



The Washington
**ANIMAL
RESCUE
LEAGUE**

Rescue • Rehab • Rehome

Major and Planned Gifts Fact Sheets

Major and Planned Gifts Overview

Beneficiary Designations

Bequests

Charitable Gift Annuities

Charitable Remainder and Lead Trusts

Comparison of Life Income Gifts

Gifts of Closely Held Business Interests

Gifts of Life Insurance

Gifts of Stock and Other Securities

IRA Rollover Gifts

Pets in Estate Plans

Pet Trusts

Real Estate Gifts

Retained Life Estate Gifts

warl.org/PlannedGiving

Pet Trusts

Introduction

Responsible pet owners always want to ensure that the needs of their animal companions are met and, while we may not like to think about a time when we cannot provide proper care for our beloved dogs and cats, responsible pet owners also need to think about providing for pets in their estate plans.

The Washington Animal Rescue League currently offers another fact sheet on providing for pets when you can no longer care for them; it is available online at warl.org/plannedgiving. This supplemental fact sheet on pet trusts is meant to provide additional, more specific information on these legal instruments.

To help their animal friends, human caregivers may now create an enforceable trust for the benefit of animals in most states, including the District of Columbia, Maryland and Virginia—the primary areas served by the Washington Animal Rescue League. Planning wisely and ahead, you can establish a pet trust with provisions that spring into effect during any period of your incapacity or following your death. With these trusts, you make the decision about what provisions to include in the trust and how much money you want to dedicate to the care of your animal.

Inter Vivos Trusts Versus Testamentary Trusts

You may establish either an inter vivos (becomes an entity during your lifetime) pet trust or a testamentary (becomes an entity upon death) pet trust. You are called the "settlor" when you create such a trust.

An inter vivos trust established today includes provisions for the care of your pets upon your incapacity and after your death. There is no delay in its use when needed; the terms are already effective. An inter vivos trust allows you to transfer assets now to fund the trust purposes. Once transferred, the trust assets are no longer available for your use because they are to be used only for trust purposes and will be administered separately from your retained assets during the term of the trust. Income tax returns may be required to be filed for the trust. A funded inter vivos pet trust is favored when you want to ensure care of your animals during any periods of your incapacity while you are alive and the immediate care of your animals upon your death.

A testamentary trust is created only upon your death. Pet trust terms are typically stated in your last will and testament. There may be some interval after death before the trust can be established and funded, but you do not transfer any assets for trust purposes prior to your death.

A testamentary pet trust is appropriate if you are concerned only with the care of your animal companion following your death (and not during any period of incapacity while you are alive) or if you do not presently have sufficient funds to set aside in an inter vivos trust.

Pet Trust Considerations

Pet trusts may be quite extensive and detailed or may be brief, all depending on your wishes and financial situation, as well as your animal's express circumstances. When you create a pet trust you will want to consider the following points:

Whom to name as the caregiver for your pet

The caregiver is the individual responsible for the day-to-day care of your companion animal. Alternate caregivers should be named in the event the original caregiver is unable to serve. Carefully choosing the caregiver is extraordinarily important and should be discussed with the caregiver prior to proceeding. This individual should have a suitable home and personal situation allowing proper lifetime care of your pet.

How you want the trust funds spent and the caregiver's obligations

Statements regarding use of trust funds and obligations of the caregiver should be customized. Most settlors provide general instructions regarding the feeding, grooming, exercising and veterinary care (both regular and emergency) of their pets. Particular directions that take into account your pet's preferences or needs may also be appropriate. For example, Fido may have a specific toy that is a constant companion or may like the television left on when no one is home. Fluffy, meanwhile, may only eat a specific brand of food and may have a favorite type of bed. Finally, guidance for the disposition of the pet's remains should be addressed.

Whom to name as trustee to manage the trust assets

An individual (other than the caregiver) or an institution will be named as trustee. Responsibilities of the trustee include safekeeping, investing and distributing trust assets for the pet's benefit. The trustee also monitors the caregiver's actions, removing and replacing the caregiver in the event of misconduct.

How to specifically identify the animal or animals to be benefited

Your pet should be identified with as much detail as possible, including descriptive markings or scars, and the presence of an identification microchip is helpful. Of course, a testamentary trust could specify the trust is for the benefit of all of the settlor's pets living when the settlor passes away, leaving the pets to be identified at the settlor's death instead of upon trust creation. Photographs may be helpful in identifying pets in such circumstances.

How you will fund the trust

You may transfer cash, securities, bonds, real estate or other property to an inter vivos trust to fund it. The income from your investments will be used for your animals when the time comes, and if it is not enough to accomplish what needs to be done, then the investments will be sold to provide needed cash.

You will plan funding any testamentary pet trust following your death by naming the trustee of the pet trust as beneficiary of life insurance proceeds or as beneficiary of retirement plan benefits, or by making a specific bequest to the trustee of the pet trust in your last will and testament. Note that the funds go to the trustee (in the trustee's capacity as trustee of the trust) to transfer into the trust, meaning that your choice of trustee is critical. Additional assets also may be transferred to an inter vivos pet trust at your death by beneficiary designation or bequest.

How much money to place in trust

Funding the trust with an appropriate amount of assets requires some thoughtful planning. At issue are not only the regular expenses of food and medical care, but also the cost of any additional care, such as boarding the pet if the caregiver is on vacation or ill. You will also decide whether the caregiver will be paid for serving and how much they should be paid. Income tax liability may be assessed against the settlor, trust or the caregiver, depending on the terms of the particular trust instrument. Please note that placing excessive amounts in pet trusts may result in legal challenges by potential heirs; therefore, the amount of funds placed in the trust should be reasonable while also being sufficient to carry out trust purposes.

How to allocate assets when the trust ends

Finally, when your animal passes away, any remaining trust assets will be distributed in the manner you direct in the pet trust document. The remainder beneficiaries may be individuals or charities. You will want to avoid naming the caregiver as the remainder beneficiary of the assets simply because there is a conflict between the caregiver's duty to care for your animal during your animal's lifetime and the caregiver's right to receive funds at your animal's death. An unscrupulous caregiver may be tempted to hasten death to receive money sooner.

Statutory Pet Trusts in D.C., Maryland, and Virginia

The District of Columbia¹, Maryland² and Virginia³ all adopted the Uniform Trust Code provisions addressing Trusts for the Care of an Animal⁴. All three jurisdictions adopted the same provisions with Virginia adding extra provisions. Statutory provisions authorize easy establishment of either an inter vivos or testamentary pet trust. Merely providing that "\$1,000 shall be held in trust for the care of my dog, Daisy" is sufficient to establish a pet trust under D.C., Maryland or Virginia law. Of course, more detailed provisions, like those explained above, may be included and would be desirable. Notice, though, that no caregiver is required to be named and no formal trust document is necessary.

¹ D.C. Code: 19.1-1304-.08

² MD Est. & Trusts: 14-112

³ VA Code: 55-544.08

⁴ Unif. Trust Code: 408

According to statute, a trust must be created for an animal alive during the settlor's lifetime and must terminate upon the death of the animal or the last to die of all the animals if the trust was created for more than one living animal. An authorized trust may be enforced by a person appointed in the terms of a trust, or if no one is appointed, then by a person appointed by the court. Anyone with an interest in the welfare of the animal may request the appointment of a person to enforce the trust or to remove an appointed person. Finally, trust property may only be applied 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 a trust, trust property not required for the intended use must be returned to the settlor or the settlor's successors.⁵

Virginia law provides that trust funds may be applied to any outstanding expenses of the trust and for burial or other post-death expenditures for animal beneficiaries as provided for in the instrument creating the trust⁶. Further, the general intent of the settlor is important and the trust instrument will be liberally construed to carry out that intention⁷. Also, in Virginia, the person appointed by the court to enforce the trust has the rights of a trust beneficiary, for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee, as well as providing consents; this person may receive reasonable compensation⁸. In the absence of a court order or trust instrument requirements, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or surety bond are required⁹.

What Kind of Trust Do You Need?

If you earmark a moderate or significant amount of funds for a pet trust, then a traditional inter vivos trust drafted by an experienced attorney and funded today is appropriate. The terms of the trust are clearly set out and funds are immediately available in the event of your incapacity or death.

If a relatively small sum is involved and there are no unusual concerns present for the care of your animal, then a simple testamentary statutory trust created under your last will and testament can be appropriate. This approach will avoid the cost during your lifetime for the preparation of a separate trust instrument and your loss of the use of some of your assets that would otherwise be transferred to an inter vivos trust during your lifetime.

The League thanks Northern Virginia attorney Patience Alexander for her generosity in preparing this fact sheet. Additional, general questions can be directed to the League's Development Office at 202-375-7756 or development@warl.org. The League cannot provide legal or other advice. For more information, please contact your legal or financial advisor, or Ms. Alexander at:

*Patience Ann Alexander, JD, MBA, LLM (Tax)
P.O. Box 320067 / Alexandria, VA 22320
palexander@paa-law.com / (703) 549-5203*

⁵ Virginia law provides that if the settlor is deceased, property shall be distributed pursuant to the residuary clause in the last will and testament or pursuant to the residuary provisions of the inter vivos trust if the trust for the animal was created in a pre-residuary clause in the trust instrument; otherwise, such property shall be distributed to the settlor's successors in interest. Va. Code: 55-544.08.E.

⁶ Va. Code: 55-544.08.A.

⁷ Va. Code: 55-544.08.B.

⁸ Va. Code: 55-544.08.C.

⁹ Va. Code: 55-544.08.D.