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Illinois Pet Trust Act
2015 Winter Series – Elder Law

INTRODUCTION

The Illinois Pet Trust Act can be found at 760 ILCS 5/15.2; it is part of the Trust and Trustee's Act. The Illinois Pet Trust Act codifies the use of a trust to care for one or more pets after the death of the owner.

Prior to 2005, the law in Illinois only recognized companion animals as "property" but did not recognize trusts established for the benefit of animals. Prior to 1990, few states recognized pet trusts. Since then, and since the widely publicized Leona Helmsley case, many states have passed acts which codify the use of trusts specifically aimed at providing care for a pet after the death of the owner. Currently, the only states which have not passed laws regulating pet trusts are Louisiana, Minnesota and Mississippi.

STATUTE

Let's look at the Act, section by section:

A. Section (a).

1. Can be set up for one or more *designated* pets (emphasis added). Trust must terminate when there is no living animal covered by the trust. The governing instrument is to be liberally construed to bring the transfer within the section and carry out the general wishes of the transferor. Extrinsic evidence is admissible to determine transferor's intent.

B. Section (b). An Illinois Pet Trust is subject to the following provisions:

1. Unless specifically provided otherwise, no portion of the principal or income of the trust can be used other than for the benefit of the covered animal(s).

2. Upon termination, the trustee shall distribute unused trust property:
 - i. First, as directed in the trust instrument
 - ii. Second, if no such direction in the trust 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.
 - iii. Lastly, if no taker is produced by the first two methods, then to the transferor's heirs determined under the Probate Act.
3. The transferor can name someone to enforce the intended use of the principal and income, or if none, by an individual appointed by a court, upon petition by an individual.
4. Unless ordered by the court or 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 parties.
5. The court can reduce the amount of property transferred to an animal trust if it determines that the amount substantially exceeds the amount required for the intended use. Any reduction shall pass pursuant to section (b)(2) (discussed above).
6. If there is no trustee named or no trustee is willing and able to serve, the court can name a trustee. The court can order the transfer of property to another trustee if necessary to ensure the intended use is carried out when there is no successor trustee named or none that is able and willing to act. The court may make other orders and determinations as are advisable to carry out the intentions of the transferor and the purpose of the Illinois Pet Trust Act.
7. The trust is exempt from the rule against perpetuities.

DISCUSS WITH CLIENT

Once you have a basic understanding of the Illinois Pet Trust Act, you have the basic information needed in order to be knowledgeable to speak with a client regarding their wishes. Here is some of the information you will want to obtain from a client considering creating a pet trust:

1. Estate plan documents already in place, if any.
2. Identity of trustee and successor trustee(s). Can be one or more individuals, an animal welfare organization, veterinary school, etc... [Be careful; are they in fact willing to act?]
3. Identity of caregiver and successor caregiver. Encourage your client to discuss their wishes with these individuals to ensure they are willing to take on the responsibility. The caregiver may, and probably should, be different than trustee to ensure checks and balances.
4. The enforcer. Think about the beneficiary of these trusts...the animal doesn't have voice or the ability to seek relief. Consider trust protector language (discussed more below).
5. Detailed information regarding each pet to be included in the trust. Information about the name, age, gender, breed and identifying factors are helpful. Consider whether to include language about after acquired pets.
6. Instructions regarding the expected standard of living for the pet. Make the client do some homework. If they are a dedicated pet owner and willing to pay an attorney to create a trust for their pet, they will most likely want to dictate how the pet is cared for after the owner's death. Think about feeding, living arrangements, exercise requirements, toys, spay/neuter, breeding. Also think about what veterinarian should be used and a successor for him/her. Consider under what circumstances the animal can be sold or given away.

7. Description of the property that will fund the trust. There are many options to fund the trust; it could be a provision in will, life insurance, direct transfer to trust while client is alive, POD accounts, or any other legal method to fund the trust. It is crucial to be thoughtful about how much to put in the trust. Too much money could mean it is subject to court scrutiny and possible reduction (including a significant amount of funds being used toward legal expenses). Underfunding the trust could cause hardship on the trustee and caregiver. Ask your client to prepare a budget for the anticipated lifespan of the animal(s) to consider when determining the amount to be used to fund the trust.

8. Names and ages of any beneficiaries who might receive the residue of the trust. Consider whether the residual beneficiaries might be minors or disabled and any sorts of restrictions that may be necessary when the trust terminates and distributes the remaining fund, if any, just like in any other trust that doesn't involve pets.

9. Animal inspection provisions. Consider requirements for inspections by the trustee (if not also the caregiver) or the "enforcer." An option could require the caregiver to provide veterinarian inspection reports to the trustee on request or on a regular basis.

10. Death of pet and disposal of remains. Get instructions from the client regarding euthanasia and how the remains of the pet are to be disposed of.

DRAFTING

Now it is time to start drafting. A sample pet trust can be found at 10 Ill. Forms Legal & Bus., Section 34:62.50. Also see form attached.

TRUST PROTECTOR

Under Section 16.3 of the Illinois Trust and Trustees Act, 760 ILCS 5/16.3, a grantor of a trust can name a trust protector with wide ranging powers including the power to amend or modify the trust to achieve favorable tax status or the power to transfer the trust to a jurisdiction where all the beneficiaries reside. The trust protector can also remove and/or appoint a new trustee of the trust. The trust protector can also terminate the trust.

ALTERNATIVES TO PET TRUST

There are a few organizations who offer estate planning options such as lifetime care for a pet.

- The Stevenson Companion Animal Life-Care Center, established by Texas A&M, offers a place for pets to live in addition to veterinary care. It currently houses 20 cats, 15 dogs and a llama. The fee for lifetime care is between \$50,000-\$100,000 per pet, with any leftover funds donated to the center.
- The Blue Bell Foundation for Cats in Laguna Beach, CA, charges \$6,500 for lifetime care of a cat.
- Veterinarians often offer lifetime care for an animal, but often owners don't like the idea of the animals living in a kennel/shelter environment.
- More and more life care facilities for animals are being created.

If the client has a trusted friend or family member, they can give them the pet and a certain amount of money outright in their will, but they should proceed with caution. Under that circumstance, there are no checks and balances to ensure that the animal is cared for.



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*Special thanks for Melissa Anne Maye, Esq., of the Law Office of Melissa Anne May, for permission to utilize the information found in her article entitled "Pet Trust Basics," Volume 1, No. 2 of the Newsletter of the ISBA's Animal Law Section.