



Human Estate Planning for NonHuman Animals

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What If?

...What if 2/3rds of your clients came with a special needs child in their immediate family unit? Do you think your practice skills and offerings would or should change?



Starting Perspective

- The majority of your clients will have some “pet” as a part of their household.
- Many of these clients consider the pet as a “companion” or family member.
- Thus, best practice is not ignoring nonhuman animals in estate planning and should be considered fundamental planning.

Time is of the Essence for Living-Beings

Time is of the essence in the administration of and care for “living-being” property – animals.

Being **dependent** is one inherent element of being a “domestic” companion animal.

Offering Client Options

- The reason most people do not do specific planning (tax, charitable, or “pet”) is that they are not presented with the application and options.
- Your estate planning questionnaire should in some way should cover pets
“Do you have animals/pets that you consider as family? No __ Yes __ and give details.”

Special Needs/Assets & Honorary/Purpose Trust & Directed Trust

- Pet Trusts are merely a form of “special needs trusts” (SNTs) or special assets trusts (business, QSST/ESBT, QPRT, etc.).
 - Estate planning for nonhuman animals is thus “special needs” planning for a family member with incapacity.
- Pet Trusts are a form of “honorary” or “purpose” trusts, with a blend of structured “directed trusts” (various directing parties).

Honorary/Purpose Trust

- Pet Trusts are a trust without a legal recognized beneficiary – a “pet” only being property.
- Therefore, a pet trust needs statutory authorization as a form of honorary or purpose trust.

Animal/Pet Trusts

“Animal/Pet Trusts” are authorized by statute in all 50 states and the District of Columbia.

Animal/Pet Trusts

- 13 states limit animal trusts only to **domestic/pet animals**:
 - Alaska, Arizona, California, Colorado, Hawaii, Illinois, Michigan, Montana, New Jersey, New York, North Carolina, Oklahoma, and Utah.
- The other states (and District of Columbia) do not limit “animals” to “domestic or pet animals.”

Animal/Pet Trusts

- The **Uniform Probate Code** Section 2-907(b) provides, in part, “... 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. ***”
- The **Uniform Trust Code** Section 408(a) provides, “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.”

Animal/Pet Trusts

- **Washington** state defines animal to mean one with vertebrae.
- **Iowa**'s enabling statute's caption is "trusts for pets," however the statutory text does not expressly limit "animal" to domestic or pet.
- **Idaho** does not have a specific animal trust, however a general "purpose trust" is recognized.

Animal/Pet Trusts

Because the majority of states recognize trusts for “animals”, perhaps the best general term is

ANIMAL TRUST

Honorary / Purpose / Animal Trusts

- Some advocates want to use animal trusts as a sword for the benefit of animals – assuming a grant of “**rights**.” In contrast to the “rights” concept, the animal trust is better thought as a “**welfare**” trust.
- An honorary (animal) trust is nothing more than a **non-charity trust**. Does a not-for-profit have special standing for the protection of animals in general? No.

Honorary / Purpose / Animal Trusts

Potential Counter-Claim to using an Animal Trust as a 'Sword'

No designated or covered animal means the trust can be terminated or there is an excess trust corpus that can be forfeited to the remainder beneficiaries.

Honorary / Purpose / Animal Trusts

Other Issues with Animal Trusts

- Inherent term limits: Rule Against Perpetuities and covered animals.
- Not Tax Exempt: The 2023 trust federal income tax rate is 37% when trust taxable income exceeds \$14,450. State income taxes may also apply.
- No charitable deduction for contributions – income, gift or estate.
- Probably better off as a tax-exempt not-for-profit organization.

Animal Concern is Everywhere in Law

- In Illinois, animals are also recognized by enabling statutes for **court considered resolution of “family matters”**:
 - Marriage dissolution petition (750 ILCS 5/42)
 - Temporary relief – such as protective orders that can include animal well-being (750 ILCS 5/501)
 - Settlement agreements (750 ILCS 5/502), and
 - Disposition of property and debts (750 ILCS 5/503)

Pet Trusts & Animal Concern is Everywhere in Law (Cont.)

- There are many other laws, varying by state, that affect animal interests.
- Illinois, for example has many has: Animal Welfare Act, Humane Care for Animals Act, Animal Control Act, Feeding Garbage to Animals, Brand Act, Dead Animal Disposal Act, Domestic Animals Running-at-Large Act, Horse Meat Act, and numerous other animal health statutes.

At-Law, Animals as Tangible Personal Property

- Something overlooked by most attorneys is that nonhuman animals (including domestic companion animals) are at-law **tangible personal property**.
- Thus, when the typical attorney prepares and facilitates a **general assignment of tangible personal property to a revocable living trust**, they are actually transferring the legal ownership of any nonhuman animal “owned” by the trust settlor. Is this a surprise ... to the attorney, the client, a trustee of the trust, i.e., ABC Bank & Trust Company?

Threshold Questions

- **Should there be a separate, standalone power of attorney** just for the animals with a named agent best suited for animal care?
 - The general property agent might be a counterproductive person.
- Should the Pet Trust be **“IN”** or **“FOR”**?
 - Is the animal corpus IN the trust?
 - Is the trust FOR the animal who is outside of the trust?
- Should the Pet Trust:
 - Be a part of the **regular** revocable living trust?
 - A **standalone** trust?
 - **Funded** with the animal “now” (**living**) or upon the death of the owner (**testamentary**)?

Threshold Questions (Cont.)

- What **dollar amount** should fund the trust fbo the animal(s)?
- Who should be the involved **fiduciaries** (trustee and directing parties)?
 - Trustee.
 - Caretaker.
 - Enforcer.
 - Trust Protector.

Standards of Care are Important

- Clearly articulating the standards of care for the animal-beneficiaries is important in order to **create justification** for the **funding amount** and **control expectations** for the animal and from remainder beneficiaries.
- Remember: The court has jurisdiction to reduce the funding amount if deemed excessive and remainder beneficiaries are inherently incentivized to view Pet Trust funding as excessive.
- Material Purpose: Standards of care assist in articulating the material purpose of the trust.

Leona Helmsley Estate

- Leona Helmsley's estate put into trust \$12 million for her 9-year-old Maltese named *Trouble*.
- The New York court reduced that to a more reasonable \$2 million.

Articulate Dollar Limits

- There needs to be a testamentary limit on funding an Animal Trust:
 - **Safeguard** any marital or charitable **deductions**.
 - Reduce frustration, anxiety, or inherent conflicts with remainder beneficiaries.

Identification of the Animal Beneficiary

Clearly identifying the animal-beneficiary can be important so that a Caretaker cannot easily substitute an animal-beneficiary.

Nonhuman Animal Life and Needs

Care of animals (i.e., check-ups by veterinarians, dental care, need for grooming, etc.) are different than for humans. Consider the lifespan of an animal (i.e., “dog years”).

Recommended Approach

- Have “boilerplate” animal care provisions in each of financial power of attorney, trust, and will.
- Consider having a standalone power of attorney just for the custody and care of the animal(s).
- Does this get entangled in the funding mechanisms (i.e., does the general assignment of tangible personal property specifically exclude animals)?

Recommended Approach (Cont.)

Each boilerplate animal care provision can have elements for:

- Care, maintenance, support, and general well-being.
- Acquisition of insurances.
- Adoption out or disposition to a quality shelter.
- Euthanasia.
- Establishment of an “Animal Trust.”

Recommended Approach (Cont.)

When there is the heightened desire for a **specific “Animal/Pet Trust,”** then have an Animal Trust article **embedded into the revocable living trust** that creates the “comprehensive” Animal Trust.

Provided Resources

- **Discussion Paper with Exhibits.**
- **Sample Boilerplate Provisions for Power of Attorney, Trust, and Will.**
- **Drafting Checklist for Comprehensive Animal Trust.**
- **Sample Comprehensive Animal Trust.**
- **All states (& District of Columbia) comparison of animal trust laws.**
- Found at - <https://theBrooksInstitute.org/brooks-papers>

What If...?

- IF two-thirds of your clients came with a special-needs child in their immediate family unit, do you think your practice skills and offerings would or should change?
- Expand your perspective and definition of “family” member and offer planning for the inter-species family members!



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Detailed resources available at - <https://theBrooksInstitute.org/brooks-papers>