust is where the drafting attorney gets a chance to write his winning case, and the pet owner has the same chance in the pet protection agreement. The beloved pet and its pet guardian should be given the opportunity to live as the pet owner wishes. It is the pet owner’s right to make decisions in life and for the time thereafter. Intentions must be explicit to make sure that the court understands the pet owner’s intended use and to ensure that Love Continues.™
Where’s The Money? (Part Two)

What did Leona intend with the remainder of the $12 million dollars she left for Trouble’s care? If the trustees had bought a house for Trouble, the house would have been bought in the name of the trust and would be owned by the trust. Perhaps she wanted the residual funds to be distributed to animal charities. Let’s look at what Leona wrote in her final mission statement, which may explain her intent:

The trustees are to make grants for (1) purposes related to the provision of care for dogs; and (2) such other charitable activities as the trustees shall determine.

Surrogate Troy K. Webber of New York County Surrogate’s Court ruled that, according to the terms of the trust, the trustees are not limited by the mission statement but may “apply trust funds for such charitable purposes and

Funding Pet Trusts Directly

Here is what I did for my rescue/shelter dog, Soupbone:

I lived in New York City in a simple one bedroom condo that I owned. My elderly friend, Jim, was going to care for Mr. Bone (Soupbone to those who did not have a personal relationship with “the man”) and possibly live there with him if something happened to me. However, Jim got sick. Next in line was Jean (but she passed away), then my friend, Suzanne. Suzanne and her fiancée loved living in the country. What if Soupbone ended up with them? They ultimately married and had a child. They would need a home, and it would include my Soupbone because he would love living in the country and running through the grass. The condo would never do. To prepare for that possibility, I permitted the executor of my will to transfer a large sum into Soupbone’s traditional stand-alone pet trust in 1999, with explanation that I left this sum so that he could always live comfortably with his new family—in this case, his pet guardian, Suzanne. Because the money was being transferred through mention in a will, it automatically invoked the provisions of New York’s statutory pet trust pertaining to funds, which states that the “court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use.”1 It is critical, therefore, to accurately describe the intended use.

As a result of many years of practice in the field, I now fund my companion animals’ pet trust directly rather than through a transfer in my will, and I advise my clients to do the same. Additionally, I leave the pet protection agreement as beneficiary of a percentage of my insurance policy and retirement accounts.

1  Section 7-8.1 of the New York Estates, Powers and Trusts Law
in such amounts as they may, in their sole discretion, determine.” As a result of the Surrogate’s ruling, $1 million of the $5 billion to $8 billion (less than 0.01 percent) went to animal charities. Wayne Pacelle, chief executive of the Humane Society of the United States, stated that “Giving less than 1 percent of the allocation to dog-related organizations is a trifling amount and not consistent with Leona Helmsley’s expressed intention.”

The Plot Thickens

Leona Helmsley wrote a few details in her will relating to her burial and orders:

- “That when my dog, Trouble, dies, her remains shall be buried next to my remains in the Helmsley Mausoleum.”
- “If the remains of my husband, Harry B. Helmsley and my son Jay Panzirer are relocated to another mausoleum in another cemetery, then I direct that my remains be interred next to them.”

If Trouble’s remains must be buried next to Leona’s, then when Leona is moved, Trouble also will be moved. A huge amount of time and money was spent to comply with Leona’s wishes for Trouble to rest in peace next to her; however, consider the following time line:

- In 1997, Harry Helmsley dies.
- In 2004, Leona becomes dissatisfied with her husband’s original resting place at Woodlawn Cemetery in the Bronx, New York, when a public mausoleum is constructed, blocking Harry’s view; she later decides to move Harry to Sleepy Hollow Cemetery in Westchester County, New York.
- On July 15, 2005, Leona signs her will.
- On July 21, 2005, construction is temporarily halted at Sleepy Hollow Cemetery by village officials because the project had neither a building permit nor planning committee approval.
- In September 2005, a building permit is issued for a mausoleum at Sleepy Hollow Cemetery.
- In August 2006, a certificate of occupancy is issued for the Helmsley Mausoleum in Sleepy Hollow, and Harry and Jay are moved.
- In August 2007, Leona Helmsley dies and is buried in Sleepy Hollow next to her husband.

Construction on the new mausoleum in Sleepy Hollow was already underway when Leona signed her will. She wished to be interred with her husband, Harry; her son, Jay; and her dog, Trouble. She even went so far as to add a clause giving her executors the right to move her body if that was what it would take for them to all be together. New York State law, however, does not permit animals to be buried in human cemeteries.

‘Absolutely not, there's no question about it,’ said the official, who asked not to be named. ‘A dog would not be allowed to be buried or interred in a cemetery. It's for human beings.’ In fact, the administrator at the state Division of Cemeteries was surprised that no one had called to question Leona’s plans for Trouble to join her in eternal marbled peace. ‘Maybe her lawyer didn’t reach out to the relevant people’ the official said.10

This left two options; they could all be cremated and buried with Trouble in a pet cemetery, or they could all be buried together in a family plot on private land. It's well within the means of the Helmsley fortune to move Harry, Leona, Jay, and Trouble to private land. Leona had already moved Harry and Jay once before. It could be done, in fact, with the $12 million that Leona left for Trouble's care. Leona was never one to spare any expense or energy to make her vision come alive.

**Conclusion**

In the past, pet owners didn’t think about making arrangements for pets, but that’s been changing. Leona Helmsley’s plight raised awareness because of her love for Trouble and the incredible media frenzy that her generosity stirred up.

The life of Leona Helmsley presents an object lesson in the truism that money does not buy happiness. … She wouldn't settle for skimpy towels, the ads proclaimed—'Why should you?’11

Every detail was under her control, yet in the case of her will, it strayed from her intentions.

The statutory pet trust, triggered by mention in a will, is a great step forward but leaves problems in the areas of both domicile and funding. Funds will always have to be taken into consideration as a possible issue because the court has the right to determine whether, in its opinion, they are excessive. For instance, courts have ruled that $5,000 is excessive and $2 million dollars is acceptable. It is important that the pet owner's intentions be clear and the reasoning behind the funding explained. Domicile will continue to be an issue.

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11 See footnote 4.
until all 50 states have authorized pet trust statutes. This is because the law of the state where a person is domiciled when he or she dies governs.

The story of Leona and Trouble underscores some important lessons. First, a will cannot provide enforceable instructions for a pet’s care. Second, even valid terms can be misunderstood and rewritten by the court. Finally, the pet still must wait for probate to be completed and, until then, rely on luck and good fortune to survive.
When a pet owner funds a pet trust, there may be both federal gift and estate tax implications. The brief discussion below will help explain why that is.

As of this writing, in early 2010, the federal estate tax has been repealed for 2010, while the federal gift tax remains in effect. However, the estate tax is almost certainly not gone forever. Under current law, the estate tax will be reinstated in 2011 with the same rates and exclusion amounts that existed in 2001. Further complicating the matter, Congressional leaders have introduced legislation to reinstate the estate tax in 2010 (with tax rates and exclusion amounts at their 2009 levels) and perhaps make it retroactive to the beginning of the year. Hopefully, these issues will be resolved soon.

Most observers expect the federal estate tax to be reinstated for deaths occurring in 2011, if not for those in 2010. Assuming a federal estate tax and a federal gift tax are both in effect, it is likely that every individual will be permitted to make certain tax free transfers because of various gift and estate tax exclusions. However, the amount of the exclusions remains in doubt.
Gift and Estate Tax Exclusions

In the most likely scenario, the estate tax will be reinstated with the same exclusion levels as were in effect in 2009 and the gift tax will continue in its present form. Therefore, everyone will have a $1 million lifetime gift tax exclusion. This means that every individual can transfer up to $1 million of cash or property gift tax-free ($2 million if he is married and his spouse consents to split the gift). In addition, everyone can make annual tax-free gifts of up $13,000 to an unlimited number of individuals and certain appropriately structured trusts ($26,000 if they are married and their spouse consents to split the gift). This amount, referred to as the annual gift tax exclusion, is indexed for inflation.

In addition, if the 2009 estate tax exclusion levels are retained, everyone will have a $3.5 million estate tax exclusion, which can shelter $3.5 million in cash or property from estate tax. (That amount may increase by indexing or by future legislation.) To the extent an individual uses any of his $1 million gift tax exclusion however, his estate tax exclusion will be reduced. This means that if an individual uses all of his $1 million gift tax exclusion, she will only be able to shelter another $2.5 million (instead of $3.5 million) from estate tax at his or her death.

However, there is no guarantee that the 2009 estate tax exclusion amounts will be retained. If they are not, under present law, the estate and gift taxes will be reinstated in their 2001 form in 2011. In that case, the exclusion allowed for both the gift tax and the estate tax will be $1 million dollars.

Application to Pet Trusts

How does the above discussion apply to pet trusts? It is simply this: under current law, a pet owner can make tax-free gifts of up to $1 million to a pet trust to the extent he has not used any of his $1 million gift tax exclusion ($2 million if he or she is married). In addition, the pet owner can structure the pet trust so that he can make annual tax-free gifts of up to $13,000 to it ($26,000 if he is married). Excess gifts are taxed at a 35% rate. The “beneficiary” of the pet trust is the pet guardian selected to watch after the pet. Thus, generally, for gifts to the pet trust to qualify for the annual gift tax exclusion, the pet guardian must be notified of the gifts and be permitted to withdraw them for a limited period of time.\(^1\) Since Statutory pet trusts—in other words, those triggered by a Will and permitted under state law—cannot be funded until the pet owner’s death, these gift tax rules are only applicable to stand-alone traditional pet trusts that are created while the pet owner is alive.

\(^1\) Crummey v. Commissioner, 397 F. 2d 82 (9th Cir. 1968)
Note that if the pet owner can revoke the trust, his lifetime transfers to it will not be subject to federal gift tax; the trust will be includible in the pet owner's estate when he dies, however, and potentially subject to estate tax. (If the pet owner can't revoke the trust, he generally will be considered to have made a “completed” gift and the trust will likely not be includible in his estate.)

Finally, if a pet owner funds a pet trust at his death, those funds will be taxable for federal estate tax purposes unless his taxable estate is less than the estate tax exclusion in effect at the time of death. The pet owner’s available estate tax exclusion will be less if he or she used any of his or her gift tax exclusion; also note that his or her state’s threshold for imposing estate tax may be significantly lower than the federal estate tax exemption.

**What about structuring a Pet Trust as a charitable remainder trust?**

Such a trust pays a fixed or variable amount of the trust property at least annually to one or more beneficiaries for life or a term of years, with any remaining property going to charity. When this type of trust is funded at death, a portion of the bequest—the present value of the charity’s remainder interest—is not subject to estate tax. By setting up this type of trust for a pet, a pet owner could reduce the estate tax cost of providing for his pet. Unfortunately, the IRS has ruled in Rev. Rul. 78-105 that this won't work for pet trusts.

This is because a statutory pet trust—where the trust beneficiary is a pet—does not fit within the definition of a charitable remainder trust because the trust’s required annual payments must be payable to or for the use of a “person,” which generally means an individual (not a pet). On the other hand, it is unclear whether a stand alone traditional pet trust that has a human beneficiary (in other words, the pet’s care giver) and is structured as a charitable remainder trust would be eligible for the charitable estate tax deduction. The Service’s ruling appears to preclude such eligibility by providing that a trust is for the lifetime benefit of a pet (rather than the pet’s pet guardian) if the trust funds are used for the care of a pet.

**Income Tax**

In general, when a pet owner transfers funds and other property to the pet trust—including the pet itself—by gift, bequest, devise, or inheritance, these receipts are not treated as taxable income, although they may be subject to gift or estate tax as previously discussed. This means that when the pet owner gives

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2 IRC § 664
3 Treas. Reg. §1.664-2(a)(3) and §1.664-3(a)(3)
4 I.R.C. § 102.
the pet or funds to the pet trust, they will not be taxable. However, interest, dividends and other income generated by trust investments are subject to income tax. The pet trust’s income generally is taxable either to the pet owner or to the trust, in the case of a stand-alone traditional pet trust that a pet owner creates during his life. If the pet owner can revoke the trust or is otherwise deemed to own the trust for income tax purposes, all of the trust’s items of income, loss, deduction and credit will be reportable on his income tax return, rather than trust’s return. This type of trust is referred to as a grantor trust and, in effect, allows the pet owner to make tax-free gifts to the trust by paying its income tax; this way, the trust funds can grow tax-free without being depleted by income tax. Nevertheless, if the pet trust is not a grantor trust or ceases to be one when the pet owner dies, it will be a separate taxable entity and will pay tax on its own income.

Generally, the trust income tax rates are imposed at graduated rates that mirror those of individuals. However, unlike individual taxpayers who typically do not pay income tax at the highest marginal rate until their income exceeds $373,650,5 trust income is subject to income tax at the highest marginal rate when it exceeds $11,200; this is a clear disadvantage to holding funds in trust, and illustrates why a grantor trust may be attractive if the pet owner is not in the top federal income tax bracket. Some commentators believe that a pet trust is subject to a more favorable tax rate (such as, married filing separately), but based upon this author’s analysis of Rev. Rul. 76-486, it appears that pet trusts are subject to the same income tax rates applicable to all other trusts.7

Nevertheless, a pet trust is not taxable on trust income (other than capital gain) to the extent it is distributed to the pet’s guardian in the case of a traditional pet trust; instead, the distribution is deductible by the trust and taxable to the pet guardian. When all is said and done, either the Trustee or the pet guardian pays the income tax on the trust’s income depending on whether trust income is accumulated or distributed each year. If the pet owner intends to compensate the pet guardian for any income tax liability

5 This threshold, which is inflation adjusted, applies to single taxpayers and married couples filing jointly in 2010.
6 This threshold, which is inflation adjusted annually, applies in 2010.
7 Commentators appear to believe this because Rev. Rul. 76-486 provides that a Pet Trust is subject to the tax rates imposed by IRC §1(d) which are the tax rates for married individuals filing separately. At the time of the Ruling, IRC §641, which specifies the tax rates applicable to estate and trusts, referenced IRC §1(d). As a result, the tax rates for married individuals filing separately, applied to all estates and trusts, not just Pet Trusts. However, IRC § 641 was subsequently amended for tax years beginning after December 31, 1976 by replacing the reference to IRC §1(d) with § 1(e), with the effect that estates and trusts (including Pet Trusts) are no longer subject to the more favorable rates applicable to married individuals filing separately but are now subject their own more compressed tax rates.
associated with trust distributions, this will need to be taken into account when distributions are made.

What if the pet, rather than a pet guardian, is the trust beneficiary, such as with a statutory pet trust? Because the IRS does not recognize a pet as a trust beneficiary, the pet cannot be taxable on trust distributions that it receives. In addition, the pet's pet guardian cannot be charged with the tax liability because the pet guardian serves only as an agent of the pet and does not consume the distributions for his own benefit (similar to a court-appointed guardian of a minor or incapacitated person). This could have created a lucrative tax loophole because no one (neither the pet nor its pet guardian) would have been subject to income tax on the trust income paid to or for the benefit of the pet. The IRS quickly recognized the problem, and in Rev. Rul. 76-486,8 held that an enforceable pet trust established under a state statute is taxable on all of its income, regardless of whether any distributions are made for the benefit of the pet beneficiary.

What are the tax ramifications if the pet is considered an asset of a stand alone traditional pet trust, rather than a trust beneficiary indirectly through the pet guardian? In this case, perhaps an argument could be made that expenditures for the pet's care are deductible as trust administration expenses because they are incurred in the “normal” business of administering a trust designed to take care of a pet. After all, trustee fees and professional fees—including those for attorneys, accountants, and tax return preparers—included in administering the trust are deductible. However, when a pet is not an income-producing asset and the expenditures incurred for the pet's care are not inextricably related to the normal business of administering a trust (not just a pet trust), they should not be deductible.9 Sometimes, a pet is an income-producing asset and in that case, the expenditures incurred for the pet's care are inextricably related to the normal business of administering a trust (not just a pet trust), and then they could be deductible.10

9 IRC §212 allows a deduction for ordinary and necessary expenses incurred: (a) for the production of income; (b) for the management, conservation, or maintenance of property held for the production of income; or (c) in connection with the determination, collection, or refund of any tax. The accompanying regulations also state that a trustee may deduct expenses incurred “in connection with the performance of the duties of administration.”
10 IRC §212 allows a deduction for ordinary and necessary expenses incurred: (a) for the production of income; (b) for the management, conservation, or maintenance of property held for the production of income; or (c) in connection with the determination, collection, or refund of any tax. The accompanying regulations also state that a trustee may deduct expenses incurred “in connection with the performance of the duties of administration.”
This chapter is about the important but changing roles that people and their companion animals play in enhancing each other's lives as they progress together through life's phases. Their situations may change, but the importance of the relationship does not.

Why is this relevant to advisors? Because a client's concern for a pet is not a frill that can be dismissed as mere luxury or eccentricity. Pets can be extremely important to many clients. Therefore, planning for a client's pet can be vital. Such planning can enhance the client's quality of life and improve an advisor's relationship with clients who have pets. This chapter also is about the many ways in which pet ownership can enhance health and well-being. What's more, when senior clients seem to be declining, the advisor could suggest that they consider pet adoption. Elderly clients will benefit from pet ownership, and the drawbacks can be minimized. The relationship between advisor and client is strengthened.

Pets have come to play an increasingly significant role in people's lives. It is well documented that people who share their lives with companion animals tend to live longer than those who do not. Pets also can help make positive changes to one's quality of life, often representing important ongoing sources of comfort, humor, attention, protection, and contact with others. Recognizing
the importance of pets and planning for a client’s future with their pets can be crucial for clients and can contribute to an advisor’s professional success. To understand the special bond that can exist between pet owners and their pets, begin at the beginning.

**First Things First**

An advisor-client relationship typically begins with a detailed conversation. “How old are you? What kind of work do you do? When would you like to retire?” Of course, this conversation also covers the client’s family situation, including marriage, divorce, children, grandchildren, possessions, and so on. At this point, it’s simple enough to ask about pets, too. It is well documented that more often than not, the client will have one or more pets. Then, the advisor can follow up with questions about the type of animal, name, age, and so forth, just as the advisor would ask about children or grandchildren.

**What Will Adding a Few Pet-Related Questions Accomplish?**

For one thing, clients who are pet owners will be impressed by the advisor’s concern. They’re more likely to look upon such an advisor as a trusted friend instead of someone who merely performs useful services. In addition, advisors who ask about pets can do a better job serving their clients. An advisor preparing a budget for a young client, for example, can include vet bills, boarding, and so on, and an advisor doing estate planning can suggest a formal agreement to protect the pet after the client’s death or disability.

**Especially for Seniors**

According to Claudia Fine, executive vice president and chief professional officer of SeniorBridge, a company that provides services to seniors, “Pets are part of the family. The law is catching up to what we all sort of experienced and have known for a long time, that people who are connected to pets care about their pets, and they’re very important in their lives. They are just like children.” Fine deals with seniors every day—that’s how her company earns its revenues—so she sees how seniors may be attached to, and even dependent upon, their beloved pets. Advisors should keep this in mind when they work with clients who are seniors or if they’re helping middle-aged clients plan for their elderly parents.

Although some seniors already have pets, others who don’t have pets might benefit from such a relationship. Therefore, advisors who are trying to help a senior who seems to be withdrawing from the world might suggest that he or she might be better off living with a companion animal.
Why Is This an Increasing Concern?

The world has become a place where people connect through the Internet and telephones; personal contacts have become distant. Seniors often find their social networks fragmented; friends and family members are either busy or have moved away.

Eighty-nine percent of people ages 50 and over prefer to stay at home for as long as possible,¹ as opposed to moving to an alternative living situation. When people's lives begin to slow down, they usually spend an increasing amount of time at home, but they often are alone there. The challenge becomes how to address this issue.

Hypothetically, what can a 90-year-old senior with a broken hip do for companionship? Or a 60-year-old with out of town grandchildren who communicate by using Skype or other technologies that he just doesn't understand? Communication is moving into places that didn't even exist just a few years ago, and today's seniors can very easily be left out. Isolation can set in. Even active people have lots of alone time, whether they are rich or poor, busy or not. Days and nights need filling in, and the options become fewer as people age.

People who are living in their own homes find that companion animals contribute to their well-being in so many ways. As social support and personal relations become splintered, these companion animals are becoming the ones who fill the gap. Most pet owners say that their pets are like family and their constant companions. Caring for a pet, feeding it, and grooming it develop into a routine—a ritual of sorts that leads to a sense of responsibility and self-worth, which, in turn, has a therapeutic effect.² The love that a pet offers is a source of comfort and fosters a mutual bond.

Advising Seniors With Pets Can Be Challenging

As people get older, their need for personal care assistance increases. If 50 percent of people over the age of 85 can't take care of themselves, they may not be able to take care of their pets. Older people are at risk for isolation, and of course, they're at risk for increased medical problems. The healthcare system has not really come to grips with this reality.

The home care model has traditionally been based on the theory that people who need care are sick. They are either going to be cured or not. It's not focused on an older person who is just old. Perhaps they're not perfect anymore, but they're about as good as they are going to be, and they're living at home. Advisors who recognize these issues can help clients anticipate them and find practical solutions.

¹ American Association of Retired Persons 2006 survey.
Rene Knapp writes "Pet Talk," which appears Sundays in the Norwich Bulletin. Reach her at helpingpaws@sbcglobal.net.
The challenges faced by senior pet owners who require in-home care include the following questions:

- What about safety issues for the pets?
- Who is going to take the pet to the doctor?
- Who is going to walk the pet?
- What about safety issues for the in-home care provider? Is there a pet allergy?

All of these concerns must be addressed in the care plan. Other than the standard issues of socialization and physical ability, the psychological issue, and personal care, the professional care givers also will need to allow for animals in the home. There will be caregivers who are allergic to cats, are afraid of dogs, or won’t want to work in an environment with animals. There will be others who enjoy or even prefer to work with animals around.

SeniorBridge, an organization that provides personalized care management and healthcare services to help people who stay at home, has created a system of assigning a caregiver to a patient to accommodate patients and their pets. It uses a geriatric care management model to deliver high quality, safe care in the home through a team of licensed nurses, social workers, and certified caregivers. It addresses the pet owner's medical, functional, and social needs, as well as their emotional well-being. As people live longer, more of these in-home care companies are cropping up around the country.

**Breaking Barriers**

**What Can a Hospital Do?**

Going to a hospital has no age requirement. People of all ages go to hospitals. Some hospital visits, such as a quick trip to the emergency room for a cut or bruise, are short; others can be quite long.

Most hospitals, though, don’t know what to do for the pet owner who is hit by a car while walking his or her dog or knocked down by a Chinese delivery bicycle. If the injured person agrees to get into an ambulance, what happens to the dog? Does it get left on the street? Consider the following story:

Elizabeth Taylor has been released from the hospital. A publicist for the 77-year-old actress says Taylor was admitted Friday to an undisclosed hospital ‘for a routine visit.’ Taylor, an avid Twitter user, had sent a tweet Friday, asking a friend to get her new puppy past hospital security.³

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St. Vincent’s Hospital in New York City’s Greenwich Village has created a successful program for patients and their pets’ care—the first of its kind that will arrange help for the pet. Generally, hospitals ask a series of standard questions during the intake process. They ask if the patient has anyone at home who needs care, such as children, the elderly, or someone with special needs. Organizations in place to deal with each of these situations, and the hospitals know who they must call. Saint Vincent’s took this process to a new and unprecedented level by asking patients the following question: “Do you have a pet at home who needs care?” They noticed that a significant number of people would not leave their pet to fend for itself and refused to get into the ambulance, go to the emergency room, or be admitted to the hospital. According to Steven J. Silverberg, Esq., “It’s not that unusual, and it’s been sensationalized, but a lot of people will put their pets first.” In order to fill the void and provide medical treatment to these people, St. Vincent’s created a program to take care of their pets. This program serves as a prototype for hospitals to follow.

The St. Vincent’s procedure for assisting injured pet owners (which has been adopted by other cutting-edge hospitals around the country) starts when the ambulance arrives at the scene.

For example, if a patient is going to St. Vincent’s, the EMTs ask about a pet; if there is one, they call Kate Fischer, the devoted professional who runs the St. Vincent’s Patient Pet Care program. Kate finds out what the patient needs. It could be a phone call to a friend or to the dog walker. In other cases, she gets the patient’s keys and takes further action. Kate describes her job as follows:

What happens if you get sick suddenly and you need to go to the hospital? You call all your friends and ask if they can come to take care of your dog, cat, or any other pet, and all you get are message machines and you have to go to the hospital and you’re leaving the animal alone. Then what happens?

Or you’re already in the hospital—it’s Thursday—and you’ve made arrangements for a friend to care for your pets. But, your friend calls you the next day and says, “Look, I’ve got an opportunity to go away for the weekend. Figure out something to do with the dog because I’m leaving.” That has happened more than once. Sometimes it worked out, sometimes not.

Or—well, there are many, many scenarios. I won’t list them all. But let’s see, if you’re the patient and you’re in a normal, regular hospital, you lay there and you worry and you don’t know what to do. Or you’re in the ambulance on the way to the hospital and you don’t know what to do.
Well, if you're at St. Vincent's, the ambulance team, nurse, or social worker would call me. Then, I come in and I would go to your room or, in some cases—in many cases, go to the emergency room to greet patients when they're brought in by the EMTs. I ask for keys to the apartment; review several consents and information forms with them, and ask for consent and signature. Then, I go help their animals.

Most hospitals want the patients to leave valuables at home, but Kate comes in and says, “Give me the keys to your apartment.” Kate can say this without concern because in March 2008, the New York State Bar Association’s Special Committee on Animals and the Law approved a new voluntary program that ensures that pets of hospitalized patients will be given proper care while the patient focuses on his or her health and well-being. Forms and guidelines are now available online enabling other hospitals to adopt similar programs. These forms and the documentation of the legal processes also are available on the companion CD-ROM. Hospital program coordinators can use the forms to

- determine a patient's pets needs,
- acquire legal authority to enter a patient's home, and
- make arrangements for the pet's care while the patient is being treated.

The forms provide a thorough description of the processes, waivers, and other legal documents necessary to properly implement this type of program. Some of the forms include apartment access, chain of custody and property value, key custody and key return to the patient, adoption and boarding, as well as surrender request, power of attorney, veterinarian care and boarding assistance, and volunteer forms.

At St. Vincent's, the Patient Pet Care program strives to take care of the pet, if possible, in the patient's home. They ask for the keys, and they get the permission because this causes the least stress for the animal that feels safest in its own home.

In some instances, the pets cannot remain in the home. For example, the patient may not be returning home soon. St. Vincent's has forged alliances with the Mayor’s Alliance for NYC’ Animals program (headed by Jane Hoffman, Esq.) and the Animal Care and Control of New York City, which will board pets until the pet owner can resume care. Other hospitals may wish to work with local shelters and rescue organizations in their municipality when implementing the service. A key point is that the hospital never assumes

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4 See www.nysba.org/PatientPetCare.
5 Individuals who may be interested in working on this program for other hospitals should contact Rachel Hirschfeld at rachel@petriarch.com, the Not Home Alone Project at nothomealoneMA@aol.com, or Kate Fischer at mfischer@svcmcny.org.
possession of the animal; the hospital works with the patient to assist with third party providers.

Advisors cannot anticipate that a pet-owning client will go to such a forward-thinking hospital in case of an emergency. Therefore, contingency planning for pets should be part of an overall plan, particularly for seniors who own pets. Some procedure should be in place in case the pet owner can't care for a pet: a friend or relative or reliable pet sitter should have keys to the client’s home, as well as pet care instructions.

Similarly, preplanning should be in place in case a client who owns a pet must move to another residence, such as a nursing home or an assisted living facility. A pet trust or pet protection agreement can specify the pet owner’s desire to live with a beloved companion animal. That client's advisor can help by researching residences that will accept such an arrangement.

**Moving to a Nursing Home**

Improvements in medical technology have enabled people to live longer, presenting new challenges in addressing people's needs. Many medical options involve the patient leaving home for varying periods of time or even permanently. Often overlooked is the devastating side effect of separating pet owners from their treasured pets, which can be a traumatic experience. Untold numbers of companion animals are killed because their owners move into facilities that do not understand the importance of the relationship between pet and pet owner and, thus, do not allow pets. Yet, more than 50 percent of pet owners would not leave their animals to move into sheltered housing. “This means that many older people are either living in inappropriate accommodation to avoid moving without their pet, or they are parting from their pet against their wishes,” according to John Belcher, chief executive of the Anchor Trust, the largest provider of housing, care, and support for older people throughout England.

Elderly people in over one-third of residential care homes experience noticeable symptoms of distress because they have to give up a beloved pet, according to research published by the Society for Companion Animal Studies, with funding from the Pet Food Manufacturers’ Association. Older people who are forced to part with a pet to move into residential care can suffer feelings of bereavement that are similar to those caused by the loss of a family member. Severe reactions can lead to depression, disturbed sleep or eating patterns, and even physical illness.

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6 All of Anchor's 950 homes and retirement schemes in England welcome animals. The Cinnamon Trust, a charity that specializes in keeping animals and their older owners together, has a list of approximately 800 pet-friendly homes around the country.

7 See www.scas.org.uk/petsforlife.
Elizabeth Ormerod, chairman of the Society for Companion Animal Studies and a practicing veterinarian said

The importance of pets to older people cannot be understated; for some they are their best friend, their family and their only lifeline to the outside world. When age or ill health forces someone to move into care, why should they be parted from a loyal companion who offers them unconditional love and support, comfort and constancy?

I believe that people of all ages should have the right to benefit from animal companionship, as long as this is managed responsibly. So we’re encouraging all housing and residential care providers to develop clear and carefully considered pet policies.

Fortunately, a new awareness exists of the need for managed care facilities of all types to include animals as an integral part of an individual’s care. For those of us who have been working for years to make this happen, this has been a slow evolution, but to others, it is a revolution.

What Can a Nursing Home or Assisted Living Facility Do?

One study suggests that seniors in nursing homes feel less lonely when spending time with an animal and may prefer an animal’s companionship over a person’s. Seniors who are separated from their pets feel the loss, and they worry. If a pet owner has to leave home for a nursing home or other living experience, the pet should go there, too. The choice of the facility is critical because a pet owner usually wants a place that will allow their pets to reside with them; this should not be left to chance. This decision may be the last independent action a person can exercise, and through the use of the pet trust or pet protection agreement as an instrument of expressing his or her desires, the pet and person can be kept together.

Sunrise Senior Living, a New York Stock Exchange-listed company with $2.4 billion in annual revenue, has approximately 450 communities with over 50,000 residents across the United States. Approximately 5 percent of Sunrise’s residents move in with a pet (mostly dogs and cats, but they’ve had some birds and turtles, as well). Altogether, roughly 4,000 dogs and 3,000 cats reside in Sunrise’s facilities. According to Emilio DiSiervi, area sales manager of Sunrise Senior Living

I can honestly say, being in sales and speaking with the families, that the people who have moved into Sunrise would never have made that choice if

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From Assisted Residential to Acute Care: One Barrier-Breaking Place

The only acute care facility that I know of that accepts patients with their pets is the Jewish Home at Rockleigh in New Jersey.

Beginning with its founding in 1915, the organization was an intergenerational environment for both the aged and orphans, but as the community changed, so did the organization's mission. The Jewish Home at Rockleigh presently operates both a skilled nursing facility and an assisted living facility. Keeping people in their homes has always been the mission of the Jewish Home at Rockleigh, so daycare, meals on wheels and home healthcare are offered first. People are allowed to bring their pets with them to their daycare program. You can walk into daycare at any time and see a pet and pet owner sitting together. It's only when a pet owner needs to find a new home that's more suitable for his or her general condition that he or she is encouraged to move in.

At the Jewish Home at Rockleigh, a new facility was designed consisting of all single room units. The motivation for the single rooms was twofold: consideration for the dignity of the individuals and to allow individuals the privacy of their own home—an extension of the community that includes the pet. Even visitors are encouraged to bring pets along. Additionally, the Jewish Home at Rockleigh provides pet assisted therapy animals.

Animals are integrated in every area. For example, a children's visiting space has a very large fish tank. Grandparents and grandchildren can be found sitting there talking and watching the fish. Many residents put a fish tank into their own room. This is revolutionary for a skilled nursing facility in an industry where the typical setup is a semiprivate room in which a resident shares the TV, thermostat, and bathroom with a roommate.

Since the Jewish Home at Rockleigh broke the pet barrier, a number of other providers have begun to revamp their own facilities to reflect the fact that pet ownership is meaningful to their residents. According to Charles Berkowitz, executive vice president of the Jewish Home at Rockleigh

It is very important to us that when we created this new environment, that we also protect and respect the rights of those who are not ready to break these barriers. By that I mean those patients who are in a facility who have poor eyesight, who have allergies, who have fear of pets, and would not want to share a room with someone who has a dog or cat running around in their room. That was part of the rationale for creating a single room environment.

For this and other reasons, we did a lot of things in our building. We built atriums. We built roof gardens. If you look at our building, you will see natural light throughout the building. This is our way of avoiding the problem of depression that develops in the aged. It's been very successful in both ... that's a primary consideration.
we wouldn't have taken their animals. We've been doing this for 25 years. I'm seeing more companies adopting animals into the workplace. It's productive, not just for the seniors but for the staff, as well.

Sunrise's facilities are organized into neighborhoods consisting of an assisted living program, an independent living program, and a memory impaired program. Each neighborhood has its own dog and cat in residence (in addition to the dogs and cats that move in with individual residents). Sunrise Senior Living is breaking the barrier in helping seniors stay with their pets. Emilio DiSiervi went on to say

And the fact that we do take them with their pets has been a godsend for them because they don't have to worry about what's going to happen with their loved ones. Not to mention how animals in the workplace help residents with depression. It gives them companionship. It helps lower blood pressure.

It also helps with seniors in times of crisis. They have the companionship. They have the friend. In some cases, this is family. At the end of the day, we use this word loosely—unconditional love. I can honestly say there is no one that provides unconditional love better than our pets, so I'm proud that we have started this initiative; that we have pets in our workplace; and, more importantly, when we've put new pets in new communities, what we have seen is a different atmosphere, less turnover in staff, and we've seen an environment that was conducive for watching seniors to continue to thrive and live their lives. That's what I'm most proud of.

Lifelong Love Affairs

As mentioned, some seniors already have pets; others may not have them but could benefit from their companionship. Advisors might suggest adopting a pet: not only is that a relatively inexpensive way to obtain a pet, but it's an approach that's bound to create an instant bond between the rescued animal and the senior who agrees to the welcome responsibility.

Why is pet adoption so beneficial to seniors and their new companions? Because adopting a pet requires a considered decision, it should not be arbitrary. With choice, however, comes responsibility. Even if a pet is received as a gift, once it is accepted into its new home, it too becomes a lifelong responsibility. Remember this quote, “[m]en have forgotten this truth, but you must not forget it. You become responsible, forever, for what you have tamed.”9 Sharing a life with a pet establishes a commitment that should be

9 Saint-Exupéry, Antoine de, The Little Prince (France: Gallimard, 1943).
Kid Stuff

Owning a pet is a wonderful way to teach children to show care and respect and to introduce concepts of caregiving, such as feeding, grooming, and giving attention. Teaching children responsibility and gratitude is important to their development. The richer part of the experience of pet ownership might just be the pet’s love. A loving relationship with a pet can

- teach a child to accept love.
- teach a child that pets give unconditional love.
- teach a child to give love back.

Because of my dog Soupbone’s unconditional love, I felt the power to change the world. He taught me by being my dog and showed me what that really means. When I was a little girl living in Israel, I saw my grandfather, Simon, every day. He loved me unconditionally, and I was as close to him as I could be. He remains in my heart to this day. Then came a dry spell in my life. No one loved me as he did, except for God. Then, when I was 51 years old, came Soupbone! Maybe God put dogs in our life to remind us of unconditional love? I don’t know. Accept love where you find it. Give it back. See where it takes you. Soupbone watered the seed that my grandfather planted.

honored. As children get older, they grow up and move out to live on their own. Pets, however, need to stay with a person; with each day, the ability to fend for themselves fades. Unconditional love from a pet is a gift and a person’s response should be gratitude and responsibility. Animals have no expectations, no conditions, and love without judgment. Human beings should impose those obligations on themselves to continue the care once they domesticate an animal.

People With Pets: Healthy Choice

People and pets play important and unique roles in each other’s lives. These roles are, for the most part, both physically and mentally beneficial, especially to seniors and those with disabilities. They also present challenges, which can usually be overcome.

Benefits for the Body

If clients have doubts about adopting a pet, advisors can make the following point: heart attack patients who have the companionship of pets recover faster
than those without pets. This phenomenon holds true with other medical conditions, as well. This is not surprising considering that pets also help

- lower blood pressure. According to a study at the State University of New York at Buffalo, in stressful situations, people with hypertension had lower blood pressure when they interacted with a pet.

- reduce health care costs. A study titled The National Institutes of Health Technology Assessment Workshop: the Health Benefits of Pets revealed that pet owners make fewer doctor visits (especially for nonserious medical conditions) than people who do not own pets.

- prevent heart disease. Reduced stress, greater psychological balance, and emotional stability are byproducts of the unconditional love that pets provide. Ultimately, these afford increased protection from heart disease, according to the National Institutes of Health Technology Assessment Workshop: the Health Benefits of Pets.

- encourage exercise. The majority of pets require some exercise or physical activity. Dogs, especially, cause their pet owner to get out with them. Walking is good exercise, and it can lead to a healthier life.

- stabilize vital measurements. The Centers for Disease Control studies have shown that the companionship of animals decreases blood pressure, cholesterol levels, and triglyceride levels.

Benefits for the Mind

Advisors also can explain to clients that owning pets can lead to improved mental health. According to a study by the American Heart Association, pets perform a unique function in reducing stress, benefitting the mind as well as the body. Among the key factors that contribute to an individual's mental well-being, pets help

- minimize the impact of stress. Pet owners, especially males, demonstrate a reduced effect from stressful situations when compared with those who do not have pets.

- reduce anxiety. People, whether living alone or with others, have fears, often based on vulnerability: there may be someone at the door, there

11 American Pet Product Manufacturers Association 2007 (Dr. Karen Allen, State University of New York at Buffalo)
12 See footnote 8.
13 See www.cdc.gov/healthypets/health_benefits.htm.
15 See footnote 11.
may be an intruder, or it may simply be the uneasiness of uncertainty. Having a pet around to warn them of trouble or alert them to the doorbell or telephone helps reduce the anxiety associated with these fears.

- **boost mental acuity.** Concentration and mental attitude are sharpened and memory is improved through the introduction of repetitive tasks, such as those required in the care and maintenance of a pet.

- **enhance socialization and companionship.** Someone is always available for interaction when a pet is around. Dog ownership, for example, gives people an opportunity to say hello to people in the park or to the dog walker who comes to take the dog out.16

- **decrease loneliness and depression.** Because pets are a distraction, pet owners can alleviate isolation by interacting with the pet.17

- **cope with life.** Traumas, loss, and illness can be difficult, and the companionship of a loving animal can help ease the pain.

- **deal with dementia.** Today, people with Alzheimer’s disease and dementia can expect to cope with this condition for 20–30 years. During certain phases of dementia, fear, loneliness, confusion, and even the loss of friends often occurs. The immediate and unconditional love of a dog, the purring of a cat, the singing of a bird, or the graceful swimming of a fish in an aquarium can provide much needed comfort and companionship. The number of people suffering from dementia is expected to double every 20 years and could reach more than 81 million worldwide by 2040.18

**Disadvantages and Difficulties**

Often, people would like to get a pet or would benefit from keeping the one they already have.19 For everyone, whether young or adult, pets play an important role in their lives. Pet ownership has both emotional and physical benefits, but it has some drawbacks, as well. Advisors should present the following issues, too, so clients will recognize them and take the proper steps to reduce the possible impact:

1. **Separation.** The fear of moving to a place where their pet is not welcome leaves many unwilling to get a pet.

2. **Disability.** Many seniors do not have pets because they worry about who

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16 Ibid.
17 See footnote 8.
18 Alzheimer’s Disease International estimates 24.3 million people currently suffer from dementia. Cases are rising by 4.6 million each year, or 1 in every 7 seconds.
19 Ibid.
will help care for their pets when they can’t do it themselves.

3. Family issues. In some families, the pet is a valued member of the household. Other relatives or friends will continue to care for the pet, if necessary. In other situations, though, no one may want to be bothered caring for the pet.

If clients know that legal agreements are available to provide for the safety and security of their pets, they might feel more comfortable acquiring or keeping pets. Knowledgeable and caring advisors can help their clients resolve many of these difficulties with a pet trust or pet protection agreement, as explained in chapter 5.

Seeking Shelter

Although pet protection documents are readily available to keep a shelter from becoming a pet’s future, too many animals (through circumstance, ignorance, or neglect) are not legally protected for their continued care and end up in shelters, where they are usually euthanized. Advisors might suggest that seniors interested in adopting a pet make a visit to a local animal shelter. Adopting an animal from a shelter gives it a new lease on life and fulfills a

Who Rescued Who?

I went to Brower Park in Brooklyn, New York, early in the morning to walk Swizzle, my beloved stray dog. I saw an old woman sitting on a bench. She had a little dog near her—clearly hers. Swizzle wanted to say hello so I asked, “Is that your dog? Can my dog, Swizzle, play with your dog?” She responded, “Yes, Swizzle can play with Bundle.”

They played, and all of us were happy.

I asked her, “Where did you find Bundle, and how long have you had him?”

This is what she told me

I never left the house. No one ever talked to me. Now I go to the park with Bundle—he’s my bundle of joy—people talk to me. When I take Bundle out for a walk, he always wants to play with other dogs—he loves dogs—and I get to socialize. No one ever talked to me before when I would go out, which was rare. The only time I would go out was if I had to, like if I had to shop for food. I found him. He was about 2 years old, and he was on Manhattan Avenue, looking confused and walking back and forth across the street. I was afraid he would get killed, so I rescued him. I took him to the vet to see if he might have a chip but no success. I called animal control, and they had no notice of a missing bichon frise. He has changed my life.

20 Ibid.
commitment that someone else didn’t or couldn’t. These animals were, through no fault of their own, abandoned by chance. Seniors who adopt from a shelter are likely to save an animal’s life while enriching their own.

**Senior Pets for Senior People**

Seniors live richer and healthier lives when they’re shared with companion animals. Literally millions of pets are in shelters just waiting for a home. Some are vulnerable and cute little puppies and kittens; they are easy to love but requiring training. Some are rambunctious teenage pets that are full of independence and energy. However, some are adult pets with wonderful qualities all their own.

Advisors can emphasize to clients that advantages exist to owning a senior pet. Senior pets require less exercise than younger ones, are usually calmer and more easygoing, usually understand a few commands, and have a lower energy level. A prospective pet owner who is not up to chasing a puppy and doesn’t have the ability to hang onto a tugging leash, or the agility to dodge a frisky kitten, should consider an adult pet that looks forward to a stroll in the park. Mature pets are often socialized, housebroken, and adapt well to a sedate lifestyle. Anyone who ever adopted an adult pet from a shelter understands their strong gratitude. Additionally, a senior animal’s size, disposition, and personality are already known factors. An age appropriate pairing is best for both the pet and pet owner. When choosing an animal, seniors should consider adult pets to improve the odds that they will live out the remainder of their lives together.

**Advantages of Shelter Adoptions**

Adopting a shelter dog or cat has some interesting benefits, other than the companionship and love a pet can foster. Advisors might inform interested clients of the following:

- Four to six million dogs and cats are euthanized each year in the United States. In times of economic downturn, especially, more pets than ever are brought to shelters or abandoned altogether. In bad financial times, it is more important than ever to give these pets a chance at a loving home.

- *Medical advantages.* Most shelters perform health examinations and vaccinate animals as part of the intake process and many spay or neuter them before adopting them out. In addition to medical care, more and more shelters also screen animals for specific personalities and behaviors to make sure each family finds a pet that suits its home. Animal shelters are chock full of happy, healthy animals just waiting for a home.
• A life is saved when a pet is adopted from a shelter rather than bought because revenue is diverted from pet shops and puppy mills.

• Grateful to be saved. Mature rescue dogs understand that their lot in life has changed for the better. As a result, they are usually loyal and loving; ask anyone who has adopted a pet from a shelter.

**Helping Hands…Er, Paws—Service and Therapy Animals**

An increasing number of seniors have come to rely on their animals to help them live better lives. This is especially true in the case of trained service and therapy animals; people live fuller and healthier lives because of the work performed by these animals. The mutual respect and teamwork between people with special needs and service animals works beautifully. Nobody has said it better than Dr. Michael J. McCulloch, cofounder of the Delta Society:

> In an age of research when it is tempting to reduce human emotions to biochemical reactions and to rely heavily on the technology of medicine, it is refreshing to find that a person's health may be improved prescribing contact with other living things.

Pets and people enrich each other's lives; in the last few decades, organizations have begun to study, measure, and recognize the power of this relationship. A person with special needs benefits from an appropriately trained animal.

**Visiting Pet Programs**

Advisors commonly deal not only with clients who are seniors but also with middle-aged clients concerned about their parents. Indeed, those parents may be in some type of residence for the elderly. Such clients probably will want to know that numerous organizations throughout the United States have instituted programs to bring animals to retirement and health care facilities to visit with the residents. Just as pet ownership is good for people who can keep a companion animal, so is a visit for those people who can’t. The animals in these programs²¹ are specially selected for their gentle nature and friendly disposition. The residents in participating facilities greatly enjoy and benefit from the experience of seeing, petting, and interacting with these animals.²²

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²¹ See www.seattlehumane.org/services/services/lowincome-senior.
²² Delta Society.
Changes in Social Attitude

The positive effect of establishing a relationship between people and animals is so well known and documented, in fact, that in 2007, New York amended its elder laws by adding a subdivision devoted to providing financing for and companion pets for seniors.  

In accordance with the act, the director of the Office for the Aging is authorized to establish, operate, and maintain, in conjunction with an association, institution, agency, a public or private entity, or community program engaged in the care of animals, one or more senior pet companionship programs. The purpose and intent of a senior pet companionship program is to match pets, including cats, dogs, and other small animals, with seniors who have limited social contact in order to improve seniors’ lives by enhancing their emotional and mental well-being through this companionship.

Conclusion

In a perfect world, more people, including seniors, would enjoy the benefits of pet ownership by adopting a pet from a shelter. People and pets are a winning combination; children can grow up with young pets, and seniors can retire with older pets.

For many seniors, a companion animal is their only connection to the world outside their home. Forming a relationship with an animal is indeed beneficial both to the person and the animal, especially to animals rescued from shelters, which are often someone else’s beloved pet. People generally live more fulfilling lives when they live them with pets, and they want to bring their pets along when they change residences; when they bring what they love to a home, it makes it home. Advisors who would like to enhance their clients’ well-being and improve their own professional prospects can suggest that pets may make life worth living.


Advisors who think they can ignore clients’ pets in their planning had better think again. More and more people, including seniors, own pets, and they increasingly regard them as family members. To a surprising extent, those clients are spending more money on their pets and are willing to cut back personal expenses so that their pets can maintain their lifestyle. Therefore, advisors who help clients with their estate planning, budgeting, insurance, housing choices, and so on should learn about their clients’ relationships with their pets. Many clients will regard a pet trust or pet protection agreement as a vital document.

The data in this chapter can demonstrate how pets have become an integral part of peoples’ lives, and this chapter will chart recent statistics and trends as they relate to companion animals. Society has entered a period of enlightenment and dramatic change in which a newfound respect exists for animals. The numbers don’t lie: the ground is shifting in the relationship between people and their pets, and the pets’ (with their own feelings, preferences, and rights) are being welcomed into the family in record numbers. The outdoor animals that used to roam the streets and backyards now enjoy the comforts of the family home. They are cared for and spoiled, and their
medical care, wellness, grooming, and recreation have become standard items in household budgets.

**Pet Population**

An estimated 411 million pets are owned in the United States, and the following chart breaks down the pet population by type:

<table>
<thead>
<tr>
<th>Pets Population by Type (Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dogs (77m)</td>
</tr>
<tr>
<td>Cats (93.6m)</td>
</tr>
<tr>
<td>Fish – Freshwater (171.7m)</td>
</tr>
<tr>
<td>Fish – Saltwater (11.2m)</td>
</tr>
<tr>
<td>Birds (15m)</td>
</tr>
<tr>
<td>Horses (13.3)</td>
</tr>
<tr>
<td>Reptiles (13.6m)</td>
</tr>
<tr>
<td>Other (15.9m)</td>
</tr>
</tbody>
</table>

**The Pet Products Industry**

In part, because of the pet food recalls of 2007, pet owners have been motivated to upgrade the quality of pet basics, such as food, collars, bedding, and leashes. When *Pet Food Industry Magazine* examined the market in August 2008, the only segments that showed a drop in sales were low and midpriced pet foods. New products, such as collars that won’t harbor odor-releasing bacteria and specially designed leashes, collars, and beds for older dogs, have hit the market.

Larger companies are beginning to recognize the economic potential of the pet industry. Target and Walmart are both expanding their pet selection and

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4. See www.dublindog.com/.
5. See www.seniorcanines.com/main/page_senior_dog_beds.html
using pets in their advertising. Big box pet specialty retailers, such as Petco and PetSmart, continue to move into the full service arena to encourage one stop shopping and customer loyalty. Companies like Omaha Steaks, Harley Davidson, and Old Navy, which are known for human products, are moving into the pet market.

Various forms of pet identification are available. The tattoo and microchip are popular, with one company claiming that it has already microchipped over 6.5 million pets. Petriarch’s Soupbone Alert System is a unique Internet-based filtering mechanism that not only has an ID number but also finds lost pets by matching visual criteria, similar to Match.com.

The pet products industry has grown continuously since 1994, which is the first year it was measured. This occurred despite changes in the economy, and this growth is illustrated by the following chart:

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Pet Products: Industry Growth

Retail sales of pet products increased 22 percent in national supermarkets from 2006–08, and at the same time, the world economy was going through a recession of historic proportions. The pet care industry is the second highest growth industry after consumer electronics. The following are some interesting facts about the pet care industry:

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See footnote 6.

See www.americanpetproducts.org/press_industrytrends.asp.

Market research conducted by the APPA. Projected 2011 numbers are from Brady, Diane and Christopher Palmeri, “The Pet Economy: Americans Spend an Astonishing $41 Billion a Year on Their Furry Friends,” Business Week, August 6, 2007.


Business Week 2005 (no further info)
• Three billion dollars is spent annually on pet grooming and kenneling in the United States.¹¹
• The combined revenue of the top 175 pet food manufacturers is $11 billion.¹²
• Annual pet industry sales in India total $45 billion.
• Annual pet industry sales in Japan total $9.5 billion.

Brazil is the fastest growing pet market in the world and is expected to be second only to the United States in annual sales within the next couple years. Currently, the U.S. pet market is the largest, with Japan second and Brazil running a close third and expected to overtake Japan in the very near future.

**Pet Travel Industry**

Society is recognizing that people want to include their pets in virtually every part of their lives, and businesses are responding to that desire. The online directory www.petswelcome.com lists over 25,000 pet friendly hotels, motels, and inns, many of which have package deals that include special pet beds and room service menus for pet guests. Also listed are pet friendly ski resorts, campgrounds, and beaches.¹³

The Ritz-Carlton Hotel chain’s Very Important Pooch program outdoes all competitors by providing luxurious pet carriers, gold plated ID tags, aromatherapy treatments, dog bone-shaped pillows, home-baked dog cookies served on ceramic dinnerware, and much more.

Twenty-three million people travel with their dogs in the car every year,¹⁴ and over 50 percent of dog owners consider their pet’s comfort when buying a car.¹⁵ Sophisticated harnesses, seat belt systems, carriers, and even motion sickness remedies are offered to make pet travel more convenient.¹⁶

A market also is emerging for safe pet travel on airplanes. The year 2009 saw the introduction of a new airline that allows animals to fly in the main cabin, watched over by flight attendants—no human passengers allowed. A few airlines have pet programs in which pets can fly in-cabin and receive some cute toys and frequent flyer miles. Richard Branson’s Virgin Atlantic Airways raised the bar for pet incentives by offering t-shirts for dogs, toy mice for cats, and

¹¹ The APPA 2007–2008 National Pet Owners Survey
¹³ See www.petswelcome.com/
¹⁵ Toyota Venza ‘Top Dog’ When it Comes to Pet Comfort, Travel and Fun, February 9, 2008, press release.
¹⁶ See footnote 7.
limited edition flying jackets for ferrets. The following are some interesting facts about pet travel on airplanes:

- Two million pets are transported by air every year in the United States as cargo, according to the San Francisco Society for the Prevention of Cruelty to Animals (SFSPCA).
- Five thousand pets are injured each year in transit when flying as cargo, according to the SFSPCA.

For those who do not take their pets along when travelling, boarding facilities with upscale amenities ranging from spa oatmeal baths, treadmills, quality bedding, in-room TVs, classical music, and bedtime stories abound.

**Pets and the Economy**

The pet industry is proving to be resilient during the recession. Spending in 2008 rose to $43.2 billion, up from $41.2 billion in 2007. Nevertheless, 500,000 to 1 million cats and dogs are at risk of becoming homeless as a result of the continuing downturn.

In order to ensure the welfare of their dogs during the recession, 97 percent of pet owners surveyed said they would eat more meals at home, 72 percent would cancel their gym membership, 67 percent would cancel their travel plans, and 50 percent would cancel cable or satellite service. Sixty-five percent of dog owners would regularly eat ramen noodles before they skimp on their dog’s high quality food, and 34 percent of dog owners have begun buying dog food in bulk. Some additional interesting facts are as follows:

- Fifty-nine percent of dog owners would color their own hair in order to keep their dog’s appointment at the groomers.
- Fifty-nine percent of pet owners will spend the same amount on gifts for their dog as they did last year.

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20 Ibid.
21 Ibid.
22 Ibid.
23 Ibid.
Pets at Work

As the economic downturn continues, some companies are attempting to boost morale and productivity by allowing employees to bring their pets to work. Although traditional perks and employee services are being reduced or eliminated due to budget considerations, this is becoming a popular alternative. The results of this experiment have been a revelation because the presence of pets, even in the absence of economic motivation, makes the workplace more efficient and less stressful. The following are some interesting facts:

- Fifty-five million people believe pets in the workplace leads to a more creative environment.
- Fifty-three million people believe pets in the workplace decrease absenteeism.
- Fifty million people believe pets in the workplace help coworkers get along better.
- Thirty-eight million people believe pets in the workplace create a more productive work environment.
- Thirty-seven million people believe pets in the workplace help improve relationships between managers and employees.24

The Veterinary Industry

Use of medications for companion animals rose about 20 percent from 1996 to 2006.25 The annual compound growth rate for core veterinary services alone has been about 10 percent over the past decade.26 Pet health insurance has gone mainstream to the tune of $270 million per year.27 High end diagnostics, such as MRIs, are becoming more widely available for pets.28 Today, pets get chemotherapy, laser surgery for glaucoma, and organ transplants. Cats, who often suffer from kidney failure, can receive transplants that cost $12,000 or more.29 Billions of dollars are spent annually on veterinary care in the United

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24 June 6, 2008, APPA press release titled “U.S. Companies Continue Trend of Allowing Pets in the Workplace.”
26 Ibid.
27 See footnote 2.
28 Ibid.
Statistics and Trends

States. Between 1991 and 2001, veterinary spending increased threefold. Some interesting facts about the veterinary industry are as follows:

- Dog owners spent $5.8 billion annually at the veterinarian. From 2007 to 2008, dog owners spent an average of $219 per dog for routine veterinary expenses and $453 per dog for surgical veterinary visits.

- Cat owners spent $3 billion annually at the veterinarian. From 2007 to 2008, cat owners spent an average of $175 per cat for routine veterinary expenses and $363 for surgical veterinary visits.

- Bird owners spend $50 million annually at the veterinarian.

Pet Medications

In 2007, the market for pet medications in the United States was $5 billion. This is projected to increase by over 60 percent to $8.6 billion by 2012. This is in addition to the already unprecedented 12.5 percent growth in the pet medications market between 2003 and 2007. All told, from 2002 to 2007, the market increased by 52 percent. Seventy-seven percent of dogs and 52 percent of cats are medicated per year.

Veterinarians

The United States has 85,977 veterinarians practicing in 20 board certified specialties. Of these, over two-thirds deal exclusively with companion animals.

Pet Insurance

The estimated size of the 2007 market for pet insurance in the United States was $195 million, up from $161 million in 2006.

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33 Ibid.
34 See footnote 1.
37 See footnote 35.
38 See footnote 25.
39 Ibid.
40 American Veterinary Medical Association market research statistics for 2009–2010
41 Ibid.
Pet Ambulance Service

In Australia, a round-the-clock veterinary ambulance service has had a 30-fold increase in business in just a couple of months, up from 1–2 calls a month. Although most of the pets are dogs and cats, the company also has transported chickens, a goat, and a turtle.42

Hospice

Pet owners formerly had few options, other than euthanasia, after diagnosis of a pet’s terminal illness. Now, compassionate end of life care for pets—hospice—is often the choice. Web sites such as www.angelsgate.org and www.pethospice.org were created to discuss these concepts. Through careful administration of palliative methods and medications, veterinarians can ease a pet’s life challenges. Various products, such as heated beds and even mobility aids, are available to ease the transition.43

Pet Owners

Eighty-eight percent of pet owners consider their animals members of the family.44 Eighty-three of pet owners refer to themselves as their animal’s mommy or daddy.45 Eighty percent of dogs live indoors,46 and more than half of them sleep on their owner’s bed.47 Twenty-percent of pet owners admit breaking up a romance over a pet.48 Thirty-seven of pet owners bought their pets birthday presents, and 65 percent bought their pets holiday presents, spending an average of $100.49

Human fads are reflected in the pet world in the form of organic and locally sourced foods for pets. Organically grown cotton bedding50 and therapeutic massages for dogs51 have become thriving boutique industries.

Some additional interesting facts about pet owners are as follows:

- Thirty-three percent of pet owners have included their pet in their holiday card.52

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43 Humphries, Jim, Hospice for our Pet Family Members, July 1, 2009.
44 The Harris Poll® #120, December 4, 2007.
45 See footnote 29.
47 See footnote 25.
48 Parker, Suzy and Cindy Hall, “USA Snapshots—What We Do for Our Pets,” USA Today, October 18, 1999.
49 See footnote 25.
52 The AP-Petside.com Poll conducted by GfK Roper Public Affairs & Media, May 28, 2009, to June 1, 2009.
Statistics and Trends

- Forty-two percent of pet owners have taken a pet on vacation.\(^{53}\)
- Seventeen percent of pet owners have taken a pet to work.\(^{54}\)
- Thirty-seven percent of pet owners carry pictures of their pets with them.\(^{55}\)
- Thirty-one percent of pet owners have stayed home from work to care for a sick animal.\(^{56}\)
- Thirty-five percent of pet owners have included their pet in a family portrait.\(^{57}\)

Fifteen percent to 20 percent of dogs were purchased from breeders,\(^{58}\) and the same amount was adopted from shelters.\(^{59}\) Two percent to 10 percent of dogs were purchased from pet shops.\(^{60}\)

Estate Planning

As of November 2007, which is the last time statistics were available, 25 percent of pet owners provided for their pets in a legal document, such as a pet trust, pet protection agreement, or will.\(^{61}\)

Homes With Animals

Fifty-six million households had pets in 1988. Twenty years later, that number had risen to an astounding 71.4 million, and no end is in sight as the trend continues upward.\(^{62}\)

The following charts illustrate the number of homes with animals, pet households by type of animal\(^{63}\), number of animals in each household\(^{64}\), and the number of dogs for each owner.\(^{65}\)

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\(^{53}\) Ibid.
\(^{54}\) Ibid.
\(^{55}\) Coxwell, Katharine and Wanda D. Devereaux, *Paws Laws or How Nigel and Miss Muffy Came to Be Rich*.
\(^{56}\) Ibid.
\(^{57}\) See footnote 52.
\(^{58}\) Ralston Purina and the National Council on Pet Population Study and Policy.
\(^{59}\) Ibid.
\(^{60}\) Ibid.
\(^{61}\) See www.cbsnews.com/video/watch/?id=3238689n.
\(^{62}\) See footnote 7.
\(^{63}\) See footnote 52.
\(^{64}\) See footnote 44.
\(^{65}\) See footnote 11
Statistics and Trends

Number of Animals in Each Household

- One (35%)
- Two (25%)
- Three (13%)
- Four (7%)
- Five (6%)
- Six + (13%)

Number of Dogs for Each Owner

- One Dog (65%)
- Two Dogs (25%)
- Three or More Dogs (12%)
Some additional interesting facts about pet ownership are as follows:

- Fifty-four percent of pet owners have a postgraduate education, and 66 percent have at least a high school degree.\(^{66}\)
- Two out of three gays and lesbians were estimated to have a pet in 2003.\(^{67}\)
- Sixty-seven percent of whites, 68 percent of Hispanics, and 35 percent of African Americans own pets.\(^{68}\)
- Eighteen percent of pet households have 5 or more pets.\(^{69}\)
- Sixty-three percent of dog owners have 1 dog, and 37 percent have 2 or more dogs.\(^{70}\)
- Seventy-five percent of pet dogs are spayed or neutered.\(^{71}\)
- Fifty-six percent of cat owners own 2 or more cats, and 87 percent of owned cats are spayed or neutered.

**Pets and the Elder Population**

Senior adults are filling their homes with companion animals in record numbers.

**Number of Pets in Each Senior Adult Household**

Forty-two percent of seniors who are pet owners have 1 pet, 29 percent have 2, 16 percent have 3, 1 percent have four, 2 percent have 5, and 10 percent of have 6 or more. Sixty-seven percent of senior pet owners allow their pets to sleep with them.\(^{72}\)

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\(^{66}\) See footnote 44.
\(^{67}\) GL Census Partners 2003 study.
\(^{68}\) See footnote 44.
\(^{69}\) Ibid.
\(^{70}\) See footnote 11.
\(^{71}\) Ibid.
\(^{72}\) See footnote 44.
The Cinnamon Trust in England has found a way to systematize what's been going on for ages in small homes all over the world—people helping people take care of their pets. It successfully organized more than 10,000 volunteers to assist with walking, feeding, and other activities a pet needs. This is especially helpful for the elderly who are no longer mobile but still care for their pets at home. The Cinnamon Trust also offers a home to pets that have lost their pet owner to death or relocation. These animals continue to reside in a loving home (not a cage) for as long as they need. Another wonderful service the trust performs is the matching of these bereaved pets with elderly persons whose pets have died.

Some additional interesting facts about pets and the elder population are as follows:

- Fifty-two percent of adults 62 years of age and older have at least 1 pet.\(^{73}\)
- Thirty-one percent of pet owners 62 years of age and older have cooked for their pet.\(^{74}\)
- Twenty-nine percent of retirement facilities routinely allow pets.\(^{75}\)
- Twenty-five percent of retired people own pets.\(^{76}\)

\(^{73}\) Ibid.
\(^{74}\) Ibid.
\(^{75}\) Ibid.
\(^{76}\) *Pets and Older People in Residential Care*, a 2007 study conducted by the Society for Companion Animal Studies and the Pet Food Manufacturers’ Association.
Shelters

The number of animals surrendered to New York City’s main animal shelter, Animal Care & Control, increased across by 9.4 percent in the first half of 2008 compared with the same months in 2007. Although intakes increased, 57 percent of shelters and rescue groups across the country noted a decline in adoptions in 2009. Everyone needs to know the following numbers and interesting facts:

- Twenty-five percent of animals in shelters nationwide are purebred.
- Six to eight million pets enter shelters each year.
- Fifty percent of shelter animals are euthanized.
- Four to six million animals are euthanized in shelters annually.
- The approximate number of pets euthanized annually simply because their owners die without providing for their care is 500,000.
- Three to four million animals are adopted from shelters annually.
- Eighteen percent of pet cats were adopted from an animal shelter.
- Ten percent of pet dogs were adopted from an animal shelter.
- Thirty percent of dogs were reclaimed by their owners from shelters.
- Two percent of cats were reclaimed by their owners from shelters.

Animal Law

Over the past 10 years, increasing numbers of students have shown an interest in animal law, and more law schools are accommodating the demand. More dogs are getting their day in court, and their lawyers are not being laughed out of court as they were in the 80s. In 2000, only 9 American Bar Association-approved law schools offered animal law as part of their curriculum. By 2008, that number had risen to 100 (out of 196). As of the time of this writing,
Statistics and Trends

the Student Animal Legal Defense Fund has 141 chapters in North American law schools.89 The relationship between animals and humans is being further defined through legal means. LegalZoom, a popular company that provides boilerplate documents to the public, now offers pet protection agreements.90

Conclusion

Societal attitudes and mindsets are maturing and evolving, and culture and economics are following along. In less than a generation, animals have become members of the family, and cutting edge law reflects that change. The amount of money people spend annually on their pets in the United States is increasing dramatically, regardless of the changes in the economy. This trend is being repeated in India, Japan, Brazil, and around the world. As the corporate world becomes aware of increased spending, more pet-related products and services are appearing on the market. In order to appeal to the concerns of pet owners, the pet product industry is producing environmentally sensitive and value-driven products for consumers.

89 See www.aldf.org/article.php?id=446.
90®, TM, and © 2009 Pet Protection Agreement, LLC. All rights reserved. Patent pending.
Conclusion

Before I became an attorney, I was intimidated by anything that resembled a legal document. Many of you probably feel the same way, at least in the burgeoning area of estate planning for pets and their owners. My goal in this book is to act as your guide through the often confusing maze of ideas and language as they pertain to pets and their ongoing care. I hope that, having read it, you are now familiar with the concepts, comfortable with the terms, and able to review pet protection documents with confidence.

People are passionate about their pets. The United States houses an astounding 365 million pets in over 74 million households. Advisors, including CPAs, attorneys, financial planners, insurance agents, and investment consultants, must be sensitive to the fact that our society is moving toward treating pets as family members. Providing care for loved ones has taken on a whole new meaning. Read these words written by attorney Stephen Corriss1 in response to a once-in-a-lifetime theatre invitation. Corriss, part of a growing trend, is referring to his beloved shelter dog, Casey:

---

1 Schulte Roth & Zabel, LLP, special counsel trust law, estate and wealth management planning, charitable foundations, income and gift tax planning, estate administration, domestic relations law and family law.
Our attending the opening of *Blithe Spirit* starring Angela Lansbury on Broadway is going to depend in a very large measure on the recovery state of Casey. He recently had neck vertebrae surgery on July 31.

Came home two weeks thereafter and went right back into critical care for an extended week. Came home again and had to go back a week later for an I.V. and toxic liver treatment. Finally came home for another week and then back into the emergency department for ultrasound and extensive blood tests on his liver, kidneys, and gall bladder. Got stabilized and came home. A week ago, he was back in for critical care because he could not stand up or extend his right leg at all.

The plan is for him to continue on some meds while weaning him off others slowly. If he shows genuine improvement and can handle himself off the meds, then we will have passed the threshold. But if the meds are shown to be masking the damage, then we'll need another MRI and—if another MRI—then almost certainly immediate surgery again on his neck.

If Stephen's dog needed advanced medical attention, he would not attend the Broadway opening but would stay by his dog's side for as long as it would take.

**Spread the Word**

Stephen is certainly not alone in his devotion to a pet such as Casey. Many Americans put their pets' welfare high on their list of personal priorities. Advisors increasingly will work with such clients, and those desires should be recognized. Often, clients who have beloved pets will want to provide for them in their financial and estate plans. This book is intended to bring advisors up to speed on the topic of legally enforceable pet trusts and pet protection agreements and also is designed as a tool to educate clients.

It's unusual to write a book that is meant for both professional advisors and their clients; however, pet protection documents are such a new and cutting edge area of law that advisors and clients often are learning about it at the same time. We find ourselves in an odd transition period in which the more educated party may be sitting on either side of the desk.

Many pet owners are still greeted with blank stares when they ask their advisors, “What about my pet?” Professional advisors who know about pet trusts and pet protection agreements see similar reactions when they broach the subject with clients who have never heard about these documents. These growing pains and knowledge gaps in pet protection documents are small hurdles to overcome on the way to the ultimate goal: making sure the beloved companion animal does not face a desolate life or, even worse, death in a shelter.
In an ideal world, every advisor would ask each client, “Do you have a pet?” Indeed, advisors who have read this book will know to raise questions about the fate of Fluffy and Fido. Additionally, by providing this book to clients, advisors can help pet owners understand the importance of planning for the future of their pets.

**A New Day**

Times have changed and attitudes have evolved. We learn more every day about the positive effects of companion animals (still mere property in the eyes of the law) on human health and well-being, and it is only fitting that we take action to return the favor. In order to make a difference, advisors and pet owners must become ambassadors for change. During financial and estate planning, someone has to ask the question, what about the pets? Fortunately, ways now exist to provide for pets. The options include well-crafted pet trusts and pet protection agreements. Pet owners may well desire to create such enforceable documents for their pets’ ongoing care, and advisors can make sure pet owners know about these documents. As we enter an era of renaissance for animals, there is much to celebrate in the area of pet trusts and pet protection agreements. A subject once scoffed at by the legal community is gaining acceptance. When something happens to the pet owner, such as an accident, illness, or death, the pet trust or pet protection agreement becomes critical. These documents authorize the pet’s community of care to take proactive steps to safeguard the designated pet or pets.

This book and the accompanying CD contain the complete pet protection agreement, a unique legal document that offers a quick, effective, and affordable solution for pet owners who want to plan for the future of their companion animals. An advisor can simply assist the client in filling out this easy-to-understand agreement. The CD also includes the pet trust system, which is all the materials needed for an attorney to prepare a pet trust. Pet trusts are more involved, expensive, and time consuming because they require an attorney, but they may serve the client better in situations in which heirs are expected to contest the plan or tax planning needs to be included.

The pet trust and pet protection agreement contain the same fundamental elements and have the express purpose of establishing continued care for pets should the pet owner not be around to do so.

Thank you for reading this book. And so, the writing ends here, but I hope that a spark has been ignited so that advisors and clients will be inspired to take action and that, as a result, all beloved pets may have a smooth transition between owners, thus ensuring that Love Continues.
Appendix A: State Pet Trust Legislation

The following are up to date as of the end of 2009.

States With Pet Trust Legislation

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida
- Hawaii
- Idaho
- Illinois
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
Duration of Trust

Trust terminates at death of last surviving animal alive during settlor's lifetime.

- Alabama
- Arizona
- Arkansas
- California
- Connecticut
- Delaware
- District of Columbia
- Florida
- Hawaii
- Illinois
- Indiana
- Kansas
- Maine
- Maryland
- Missouri
- Nebraska
- Nevada
- New Hampshire
- New Mexico
- Texas
- Vermont
- Virginia
- Washington
- Wyoming

Trust terminates in 21 years or when no living animal is covered by the trust, whichever occurs earlier.

- Alaska
- Iowa
- Michigan
- Montana
- New Jersey
- New York
- Tennessee
- Utah

Trust for the care of designated domestic or pet animals and the animals’ offspring in gestation.

- Colorado
- South Carolina
Funding Limits

Courts may reduce the amount of property transferred if the amount substantially exceeds the amount required for its intended use.

- Alaska
- Arizona
- Hawaii
- Illinois
- Iowa
- Michigan
- Montana
- New Jersey
- New York
- North Carolina
- South Dakota
- Utah

The courts may reduce the amount of property transferred if the amount exceeds the amount required for its intended use.

- Alabama
- Arkansas
- Connecticut
- District of Columbia
- Florida
- Indiana
- Kansas
- Maine
- Maryland
- Missouri
- Nebraska
- Nevada
- New Hampshire
- New Mexico
- North Dakota
- Ohio
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- Texas
- Vermont
- Virginia
- Wyoming

States Without Pet Trust Legislation

- Georgia
- Kentucky
- Louisiana
- Massachusetts
- Minnesota
- Mississippi
- Oklahoma
- West Virginia
Appendix B: State Pet Trust Statutes: Provisions of Interest

**Alabama**

*Ala. Code § 19-3B-408*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2007</td>
</tr>
</tbody>
</table>

**Alaska**

*Alaska Stat. § 13.12.907*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>Twenty-one years but not longer, regardless of whether the terms of the trust contemplate a longer duration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if it determines that amount substantially exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>State</td>
<td>Code</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Arizona</td>
<td>Ariz. Rev. Stat. § 14-2907</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Arkansas Code § 28-73-408</td>
</tr>
<tr>
<td>California</td>
<td>Cal. Prob. Code § 15212</td>
</tr>
</tbody>
</table>
### Colorado

**Colo. Rev. Stat. § 15-11-901**

<table>
<thead>
<tr>
<th><strong>Duration of Trust:</strong></th>
<th>The trust for the care of designated domestic or pet animals and the animals’ offspring in gestation is valid.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Funding Limits:</strong></td>
<td>No limit mentioned in the statute.</td>
</tr>
<tr>
<td><strong>Special Provisions:</strong></td>
<td>The determination of the animals’ offspring in gestation is made at the time the designated domestic or pet animal becomes a beneficiary of the trust.</td>
</tr>
<tr>
<td><strong>Year Enacted:</strong></td>
<td>1995</td>
</tr>
</tbody>
</table>

### Connecticut

**Ct. ALS 169**

<table>
<thead>
<tr>
<th><strong>Duration of Trust:</strong></th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Funding Limits:</strong></td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td><strong>Special Provisions:</strong></td>
<td>Requires that the pet owner designate a trust protector, someone whose sole duty is to act on behalf of the animal. Accountings are required.</td>
</tr>
<tr>
<td><strong>Year Enacted:</strong></td>
<td>October 1, 2009</td>
</tr>
</tbody>
</table>

### Delaware

**Title 12, §12 § 3555**

<table>
<thead>
<tr>
<th><strong>Duration of Trust:</strong></th>
<th>The trust terminates at the death of all animals living at the trustor's death and covered by the terms of the trust.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Funding Limits:</strong></td>
<td>No limit mentioned in the statute.</td>
</tr>
<tr>
<td><strong>Special Provisions:</strong></td>
<td>The term animal shall include any nonhuman member of the animal kingdom but shall exclude plants and inanimate objects.</td>
</tr>
<tr>
<td><strong>Year Enacted:</strong></td>
<td>2008</td>
</tr>
</tbody>
</table>

### District of Columbia

**D.C. Code Ann. § 19-1304.08**

<table>
<thead>
<tr>
<th><strong>Duration of Trust:</strong></th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
</table>

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139
<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Duration of Trust</th>
<th>Funding Limits</th>
<th>Special Provisions</th>
<th>Year Enacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida</td>
<td><em>Fla. Stat. Ann.</em> § 736.0408</td>
<td>The trust terminates at death of last surviving animal alive during settlor's lifetime.</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
<td>Pet trust legislation, now amended, was in effect 4/23/02 until 6/30/07.</td>
<td>July 1, 2007</td>
</tr>
<tr>
<td>Hawaii</td>
<td><em>Hawaii Stat.</em> § 560:7-501</td>
<td>The trust terminates when no living animal is covered by the trust.</td>
<td>The court may reduce the amount in trust if it substantially exceeds the amount required for intended use and there will be no adverse impact in the care, maintenance, health, or appearance of the domestic or pet animal.</td>
<td>None</td>
<td>2005</td>
</tr>
<tr>
<td>Idaho</td>
<td><em>Idaho Code</em> § 15-7-601</td>
<td>None mentioned in the statute.</td>
<td>No limit mentioned in the statute.</td>
<td>Statute provides for a purpose trust, which, by definition, does not need a beneficiary. Trust may be created for the care of an animal, Trust is enforceable upon the terms set forth in the trust.</td>
<td>2005</td>
</tr>
</tbody>
</table>
### Illinois

**Ill. Comp. Stat. 760 ILCS 5/15.2**

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates when no living animal is covered by the trust.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount in trust if it substantially exceeds the amount required for intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>Trust for domestic or pet animals.</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2005</td>
</tr>
</tbody>
</table>

### Indiana

**Indiana Code § 30-4-2-18**

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>No limit mentioned in the statute.</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2005</td>
</tr>
</tbody>
</table>

### Iowa

**Iowa Code Ann. § 633A.2105**

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>Twenty-one years but not longer, regardless of whether the terms of the trust contemplate a longer duration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount substantially exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>A portion of the property of a trust authorized by this section shall not be converted to any use other than its intended use unless the terms of the trust so provide or the court so determines.</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2000</td>
</tr>
</tbody>
</table>

### Kansas


<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
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</thead>
<tbody>
<tr>
<td>State</td>
<td>Title and Code</td>
</tr>
<tr>
<td>------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>Maine</td>
<td>Me. Rev. Stat. Ann. tit. 18-B, 408</td>
</tr>
<tr>
<td>Maryland</td>
<td>Maryland Est. &amp; Trusts §14-112</td>
</tr>
<tr>
<td>Michigan</td>
<td>Mich. Comp. Laws Ann. § 700.2722</td>
</tr>
</tbody>
</table>
### Missouri

*Mo. Ann. Stat. § 456.4-408*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
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<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2004</td>
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### Montana

*Mont. Code Ann. § 72-2-1017*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>Twenty-one years but not longer, regardless of whether the terms of the trust contemplate a longer duration.</th>
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<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount substantially exceeds the amount required for the intended use.</td>
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<tr>
<td>Special Provisions:</td>
<td>None</td>
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### Nebraska

*Neb. Rev. Stat. §30-3834*

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<th>Duration of Trust:</th>
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<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2005</td>
</tr>
</tbody>
</table>

### Nevada

*Nevada Stat. § 163.0075*

<table>
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<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
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<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>State</td>
<td>Statute</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>N.H. Rev. Stat. Ann. § 564-B: 4-408</td>
</tr>
<tr>
<td>New Jersey</td>
<td>N.J. Stat. Ann. § 3B:11-38</td>
</tr>
<tr>
<td>New Mexico</td>
<td>N.M. Stat. Ann. § 46A-4-408</td>
</tr>
</tbody>
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### New York

**N.Y. Est. Powers & Trusts Law § 7-8.1**

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>Twenty-one years or when no living animal is covered by the trust—whichever occurs earlier.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount substantially exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>1996</td>
</tr>
</tbody>
</table>

### North Carolina

**N.C. Gen. Stat. § 36C-4-408**

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive at the time of creation of the trust.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The clerk may determine that the value of the trust property substantially exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
</tbody>
</table>

### North Dakota

**N.D. Cent. Code § 59-12-08**

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may determine that the value of the trust property exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2007</td>
</tr>
</tbody>
</table>

### Ohio

**§ 5804.08 Trust for the care of an animal**

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
</tbody>
</table>
Oregon

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>No limit mentioned in the statute.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>An oral or written declaration shall be liberally construed in favor of creating a trust.</td>
</tr>
</tbody>
</table>

Pennsylvania
§ 7738. Trust for care of animal—UTC 408

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2006</td>
</tr>
</tbody>
</table>

Rhode Island
R.I. Statutes § 4-23-1

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>Extrinsic evidence is admissible in determining the transferor’s intent.</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2005</td>
</tr>
</tbody>
</table>
### South Carolina
*S.C. Code Ann. § 62-7-408*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust for the care of designated domestic or pet animals and the animals' offspring in gestation is valid.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2006</td>
</tr>
</tbody>
</table>

### South Dakota
*S.D. Codified Laws §§ 55-1-21 & 55-1-22*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates when no living animal is covered by trust.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount substantially exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>Extrinsic evidence is admissible in determining transferor's intent.</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2006</td>
</tr>
</tbody>
</table>

### Tennessee
*Tenn. Code Ann. § 35-15-408*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>Twenty-one years or when no living animal is covered by the trust—whichever occurs earlier.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2004</td>
</tr>
</tbody>
</table>

### Texas
*Tex. Prop. Code § 112.037*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor's lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
</tbody>
</table>
**Utah**

*Utah Code Ann. § 75-2-1001*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates when no living animal is covered by the trust.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount substantially exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
</tbody>
</table>

**Vermont**

*Vt. Stat. § 14A-408*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>July 1, 2009</td>
</tr>
</tbody>
</table>

**Virginia**

*Virginia Code § 55-544.08*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>Funds for the trust may be applied to any outstanding expenses of the trust and for burial or other postdeath expenditures for animal beneficiaries as provided for in the instrument creating the trust.</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2006</td>
</tr>
</tbody>
</table>
Appendix B: State Pet Trust Statutes: Provisions of Interest

**Washington**

*Wash. Rev. Code §§ 11.118.005–.110*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates when no animal identified as a beneficiary is living.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>None</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>Definition of <em>animal</em> is “nonhuman animal with vertebrae.” This may be broader than the definition of <em>domestic or pet animal</em>. Most other statutes say “domestic or pet animals.”</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2001</td>
</tr>
</tbody>
</table>

**Wisconsin**

*Wis. Stat. § 701.11*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>A trust can be created for a noncharitable purpose where no definite human beneficiary exists.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court can order distribution of trust property valued at less than $5000 that will best carry out settlor’s intent.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>No mention of animals as beneficiaries is made. However, a resulting trust arises in favor of transferor’s estate, and the court is authorized to order transferee to retransfer the property.</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>1969</td>
</tr>
</tbody>
</table>

**Wyoming**

*Wyo. Stat. Ann. § 4-10-409*

<table>
<thead>
<tr>
<th>Duration of Trust:</th>
<th>The trust terminates at death of last surviving animal alive during settlor’s lifetime.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding Limits:</td>
<td>The court may reduce the amount of property transferred if the amount exceeds the amount required for the intended use.</td>
</tr>
<tr>
<td>Special Provisions:</td>
<td>None</td>
</tr>
<tr>
<td>Year Enacted:</td>
<td>2003</td>
</tr>
</tbody>
</table>

**States Without Pet Trust Statutes:** Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Oklahoma, West Virginia
Appendix C: State Pet Trust Statutes

The following state pet trust statutes are triggered by mention in a will.

Alabama

Code § 19-3B-408, effective January 1, 2007

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the
intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Alaska


Honorary trusts; trusts for pets

(a) Subject to (c) of this section, a trust may be performed by the trustee for 21 years but not longer, whether or not the terms of the trust contemplate a longer duration, if

1. the trust is for a specific lawful, noncharitable purpose or for a lawful, noncharitable purpose to be selected by the trustee; and
2. there is not a definite or definitely ascertainable beneficiary designated.

(b) Except as otherwise provided by this subsection and (c) of this section, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when a living animal is not covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(c) In addition to the provisions of (a) or (b) of this section, a trust covered by either of those subsections is subject to the following provisions:

1. except as expressly provided otherwise in the trust instrument, a portion of the principal or income may not be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal;
2. upon termination, the trustee shall transfer the unexpended trust property in the following order:
   A. as directed in the trust instrument;
   B. if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and
   C. if a taker is not produced by the application of (A) or (B) of this paragraph, to the transferor's heirs under AS 13.12.711;
3. for the purposes of AS 13.12.707, the residuary clause is treated as creating a future interest under the terms of a trust;
4. the intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or,
if none, by an individual appointed by a court upon application to the court by an individual;

(5) except as ordered by the court or required by the trust instrument, a filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is not required by reason of the existence of the fiduciary relationship of the trustee;

(6) a court may reduce the amount of the property transferred, if it determines that amount substantially exceeds the amount required for the intended use; the amount of the reduction, if any, passes as unexpended trust property under (2) of this subsection;

(7) if a trustee is not designated or a designated trustee is not willing or able to serve, a court shall name a trustee; a court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if a successor trustee is not designated in the trust instrument or if a designated successor trustee does not agree to serve or is unable to serve; a court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Arizona


Honorary trusts; trusts for pets; conditions

A. If a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for not longer than twenty-one years whether or not the terms of the trust contemplate a longer duration.

B. A trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. In addition to the provisions of subsection A or B, a trust created under this section is subject to the following:

1. Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.
2. On termination, the trustee shall transfer the unexpended trust property in the following order:
   (a) As directed in the trust instrument.
   (b) If the trust was created in a nonresiduary clause in the transferor’s will or in a codicil to the transferor’s will, under the residuary clause in the transferor’s will.
   (c) If no taker is produced by the application of subdivision (a) or (b) of this paragraph, to the transferor’s heirs under § 14-2711.
3. For the purposes of § 14-2707, the residuary clause is treated as creating a future interest under the terms of a trust.
4. The intended use of the principal or income can be enforced by a person who is designated for that purpose in the trust instrument or, if none, by a person appointed by a court on application to it by any person.
5. Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee.
6. A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under paragraph 2 of this subsection.
7. If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if this is necessary to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make other orders and determinations that it determines advisable to carry out the intent of the transferor and this section.

Note: Arizona had enacted the Uniform Trust Code provision regarding animal trusts as § 14-10408 but repealed it prior to its effective date.

Arkansas

Code § 28-73-408, effective September 1, 2005

Trust for care of animal
   (a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

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(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by a court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent a court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

California


(a) Subject to the requirements of this section, a trust for the care of an animal is a trust for a lawful noncharitable purpose. Unless expressly provided in the trust, the trust terminates when no animal living on the date of the settlor’s death remains alive. The governing instrument of the animal trust shall be liberally construed to bring the trust within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the settlor. Extrinsic evidence is admissible in determining the settlor’s intent.

(b) A trust for the care of an animal is subject to the following requirements:

(1) Except as expressly provided otherwise in the trust instrument, the principal or income shall not be converted to the use of the trustee or to any use other than for the benefit of the animal.

(2) Upon termination of the trust, the trustee shall distribute the unexpended trust property in the following order:

(A) As directed in the trust instrument.

(B) If the trust was created in a nonresiduary clause in the settlor’s will or in a codicil to the settlor’s will, under the residuary clause in the settlor’s will.

(C) If the application of subparagraph (A) or (B) does not result in distribution of unexpended trust property, to the settlor’s heirs under Section 21114.

(3) For the purposes of Section 21110, the residuary clause described in subparagraph (B) of paragraph (2) shall be treated as creating a future interest under the terms of a trust.
(c) The intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument or, if none is designated, by a person appointed by a court. In addition to a person identified in subdivision (a) of Section 17200, any person interested in the welfare of the animal or any nonprofit charitable organization that has as its principal activity the care of animals may petition the court regarding the trust as provided in Chapter 3 (commencing with Section 17200) of Part 5.

(d) If a trustee is not designated or no designated or successor trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the trust property to a court-appointed trustee, if it is required to ensure that the intended use is carried out and if a successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make all other orders and determinations as it shall deem advisable to carry out the intent of the settlor and the purpose of this section.

(e) The accountings required by Section 16062 shall be provided to the beneficiaries who would be entitled to distribution if the animal were then deceased and to any nonprofit charitable corporation that has as its principal activity the care of animals and that has requested these accountings in writing. However, if the value of the assets in the trust does not exceed forty thousand dollars ($40,000), no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee, unless ordered by the court or required by the trust instrument.

(f) Any beneficiary, any person designated by the trust instrument or the court to enforce the trust, or any nonprofit charitable corporation that has as its principal activity the care of animals may, upon reasonable request, inspect the animal, the premises where the animal is maintained, or the books and records of the trust.

(g) A trust governed by this section is not subject to termination pursuant to subdivision (b) of Section 15408.

(h) Section 15211 does not apply to a trust governed by this section.

(i) For purposes of this section, “animal” means a domestic or pet animal for the benefit of which a trust has been established.

**Colorado**

**Rev. Stat. § 15-11-901, effective July 1, 1995**

Honorary trusts; trusts for pets

(1) Honorary trust. Subject to subsection (3) of this section, and except as provided under sections 38-30-110, 38-30-111, and 38-30-112, C.R.S., if (i) a
trust is for a specific, lawful, noncharitable purpose or for lawful, noncharitable purposes to be selected by the trustee and (ii) there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for twenty-one years but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Trust for pets. Subject to this subsection (2) and subsection (3) of this section, a trust for the care of designated domestic or pet animals and the animals’ offspring in gestation is valid. For purposes of this subsection (2), the determination of the “animals’ offspring in gestation” is made at the time the designated domestic or pet animals become present beneficiaries of the trust. Unless the trust instrument provides for an earlier termination, the trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection (2), to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent. Any trust under this subsection (2) shall be an exception to any statutory or common law rule against perpetuities.

(3) Additional provisions applicable to honorary trusts and trusts for pets. In addition to the provisions of subsection (1) or (2) of this section, a trust covered by either of those subsections is subject to the following provisions:

   (a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee, other than reasonable trustee fees and expenses of administration, or to any use other than for the trust’s purposes or for the benefit of a covered animal or animals.

   (b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

      (I) As directed in the trust instrument;

      (II) If the trust was created in a nonresiduary clause in the transferor’s will or in a codicil to the transferor’s will, under the residuary clause in the transferor’s will; and

      (III) If no taker is produced by the application of subparagraph (I) or (II) of this paragraph (b), to the transferor’s heirs under part 5 of this article.

   (c) (Reserved)

   (d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument, by the person having custody of an animal for which care is provided by the trust instrument, by a remainder beneficiary, or, if none, by an individual appointed by a court upon application to it by an individual.
(e) All trusts created under this section shall be registered and all trustees shall be subject to the laws of this state applying to trusts and trustees.

(f) (Reserved)

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

Connecticut

Ct. ALS § 169, effective October 1, 2009

Section 1. (NEW) (a) A testamentary or inter vivos trust may be created to provide for the care of a domestic animal alive during the settlor's lifetime. Such trust shall terminate upon the earlier of (1) the death of the domestic animal or, if the trust was created to provide for the care of more than one domestic animal alive during the settlor's lifetime, the death of the last surviving domestic animal, or (2) ninety years after its creation.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the Probate Court. Any person having an interest in the welfare of the domestic animal may petition the court to appoint a person to enforce the trust or to remove a person so appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use for the care of the domestic animal, except to the extent the Probate Court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

(d) Any person designated pursuant to the terms of the trust instrument may act as trustee of a trust authorized by this section. Any such trustee may also be designated as a remainder beneficiary of such trust pursuant to the terms of the trust instrument. For the purposes of this subsection: (1) “Person” means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association or any other legal entity; and (2) “remainder beneficiary” has the same meaning as provided in section 45a-542a of the general statutes.
Delaware

Title 12, § 12 § 3555, effective August 1, 2008

Trust for care of an animal

(a) A trust for the care of one or more specific animals living at the trustor's death is valid. The trust terminates upon the death of all animals living at the trustor's death and covered by the terms of the trust.

(b) A trust authorized by subsection (a) of this section shall not be invalid because it lacks an identifiable person as beneficiary.

(c) A trust authorized by subsection (a) of this section may be enforced by a person appointed in the terms of the trust or, if there is no such person or if the last such person no longer is willing and able to serve, by a person appointed by the Court of Chancery. A person who has an interest in the welfare of the animal or animals other than a general public interest may petition the Court of Chancery for an order that appoints a person to enforce the terms of the trust or to remove that person.

(d) Property of a trust authorized by this section may be applied only to its intended use. Upon the termination of the trust, any property of the trust remaining shall be distributed in accordance with the terms of the trust or, in the absence of such terms, as provided in § 3592 of this title.

(e) In the case of a trust created in accordance with subsection (a) of this section, a trustor or other owner of an animal for whose benefit the trust was created may transfer ownership of the animal to the trustee at or subsequent to the creation of the trust. Subject to any contrary provision in the trust or other instrument by which ownership of the animal is given or bequeathed, if the person to whom ownership of the animal is given or bequeathed disclaims or releases such ownership, ownership of the animal shall pass to the trustee upon such disclaimer or release.

(f) The trustee of a trust created in accordance with subsection (a) of this section shall provide care for the benefit of the animal in accordance with the terms of the trust or, in the absence of any such terms, shall provide care that is reasonable under the circumstances. The trustee may employ agents or contractors to provide any such care and pay for such care from the assets of the trust.

(g) For purposes of this section, the term “animal” shall include any nonhuman member of the animal kingdom but shall exclude plants and inanimate objects.
**District of Columbia**

**Code Ann. § 19-1304.08, effective March 10, 2004**

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

**Florida**


Trust for care of animal

(1) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(2) Except as provided in this section, the law of this state regarding the creation and administration of express trusts applies to a trust for the care of an animal.

(3) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents.

(4) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the
Appendix C: State Pet Trust Statutes

Trust property exceeds the amount required for the intended use. Property not required for the intended use, including the trust property remaining upon its termination, shall be distributed in the following order of priority:

(a) As directed by the terms of the trust;
(b) To the settlor, if then living;
(c) Pursuant to the residuary clause of the settlor’s will if the trust for the animal was created in a preresiduary clause in the settlor’s will;
(d) If the settlor is deceased, pursuant to the residuary provisions of the inter vivos trust if the trust for the animal was created in a preresiduary clause in the trust instrument; or
(e) To the settlor’s heirs.

(5) This section applies to trusts created on or after January 1, 2003.

§ 736.0408. Trust for care of an animal, effective July 1, 2007

(1) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates on the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, on the death of the last surviving animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(3) Property of a trust authorized by this section may be applied only to the intended use of the property, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise as part of the settlor’s estate.

Hawaii

Stat. § 560:7-501, effective June 24, 2005

Trusts for domestic or pet animals

(a) A trust for the care of one or more designated domestic or pet animals shall be valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the precatory or honorary nature of its disposition, and to carry out the general intent of the transferor. Extrinsic evidence shall be admissible in determining the transferor’s intent.
(b) A trust for the care of one or more designated domestic or pet animals shall be subject to the following provisions:

(1) Except as expressly provided otherwise in the instrument creating the trust, and notwithstanding section 554A-3, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use contrary to the trust's purposes or for the benefit of a covered animal;

(2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(A) As directed in the trust instrument;

(B) If there is no such direction in the trust instrument and if the trust was created in a non-residuary clause in the transferor’s will, then under the residuary clause in the transferor’s will; and

(C) If no taker is produced by the application of subparagraph (A) or (B), then to the transferor’s heirs, determined according to section 560:2-711;

(3) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court having jurisdiction over the matter and parties, upon petition by an individual;

(4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee shall be required by reason of the existence of the fiduciary relationship of the trustee;

(5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health, or appearance of the designated domestic or pet animal. The amount of the reduction, if any, shall pass as unexpended trust property under paragraph (2);

(6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out and if a successor is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section; and

(7) The trust is exempt from the operation of chapter 525, the Uniform Statutory Rule Against Perpetuities Act.
Appendix C: State Pet Trust Statutes

Idaho

Code § 15-7-601, effective July 1, 2005

Purpose Trusts

(1) A trust may be created for any purpose, charitable or noncharitable, under the terms of a trust agreement or will. A noncharitable trust so created is a purpose trust and shall exist to serve a purpose.

(2) A purpose trust does not need a beneficiary.

(3) A purpose trust shall be enforceable on the terms set forth in the trust agreement by the person named to enforce the trust; provided however, that the failure to name a person to enforce the trust shall not void the trust or otherwise cause it to be unenforceable.

(4) A person named to enforce a purpose trust may resign or be removed or replaced in accordance with the trust.

(5) If the person named to enforce the trust resigns, or is removed, or is unwilling or unable to act, and if no successor is named in accordance with the trust, the trustee shall forthwith apply to the court having jurisdiction of the purpose trust for directions or for a person to be appointed by the court to enforce the trust. The court having jurisdiction of the purpose trust shall be empowered to make an order appointing a person to enforce the trust on such terms as it sees fit and to designate how successors will be named.

(6) During any period of time when no person is named or acting to enforce a purpose trust, the court having jurisdiction of the purpose trust shall have the right to exercise all powers necessary to enforce the trust in order to serve the purpose for which it was created.

(7) Any interested person, as defined in section 15-1-201(24), Idaho Code, may bring an action under law or equity to enforce a purpose trust.

(8) Charitable trusts are not governed by this section.

(9) A purpose trust created prior to July 1, 2005, shall be valid and enforceable from the date of the trust's creation.

Illinois

Comp. Stat. 760 ILCS 5/15.2, effective January 1, 2005

Trusts for domestic or pet animals

(a) A trust for the care of one or more designated domestic or pet animals is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this Section, to presume against a merely precatory or honorary nature of
its disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(b) A trust for the care of one or more designated domestic or pet animals is subject to the following provisions:

(1) Except as expressly provided otherwise in the instrument creating the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

   (A) as directed in the trust instrument;

   (B) if there is no such direction in the trust instrument and if the trust was created in a non-residuary clause in the transferor's will, then under the residuary clause in the transferor's will; or

   (C) if no taker is produced by the application of subparagraph (A) or (B), then to the transferor's heirs, determined according to Section 2-1 of the Probate Act of 1975.

(3) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court having jurisdiction of the matter and parties, upon petition to it by an individual.

(4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under paragraph (2).

(6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this Section.

(7) The trust is exempt from the operation of the common law rule against perpetuities.
Indiana

Code § 30-4-2-18, effective July 1, 2005

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime.

(b) A trust authorized by this section terminates as follows:
   (1) If the trust is created to provide for the care of one (1) animal alive during the settlor’s lifetime, the trust terminates on the death of the animal.
   (2) If the trust is created to provide for the care of more than one (1) animal alive during the settlor’s lifetime, the trust terminates on the death of the last surviving animal.

(c) A trust authorized by this section may be enforced by the following:
   (1) A person appointed in the terms of the trust.
   (2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) A person having an interest in the welfare of an animal for whose care a trust is established may request the court to:
   (1) appoint a person to enforce the trust; or
   (2) remove a person appointed to enforce the trust.

(e) Property of a trust authorized by this section may be applied only to the trust’s intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust’s intended use.

(f) Except as provided in the terms of the trust, property not required for the trust’s intended use must be distributed to the following:
   (1) The settlor, if the settlor is living.
   (2) The settlor’s successors in interest, if the settlor is deceased.

Iowa

Code Ann. § 633A.2105, effective July 1, 2000

Honorary trusts – trusts for pets

1. A trust for a lawful noncharitable purpose for which there is no definite or definitely ascertainable beneficiary is valid but may be performed by the trustee for only twenty-one years, whether or not the terms of the trust contemplate a longer duration.

2. A trust for the care of an animal living at the settlor’s death is valid. The trust terminates when no living animal is covered by its terms.
3. A portion of the property of a trust authorized by this section shall not be converted to any use other than its intended use unless the terms of the trust so provide or the court determines that the value of the trust property substantially exceeds the amount required.

4. The intended use of a trust authorized by this section may be enforced by a person designated for that purpose in the terms of the trust or, if none, by a person appointed by the court.

**Kansas**

*Stat. Ann. § 58a-408, effective January 1, 2003*

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use may be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

**Maine**


Trust for care of animal

1. To provide care for animal; termination. A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

2. Enforcement. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of
the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

3. Intended use of property. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise, to the settlor’s successors in interest.

Maryland

**Est. & Trusts § 14-112, effective October 1, 2009**

(A) A trust may be created to provide for the care of an animal alive during the lifetime of the settlor.

(B) A trust authorized by this section terminates:
   (1) if created to provide for the care of one animal alive during the lifetime of the settlor, on the death of the animal; or
   (2) if created to provide for the care of more than one animal alive during the lifetime of the settlor, on the death of the last surviving animal.

(C) (1) A trust authorized by this section may be enforced by a person appointed under the terms of the trust or, if no person is appointed, by a person appointed by the court.
   (2) a person having an interest in the welfare of an animal the care for which a trust is established may request the court to appoint a person to enforce the trust or to remove a person appointed.

(D) (1) Except to the extent that the court may determine that the value of a trust authorized by this section exceeds the amount required for the use intended by the trust, the property of the trust may be applied only to the intended use of the trust.
   (2) Except as otherwise provided under the terms of the trust, property not required for the intended use of the trust shall be distributed:
      (i) to the settlor, if living; or
      (ii) if the settlor is deceased, to the successors in interest of the settlor.

Note: The Rule Against Perpetuities does not apply to pet trusts under Est. & Trusts § 11-102(b)(12).
Michigan

Comp. Laws Ann. § 700.2722, effective April 1, 2000

Trust for lawful noncharitable purposes; length of performance; trust for care of designated domestic or pet animal; validity; length; intent and extrinsic evidence

(1) Subject to subsection (3), if a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee, and if there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this subsection and subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to a use other than for the trust’s purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order.

(i) As directed in the trust instrument.

(ii) If the trust was created in a nonresiduary clause in the transferor’s will or in a codicil to the transferor’s will, under the residuary clause in the transferor’s will.

(iii) If no taker is produced by the application of subparagraph (i) or (ii), to the transferor’s heirs under section 2720.

(c) For the purposes of sections 2714 to 2716, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon petition to it by an individual.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate
maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) The court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subdivision (b).

(g) If a trustee is not designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

(h) The trust is not subject to the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

Missouri

Ann. Stat. § 456.4-408, effective 2004

Creation of trust, care of living animals

1. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

[Replacing former § 456.055 which provided,“A trust for care of pet animals or other lawful specific noncharitable purpose, society or organization may be carried out by the intended trustee or a successor trustee for twenty-one years or any shorter period specified by the terms of the trust although it
has no ascertainable human beneficiary or might, by its terms, last longer than the period of the rule against perpetuities.”]

Montana

Code Ann. § 72-2-1017, effective 1993; amended 1995

Honorary trusts – trusts for pets

(1) Subject to subsection (3), a trust may be performed by the trustee for 21 years but no longer, whether or not the terms of the trust contemplate a longer duration if:

(a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee; and

(b) there is no definite or definitely ascertainable beneficiary designated.

(2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust’s purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor’s will or in a codicil to the transferor’s will, under the residuary clause in the transferor’s will; and

(iii) if no taker is produced by the application of subsection (3) (b)(i) or (3)(b)(ii), to the transferor’s heirs under 72-2-721.

(c) For the purposes of 72-2-717, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if
none, by an individual appointed by a court upon application to it by an individual.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (3)(b).

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Nebraska

Rev. Stat. § 30-3834, effective January 1, 2005

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.
Nevada

Stat. § 163.0075, effective October 1, 2001

Validity of trust providing for care of one or more animals

1. A trust created for the care of one or more animals that are alive at the time of the settlor’s death is valid. Such a trust terminates upon the death of all animals covered by the terms of the trust. A settlor’s expression of intent must be liberally construed in favor of the creation of such a trust.

2. Except as otherwise provided in this subsection, property of a trust described in subsection 1 may not be used in a manner inconsistent with its intended use. Except as otherwise directed by the terms of the trust, if a court determines that the value of a trust described in subsection 1 exceeds the amount required to care for the animal beneficiary, the excess amount must be distributed to the person who would have taken the trust property if the trust had terminated on the date of the distribution.

3. The intended use of a trust described in subsection 1 may be enforced by the trustee or, if a trustee was not designated, by a person appointed by the court to act as the trustee. A person having a demonstrated interest in the welfare of the animal beneficiary may petition the court for an order to appoint himself as trustee or to remove the trustee. The court shall give preference for appointment to a person who demonstrates such an interest.

New Hampshire

Rev. Stat. Ann. § 564-B: 4-408, effective October 1, 2004

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the
intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

New Jersey


Trusts for care of domesticated animals

a. A trust for the care of a domesticated animal is valid. The intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument, a person appointed by the court, or a trustee. The trust shall terminate when no living animal is covered by the trust, or at the end of 21 years, whichever occurs earlier.

b. Except as expressly provided otherwise in the trust instrument, no portion of the trust’s principal or income may be converted to the use of the trustee or to any use other than for the benefit of the animal designated in the trust.

c. Upon termination of the trust, the trustee shall transfer the unexpended trust property as directed in the trust instrument. If no directions for such transfer exist, the property shall pass to the estate of the creator of the trust.

d. The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of any reduction shall be transferred as directed in the trust instrument or, if no such directions are contained in the trust instrument, to the estate of the creator of the trust.

e. If no trustee is designated or if no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the creator of the trust and the purpose of this act.

New Mexico

Stat. Ann. § 46A-4-408, effective July 1, 2003

Trust for care of animal

A. A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

B. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.
PETRIARCH

C. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

New York

Est. Powers & Trusts Law § 7-8.1, effective 1996

Honorary trusts for pets

(a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when no living animal is covered by the trust, or at the end of twenty-one years, whichever occurs earlier.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of a covered animal.

(c) Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such directions in the trust instrument, the property shall pass to the estate of the grantor.

(d) A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property pursuant to paragraph (c) of this section.

(e) If no trustee is designated or no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

[renumbered from former § 7-6.1 in 2003]

North Carolina

Gen. Stat. § 36A-147, effective October 1, 1995 to January 1, 2006

Trusts for pets

(a) Subject to the provisions of this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.
Appendix C: State Pet Trust Statutes

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust instrument;
(2) If the trust was created in a preresiduary clause in the transferor’s will or in a codicil to the transferor’s will, under the residuary clause in the transferor’s will;
(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the transferor or the transferor’s heirs determined as of the date of the transferor’s death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by the clerk of superior court having jurisdiction over the decedent’s estate upon application to the clerk by an individual.

(e) Except as ordered by the clerk or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence shall be admissible in determining the transferor’s intent.

(g) The clerk may reduce the amount of the property transferred, if the clerk determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk shall name a trustee. The clerk may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.
N.C. Gen. Stat. § 36C-4-408, effective January 1, 2006

Trust for care of animal

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust instrument;
(2) If the trust was created in a preresiduary clause in the transferor’s will or in a codicil to the transferor’s will, under the residuary clause in the transferor’s will;
(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the transferor or the transferor’s heirs determined as of the date of the transferor’s death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the decedent’s estate upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor
trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

North Dakota

Cent. Code § 59-12-08, effective August 1, 2007

Trust for care of animal

1. A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must.

Ohio

§ 5804.08 Trust for care of animal, effective January 1, 2007

Trust for care of animal

(A) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(B) A person appointed in the terms of a trust or, if no person is so appointed, a person appointed by the court may enforce a trust authorized by this section. A person having an interest in the welfare of an animal that is provided care by a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed.

(C) The property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the
intended use must be distributed to the settlor if then living or to the settlor's successors in interest.

**Oregon**


**Pet trusts**

(1) Any person may establish a pet trust for the care of designated domestic or pet animals. A pet trust may provide for the care of individually named animals or for a class of animals, but any animal provided for under the trust must be living at the time of the trustor's death. Wills and other instruments shall be liberally construed in favor of finding the creation of a pet trust, and there is a presumption against merely precatory or honorary disposition on behalf of domestic and pet animals.

(2) The terms and conditions of a pet trust may be enforced by an individual designated for that purpose in the trust instrument. If the trust instrument does not designate a person to enforce the terms and conditions of the pet trust, the circuit court may appoint a person for that purpose. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

(3) If a trustee is not designated in a pet trust or the person designated to act as trustee is unwilling or unable to serve, the circuit court shall name a trustee. A pet trust may designate one or more persons to serve as successor trustee. The court may order the transfer of the property to a person other than the designated trustee or successor trustee if the transfer is required to ensure that the trustor's intent is carried out. The court may also make such other orders as the court deems necessary to carry out the intent of the trustor and the purposes of this section.

(4) Upon termination of a pet trust, the trustee shall transfer the unexpended trust property in the following order:

(a) As directed by the trust instrument;

(b) If the trust was created in a nonresiduary clause in the trustor's will, under the residuary clause in the trustor's will; or

(c) If paragraphs (a) and (b) of this subsection do not apply, to the persons to whom the estate of the trustor would pass by intestate succession under ORS 112.025 to 112.055.

(5) Except as ordered by a circuit court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee.
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(6) A pet trust terminates as provided by the terms of the trust instrument. If the trust instrument makes no provision for termination of the trust, the trust terminates when no living animal is covered by the trust or when all trust assets are exhausted, whichever occurs first.


Pet trust

(1) A trust may be created to provide for the care of one or more animals that are alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal, upon the death of the last surviving animal. An oral or written declaration shall be liberally construed in favor of finding the creation of a trust under this section. There is a presumption against merely precatory or honorary disposition on behalf of an animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

(3) Property of a trust authorized by this section may be applied only to its intended use. Upon termination of the trust, property of the trust must be distributed to those persons designated in the trust. In the absence of a designation, the property shall be distributed to the settlor if the settlor is living when the distribution is made, or to the settlor's successors in interest if the settlor is not living when the distribution is made.

(4) Except as ordered by a circuit court or required by the trust instrument, a trustee for a trust authorized under this section need not pay any fee or make any filing, report, registration, periodic accounting, separate maintenance of funds or appointment by reason of the existence of the fiduciary relationship of the trustee. A person appointed to enforce the trust may request a report under ORS 130.710 (3).

**Pennsylvania**

**Uniform Trust Act, § 7738, effective November 4, 2006**

Trust for care of animal

(a) Creation and termination.—A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of
more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) Enforcement.—A trust authorized by this section may be enforced by a person appointed in the trust instrument or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Limitation.—Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the trust instrument, property not required for the intended use must be distributed to the settlor if then living, otherwise to the settlor’s successors in interest.

Rhode Island

Statutes § 4-23-1, effective July 19, 2005

Trust for care of animals

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal, or if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime upon the death of the last surviving animal.

(b) Except as provided in this section, the provisions of the general laws which govern the creation and administration of express trusts applies to the trust for the care of an animal.

(c) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove the appointed person. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents.

(d) Property of a trust appointed by this person may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use, including the trust property remaining upon its termination, shall be distributed in the following order of priority:

1. As directed by the terms of the trust;
2. To the settlor, if then living;
(3) Pursuant to the residuary clause of the settlor's will;
(4) To the settlor's heirs in accordance with the Rhode Island general laws on descent and distribution.

(e) A governing instrument shall be liberally construed in order to presume against the merely precatory or honorary nature of the disposition and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

(f) If a trustee is not designated or designated trustee is not willing or able to serve, the probate court shall name a trustee; a court may order the transfer of the property to another trustee, if the court makes a factual finding that it is necessary to assure the intended use is carried out and if a successor trustee is not designated in the trust instrument or if a designated trustee does not agree to serve or is unable to serve.

South Carolina

Code § 67-7-408, effective January 1, 2006

Trust for care of animal

(a) A trust may be created to provide for the care of an animal or animals alive or in gestation during the settlor's lifetime, whether or not alive at the time the trust is created. The trust terminates upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person concerned for the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

South Dakota

Codified Laws §§ 55-1-21 & 55-1-22, effective February 22, 2006

Trust for care of designated animal

Subject to the provisions of § 55-1-22, a trust for the care of a designated animal is valid. The trust terminates when no living animal is covered by the
PETRIARCH

trust. A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

55-1-22. Provisions governing trusts for specific purposes selected by trustee and for care of animals

Any trust provided for by §§ 55-1-20 and 55-1-21 is subject to the following provisions:

(1) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust’s purposes or for the benefit of a covered animal;

(2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:
   (a) As directed in the trust instrument;
   (b) If the trust was created in a nonresiduary clause in the transferor’s will or in a codicil to the transferor’s will, then under the residuary clause in the transferor’s will; and
   (c) If no beneficiary results from the application of subsection (a) or (b) of this subdivision, then to the transferor’s heirs under § 29A-2-711;

(3) For the purposes of § 29A-2-707, the residuary clause is treated as creating a future interest under the terms of a trust;

(4) The intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by that person;

(5) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee;

(6) A court may reasonably reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subdivision (2) of this section;

(7) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry

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out the intent of the transferor and the purpose of §§ 55-1-20 to 55-1-23, inclusive.

**Tennessee**

**Code Ann. § 35-15-408, effective July 1, 2004**

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal. The trust may not be enforced for more than twenty-one (21) years.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.


**Animals**

(a) Any gift or devise under a will or trust having as its object the humane treatment and care of a specific animal or animals designated by the donor and testator shall be valid, even though it creates a perpetuity in such animal or animals, or creates a condition subsequent that must be fulfilled before a person is entitled to the outright receipt of the gift or devise. Such gift or devise shall be considered an honorary trust, that is, one binding the conscience of the trustee, since there is no beneficiary capable of enforcing such a trust.

(b) Such gift or devise shall provide for the appointment of a trustee to carry out the provisions of the trust, but in the event that no trustee or successor trustee is named, the person designated as donee or devisee of such gift or devise, or in the case such person is a minor, then the minor’s court-appointed representative, shall serve as trustee and hold such property in trust for the benefit of such animal or animals.
(c) Any such trust shall terminate and any conditions shall be extinguished on the death of such animal or animals or as provided for by will or trust, but in all events, any such trust shall terminate twenty-one (21) years after the death of the donor or testator.

Texas

Prop. Code § 112.037, effective January 1, 2006

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates on the death of the animal or, if the trust is created to provide for the care of more than one animal alive during the settlor’s lifetime, on the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of an animal that is the subject of a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed to enforce the trust.

(c) Except as provided by Subsections (d) and (e), property of a trust authorized by this section may be applied only to the property’s intended use under the trust.

(d) Property of a trust authorized by this section may be applied to a use other than the property’s intended use under the trust to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.

(e) Except as otherwise provided by the terms of the trust, property not required for the trust’s intended use must be distributed to:

1. if the settlor is living at the time the trust property is distributed, the settlor; or
2. if the settlor is not living at the time the trust property is distributed:
   A. if the settlor has a will, beneficiaries under the settlor’s will; or
   B. in the absence of an effective provision in a will, the settlor’s heirs.

(f) For purposes of Section 112.036, the lives in being used to determine the maximum duration of a trust authorized by this section are:

1. the individual beneficiaries of the trust;
2. the individuals named in the instrument creating the trust; and
(3) if the settlor or settlors are living at the time the trust becomes irrevocable, the settlor or settlors of the trust or, if the settlor or settlors are not living at the time the trust becomes irrevocable, the individuals who would inherit the settlor or settlors’ property under the law of this state had the settlor or settlors died intestate at the time the trust becomes irrevocable.

Utah

Code Ann. § 75-2-1001, effective July 1, 1998; amended 2003

Honorary trusts – trusts for pets

(1) Subject to Subsection (3), if a trust is for a specific lawful noncharitable purpose or for a lawful noncharitable purpose to be selected by the trustee and there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years but no longer whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this subsection (2) and Subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

(3) In addition to the provisions of Subsection (3)(a) or (b), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust’s purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

   (i) as directed in the trust instrument;
   (ii) if the trust was created in a nonresiduary clause in the transferor’s will or in a codicil to the transferor’s will, under the residuary clause in the transferor’s will; and
   (iii) if no taker is produced by the application of Subsection (3)(b)(i) or (ii), to the transferor’s heirs under Section 75-2-711.

(c) For the purposes of Section 75-2-707, the residuary clause is treated as creating a future interest under the terms of a trust.
(d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A court may reduce the amount of the property transferred, if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under Subsection (3)(b).

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

[Although Utah enacted the Uniform Trust Code, Utah did not enact § 408. Instead, Utah retained its prior provision based on Uniform Probate Code § 2-907.]

§ 75-7-408. Trust for care of animal
A trust may be created to provide for the care of a pet or animal as provided in Section 75-2-1001.

Vermont
Vt. Stat. § 14A-408, effective July 1, 2009

Trust for care of animal

A. A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

B. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court. A person having an interest in the welfare of the animal may request the probate court to appoint a person to enforce the trust or to remove a person appointed.

C. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value
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of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

Virginia

Code § 55-544.08, effective July 1, 2006

A. A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal. Funds from the trust may be applied to any outstanding expenses of the trust and for burial or other postdeath expenditures for animal beneficiaries as provided for in the instrument creating the trust.

B. The instrument creating the trust shall be liberally construed to bring the transfer within the scope of trusts governed by this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

C. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

D. Except as ordered by a court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or surety bond shall be required by reason of the existence of the fiduciary relationship of the trustee.

E. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living. If the settlor is deceased, such property shall be distributed pursuant to the residuary clause of the settlor’s will if the trust for the animal was created in a preresiduary clause in the will or pursuant to the residuary provisions of the inter vivos
trust if the trust for the animal was created in a preresiduary clause in the trust instrument; otherwise, such property shall be distributed to the settlor’s successors in interest.

Washington

Rev. Code §§ 11.118.005 - .110, effective 2001

Purpose—Intent

The purpose of this chapter is to recognize and validate certain trusts that are established for the benefit of animals. Under the common law such trusts were unenforceable at law. The legislature intends that such trusts be recognized as valid, and that such trusts be enforceable in accordance with their terms.

§ 11.118.010. Definition

As used in this chapter, “animal” means a nonhuman animal with vertebrae.

§ 11.118.020. Validity of animal trust

A trust for the care of one or more animals is valid. The animals that are to be benefited by the trust may be individually identified, or may be identified in such other manner that they can be readily identified. Unless otherwise provided in the trust instrument or in this chapter, the trust will terminate when no animal that is designated as a beneficiary of the trust remains living.

§ 11.118.030. Use of trust principle or income

Except as expressly provided otherwise in the trust instrument or in RCW 11.118.070 and except as may be necessary to pay the trustee reasonable compensation and to reimburse the trustee for reasonable costs incurred on behalf of the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to any use other than for the trust’s purpose or for the benefit of the designated animal or animals.

§ 11.118.040. Termination of trust

Upon termination of the trust, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the instrument;

(2) If the trust was created in a nonresiduary clause in the trustor’s will or in a codicil to the trustor’s will and the will or codicil does not direct otherwise, under the residuary clause in the trustor’s will, which shall be read as though the testator died on the date the trust terminated; and

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(3) If no taker is produced by the application of subsection (1) or (2) of this section, to the trustor’s heirs under RCW 11.04.015, as it exists at the time of the trust’s termination.

§ 11.118.050. Enforcement of trust provisions
The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust.

§ 11.118.060. Accounting requirements
Except as ordered by the court or required by the trust instrument, no filing, report, registration, or periodic accounting shall be required of the trust or the trustee.

§ 11.118.070. Appointment and removal of trustee
If no trustee is designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the removal of an acting trustee and the transfer of the property to another trustee if it is necessary or appropriate in order to assure that the intended use is carried out. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the trustor and the purpose of this chapter.

§ 11.118.080. Construction of trust language
In construing the language of a trust for an animal, the governing instrument shall be liberally construed to provide the protections of this chapter. It is presumed that language contained in a trust for an animal is not merely precatory or honorary in nature unless it can be shown by clear and cogent evidence that such was the trustor’s intent. Extrinsic evidence is admissible in determining the trustor’s intent.

§ 11.118.090. Application of rule against perpetuities – Effective date of trust
RCW 11.98.130 through 11.98.160 apply to trusts that are subject to this chapter.

§ 11.118.100. Trustee powers
Except as otherwise provided in the trust instrument or in this chapter, all powers and duties conferred on a trustee under Washington law also apply to the trustee of a trust for animals.

§ 11.118.110. Application of chapter
This chapter applies to trusts that are created on or after July 22, 2001, and to trusts that are in existence on July 22, 2001, but that are revocable by the trustor on July 22, 2001. If a trustor is incompetent to exercise a power of
revocation on July 22, 2001, this chapter does not apply to such trust unless the trustor later becomes competent to exercise such power of revocation, in which case this chapter applies to such trust.

**Wisconsin**

**Stat. § 701.11, effective 1969**

Honorary Trusts; cemetery trusts

(1) Except under sub. (2), where the owner of property makes a testamentary transfer in trust for a specific noncharitable purpose, and there is no definite or definitely ascertainable human beneficiary designated, no enforceable trust is created; but the transferee has power to apply the property to the designated purpose, unless the purpose is capricious. If the transferee refuses or neglects to apply the property to the designated purpose within a reasonable time and the transferor has not manifested an intention to make a beneficial gift to the transferee, a resulting trust arises in favor of the transferor’s estate and the court is authorized to order the transferee to retransfer the property.

(2) A trust may be created for maintaining, keeping in repair and preserving any grave, tomb, monument, gravestone or any cemetery. Any cemetery company, association or corporation may receive property in trust for any of those purposes and apply the income from the trust to the purpose stated in the creating instrument.

(3)(a) A trust described in sub. (2) is invalid to the extent it was created for a capricious purpose or the purpose becomes capricious.

(b) If the assets of any trust described in sub. (2) are valued at less than $5,000 and the court finds that the cost of operating the trust will probably defeat the intent of the settlor or if the trustee, including a cemetery company, association or corporation, named in the creating instrument is improperly described, the court may order distribution of the assets on terms which will as nearly as possible carry out the settlor’s intention.

**Wyoming**

**Stat. Ann. § 4-10-409, effective July 1, 2003**

Trust for care of animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if
the trust was created to provide for the care of more than one (1) animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust, trust advisor, trust protector or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

Alternatives to a Will

Three options need to be considered when legally planning the continuing care of an animal: The will, the pet trust, and the pet protection agreement.¹

The pet trust and pet protection agreement may be used alone, and each of the three documents may be used in combination with the others. However, if a pet owner wants to provide for the care and well-being of companion animals, a will by itself is not the answer.

The traditional stand-alone pet trust and the pet protection agreement are almost identical. These two legal documents, valid in all 50 states, fully cover all eventualities and provide unlimited space for instructions regarding the pet’s care and the expenditure of funds.

If, on the date of death, the pet owner is domiciled in the District of Columbia or 1 of the 42 out of 50 states that does authorize a statutory pet trust, then

- a pet guardian is appointed by the court if one was not mentioned in the will by the pet owner.
- the pets and the funds must stay together.
- the pet trust will be honored.

If, on the date of death, the pet owner is domiciled in one of the eight states that does not presently authorize a statutory pet trust, then

- the pets belong to the named pet guardian.
- the pet guardian is not obligated to care for the pets.

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• the funds belong to the pet guardian, without condition or restriction.

The preceding conditions also apply if, on the date of death, the pet owner is domiciled in one of the eight states that does not presently authorize a statutory pet trust but has written a valid will while domiciled in a state that authorizes a statutory pet trust because the will is treated as if it were written in a state without a statutory pet trust. If the pet owner lives or dies in a state that does not have a statute authorizing statutory pet trusts, all is not lost. The traditional stand-alone pet trust and the pet protection agreement are available to provide the security the will cannot provide.
About the Author


Ms. Hirschfeld is an active member of the prestigious National Academy of Elder Law Attorneys (NAELA) where she serves on the Advanced

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Programming and Education committees. Ms. Hirschfeld has served on the Elder Law committee and Trusts and Estates committees of the New York State and the New York City Bar Associations. Ms. Hirschfeld works closely with animal shelters and sanctuaries throughout the U.S. as well as Animal Committees of the American Bar Association, New York City Bar Association and the New York State Bar Association.

- Through her practice, and the devastating illnesses of her beloved shelter-rescue dog, Soupbone—the missing link in her life that ultimately set her on the path of her most important life’s work—she created the Pet Protection Agreement and The Hirschfeld Pet Trust, both of which are legal protection for a pet’s continued care.

- Ms. Hirschfeld’s mission is “to ensure that every pet that has found a loving home is guaranteed a secure future.” She lives with her two shelter-rescue pets—Swizzle and Topper, a rescue dog and cat—and the newest arrival, Tama, a feral cat.

In an ongoing effort to provide for pets during a patient’s stay in the hospital, Ms. Hirschfeld has co-developed a program, and the associated necessary legal forms, which care for patients’ pets. Ms. Hirschfeld is presently spearheading changes in the New York Pet Trust Bill.

An honors graduate of Yeshiva University’s Benjamin N. Cardozo School of Law, Ms. Hirschfeld has interned in U.S. Attorney General Janet Reno’s office in the Department of Justice in Washington, D.C. and for the Honorable William G. Bassler, Justice of the U.S. District Court for the Southern District of New York. In addition to New York State, Ms. Hirschfeld is admitted to argue before the Supreme Court of the United States of America.

Ms. Hirschfeld produced several shows on and off Broadway as well as in England, including On Golden Pond (Tony nomination, James Earl Jones), Blithe Spirit (Tony Award, Angela Lansbury), and Oleanna starring Julia Stiles and Bill Pullman. She is currently a Tony voter, and until recently, a Grammy voter. Ms. Hirschfeld is the first Haute Cuisine chef in America, having graduated first in her class from the Cordon Bleu Culinary Academy in Paris, France, with the highest possible honor, Tres Bien. She remains a member of Les Dames d’Escoffier—women of achievement in the culinary, fine beverage and hospitality professions. Fluent in English, French, Italian and Hebrew, Ms. Hirschfeld represents clients around the globe and can be reached at rachel@petriarch.com and www.petriarch.com.