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Estate Planning For Your Four-Legged Family

By Nik Schuttauf

Is your pet a beloved member of the family? That's certainly the case with my wife and me. We have a dog named Rascal, a 20-pound terrier mix we adopted a couple of years ago. We call him our "fur child" and say he's the four-legged older brother to his little sister, our daughter. He's spoiled rotten, as any good dog should be. He's got his own Christmas stocking, has more toys than most children and we even had a painting of him done!

Rascal was a rescue. His litter was left in a box on the side of a road in Texas, and we're lucky the puppies were found, placed into a foster home and put up for adoption. Perhaps because of his tough start in life, Rascal has always been shy, nervous and had separation anxiety.

If anything were to unexpectedly happen to my wife and me, Rascal would only do well in the home of certain close family members he knows and is comfortable with. We shudder at the thought of him being placed back into foster care or a kennel.

While my wife and I certainly don't like to think about the possibility of such an unfortunate turn of events, it was important to consider because we both decided to add a Pet Trust to our Revocable Trust to make sure Rascal would be taken care of if anything ever happened to us.

If you love a pet like we love Rascal and think a Pet Trust may be right for you, then you've come to the right place. This article will explain what a Pet Trust is, and how you can use a Pet Trust to make sure your four-legged family is provided for just like your two-legged loved ones!

What is a Pet Trust?

A Pet Trust is a written arrangement that allows people to specify how their pet will be cared for if their pet outlives them. A Pet Trust is usually inserted as a section in a person's Revocable Trust (a/k/a a Living Trust or an Estate Planning Trust), but it can also be inserted into a Will.

All 50 states and the District of Columbia have laws allowing for Pet Trusts. Here's how Pet Trusts work in Massachusetts:

Pet Trust Basics:

The Trust involves several people:

- The Donor – the person who owns the pet and is creating the Pet Trust. You would be the Donor if you are creating the Pet Trust.
- The Trustee – the person who will be responsible for making sure the terms of the Pet Trust are enforced and the pet is cared for properly. You pick the Trustee (who is often also the Trustee of your Revocable Trust as well).
- The Caretaker – the person who is responsible for caring for the pet. The Caretaker can be the same person as the Trustee. You pick the Caretaker and can name backup Caretakers too.

Pet Trust Terms:

- The Pet Trust will identify the pet or pets who will be the beneficiary of the Trust. There is no limit on how many pets can be the beneficiaries of the Pet Trust!
- The Donor will set aside funds to be used for the care of the pet (typically a lump sum of cash for reasons we'll talk about later).
- The Trust states that the Trustee will provide the Caretaker with the funds to ensure the pet receives "proper care." As Donor, you have the freedom to define "proper care" as you see fit based on how you treat (or spoil) your pets.
- The Trustee makes sure the pet receives proper care and can pay the pet's expenses (food, vet bills, toys) directly or periodically distribute funds to the Caretaker.
- When the pet passes, the Pet Trust can specify what happens with any unused money. It can go to family members or charities (including charities for animals!).

Considerations:

While the basic mechanics are simple, there are certain issues you should think through when creating a Pet Trust.

- The pets must be properly identified. A super-generic description such as "all my cats" would likely not be sufficient to clearly identify the pets who are the beneficiaries of the Trust.
- When drafted properly, the Pet Trust can apply to pets you have now and any pets you have in the future, so you don't have to change the Trust every time you get a new pet.

- You should look at the annual expense of caring for your pet to make sure you set aside sufficient assets to fund the trust.
- The asset used to fund the trust should almost always be cash. If you use an asset that generates income, the Trust may be required to file annual trust income tax returns, which would add an unnecessary layer of difficulty and expense to carrying out the Trust.
- The Trustee should set up a Trust account with a bank or financial institution, periodically check on the care the pet is receiving and maintain good recording keeping.
- If you ever were incapacitated, you can also add provisions to your Durable Power of Attorney giving your attorney the authority to care for your pet while you are unable to do so.

An estate planning attorney can help make sure the Pet Trust is drafted properly, funded with the right type and amount of assets and advise the Trustee on carrying out his/her duties.

Nik Schuttauf is an associate attorney in the Estate Planning department at Schlossberg, LLC. He is admitted to practice in Massachusetts and Rhode Island. If you would like to learn more about Pet Trusts or are interested in adding a Pet Trust to your estate plan, please call Nik at (781) 848-5028, or e-mail him at nschuttauf@sabusinesslaw.com. For more information on the estate planning and other legal services provided at Schlossberg, LLC, please visit www.sabusinesslaw.com.