Estate Planning for Non-Human Animals by Human Animals

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The majority of households have nonhuman animals as members (domestic companion animals or “pets”). In human law, nonhuman animals are considered tangible personal property. But they are living beings, with personalities, relationships with their family members, and capable of thinking, flourishing, and suffering. This paper will equip the estate planning lawyer with the legal tools and appreciation for animal-related issues in drafting estate plans that incorporate (not ignore) nonhuman animal family members.

Estates that have interests in other non-human living creatures (such as farmed animals, animals for sale as inventory, or laboratory animals) may also need special consideration in estate planning – similar to any other kind of special asset. This paper focuses on domestic companion animals that are deemed members of human families.

While this paper has a citation focus to Illinois law, the principles are applicable across the United States.

“Animals” are generally defined as being living organisms that feed on organic matter; any of a vast kingdom of living things. Illinois statute, 510 ILCS 5/2.02 (the Animal Control Act), defines “animal” to mean “every living creature, other than [hu]man. ***” For estate planning purposes, covered or designated animals might be defined as “any non-human animal, and its offspring [alternative: and the offspring of a female], intentionally acquired and owned or intentionally permanently possessed by me [the human owner].” This might be more specifically limited to a specific animal and the potential of its offspring.

Perhaps the best way to grasp the planning and its opportunities for animals is to view this as special needs planning as if there is a child with disability or legal incapacity. Ignoring such special planning requirements creates problems, sooner or later. This is true for the non-human family members in need for immediate and longer-term proper care. How do the fiduciaries (agent under a power of attorney, trustee or executor) timely and effectively carry out their duties to all ‘property’ interests – inclusive of ‘owned’ animals? Consider: When there is a general assignment of tangible personal property to a trust, it’s probable that technically the ownership of the animal has just been transferred to the trustee. Which fiduciary is empowered to do what for whom?

I will now explore the Why, Who, and How of estate planning for the non-human animal that is a member of a human home.

I – Why?

Opportunity of Significance. There is a significant opportunity to better service your clients and expand paid services to your clients by providing animal specific estate planning. There are about 400 million “pets” in about 85 million (67% of) U.S. households and many are considered family members. These include: cats, dogs, fish, birds, reptiles, horses, and other non-
human animals. Of pet owning households, about 48% possess dogs and about 38% possess cats. Specific planning for animals is simply a potentially dynamic opportunity and many humans will be motivated to pay for enhanced planning for their non-human family members.

Further, many Americans have a strong emotional bond with their pets and regard them as family members. It is important for all attorneys to be aware of the importance that domestic and pet animals (especially companion animals) have in their clients’ lives. The growing significance of animals in the family is reflected in trends such as an increase in custody disputes over beloved pets and a growing awareness of the ways that animals become entangled in the web of domestic violence, where they may be abused as the most vulnerable member of the household or used to control a spouse into not leaving an abusive situation for fear of the animal’s safety. For this reason, many states’ dissolution of marriage laws (including Illinois) expressly grant the court jurisdiction over domestic companion animals and even some states now have laws allowing domestic violence protective orders to include pets.

More people are making, and many more should make, estate planning provisions for their animals to ensure that they will be properly cared for in the event of the owner’s incapacity or death. It is important for attorneys to be prepared to help their clients include domestic and pet animals specifically in their estate planning, so they can have peace of mind knowing that should they become incapacitated or predecease a beloved animal that animal will be properly cared for.

**PRACTICE TIP:** Include in your estate planning questionnaire something similar to: “Companion Animals and Pets: Do you own any animals? If yes, are they important enough to specifically provide for their handling and continued proper care? If yes, please provide some information on your animals and your initial thoughts for their handling and continued proper care.”

**Duties Recognition.** Animals are a legitimate estate interest that need to be adequately addressed. It is prudent to raise the property handling of animal interests to that of a “specific bequest.” Specific bequests are given priority over general bequests and also over the remainder estate interests. Such express priority distinction and fiduciary discretion should reduce conflict by other beneficiaries and better address costs (administration, lawyer, veterinarian, placement, adoption, life care funding, etc.) associated with proper handling animal interests.

Time is of the essence for proper care of animals and this requires proper administration enablement. Animals (although living beings) are considered property interests under the law and are in need of preservation, protection, custody or management, and conveyance. Animals have the unique nature of a living being, whether considered a sentient being or (non-human) person or family member. Domestic companion animals have been bred to be dependent on their humans and the dependency on humans for basic health and life also extends to other animals in confinement. There are moral or ethical responsibilities in the sense that merely having intrinsic value (separate from the value the animal brings to the human) and animals’ capacity for suffering calls for care considerations.

In short, animals as living beings inherently have attached to them emotional and potentially economic interests. Emotional attachments to the household animals may create emotional dynamics. Animals are perishable estate interests. Lawyers should consider their legal, ethical, moral, and humane duties towards animals’ interests.
**Relationship.** There are real and legitimate human and non-human bonds. There is a sense of family unit, such as how children have bonded with the domestic companion animal. The value of the animal is not monetary but found in its ability to provide companionship and create emotional connections. There is no Blue Book or market value that will satisfy your client on the value of his or her non-human family member.

There also are animal (non-human) to animal bonds: socialization; family or community of animals. These should be considered and respected.

**Sentience of Non-Human Animals — Sentient Living Beings.** Broadly, sentience (including cognitive elements) is the recognition of self-determination (agency), intelligence, cognition, ability to think and learn, powers of deliberation, having a conscious mind, awareness, perception, feeling, and to experience other sensations; the capacity for love, devotion, empathy, pleasure, pain, fear, stress, and suffering; the formation of social and relationship attachments; and possessing distinct personalities.

At the least, animals are not merely things nor mere property. Animals are beings with various capacities of awareness, emotional and intellectual cognition, physical capabilities, and relationship development (both with their own and other species). Many people perceive a personhood or quasi-personhood of non-human animals. They have faces, personalities, intelligence, language, socialization, and the ability to suffer. Many people recognize the unique personality, life, and value in their animal and often view him or her as a unique (non-human) person. Regardless of particular animals’ own capabilities, humans are able to develop strong bonds with a broad range of them and likely will want to ensure their animals’ continued well-being.

Animals will also have the potential of traumatic transition upon the loss of their human family member. This is particularly poignant when the animals are often confined for the human’s sense of the animals’ protection and transportation. Upon the death or incapacity of their human, an animal may feel abandonment or even punishment. Think of it this way – humans punish humans in various ways. Confinement (prison or “go to your room”), control or discomfort (grabbing and possibly even spanking) are common human punishments. These punishments may be effective corrections for or endurable by humans due to the understanding between cause (choice) and effect (consequence). However, animals’ suffering by human hands may be compounded by the inability to understand any cause and effect (for which it is likely to be zero relation). So, the loss of the animal’s human plus the probable confinement and dramatic change of circumstances (including routine or standard of care) can be traumatic for animals and become a form of their suffering. When deprived of their physiological, cognitive, and social needs, animals also suffer like humans, whether from pain or mental disorders such as posttraumatic stress and depression. So, providing the most effective, efficient, and caring animal transition is laudable.

There are global issues: welfare, ethics, and a human moral responsibility and stewardship toward non-human animals.

**Laws.** There are various types of laws that effect opportunities and responsibilities for properly dealing with animal interests:
(1) In the context of estate planning:
   a. Breach of fiduciary duty with respect to estate interests. Further, consider estate planners’ responsibilities to adequately cover estate issues, that include the massive number of pets in U.S. households.
   b. “Pet” trusts – each state has some form of such laws. For Illinois, see 760 ILCS 3/408.

(2) Marriage dissolution law specifically recognizes the importance of domestic companion animals in the family relationships and consideration of such companion animals’ well-being. For Illinois, see 750 ILCS 5/452; 5/501; 5/502; 5/503. Companion animal matters (other than service animals) may be addressed by the court via petition, temporary relief, agreement, and as disposition of property.
   “Well-being” is generally defined as a state of comfort, healthy, and happy; includes well-being states of: physical, economic, social, development and activity, emotional, psychological, and life. In the context of animals, well-being may include: psychological needs of a particular animal or breed of animal; social interaction and stable relationships for the animal; safe, stable and secure environment; other financial or non-financial considerations – that might even require an expert’s advice or opinion (such as a veterinarian or trainer).

(3) Animal welfare, protection, and anti-cruelty laws – civil and criminal.

II – Who?

There may be a broader range of animals to be considered – both domestic and pet animals. The coverage under the Illinois “Domestic Animal or Pet Trust” statute (760 ILCS 3/408) is broader than only “domestic companion” animals. The Illinois Domestic Animal or Pet Trust statute by implication excludes animals owned for commercial purposes (farmed or agriculture animals or perhaps “road-side zoo” animals). Captive wildlife very well may be considered a “pet” by an owner (although it very well may be illegal and that can further complicate an estate administration). Yet animals owned for commercial purposes (farmed animals, for example) are estate interests requiring time-is-of-the-essence consideration due to them being perishable and their capacity for suffering.

These animals may have varying degrees of sentience and ranges of self-determination (agency). These animals may be warm blooded or cold blooded – mammals, birds, aquatics, reptiles, and insects (such as, ant farms and spiders). For estate planning purposes, covered or designated animals might be defined as “any non-human animal, and its offspring [alternative: and the offspring of a female], intentionally acquired and owned or intentionally permanently possessed by me [the human owner].” This might be more specifically limited to a particular animal and the potential of her offspring.

III – How?

Variety. The “pet” industry generates about $72 billion in consumer spending each year. The costs and opportunities of care, welfare, and well-being are diverse, expanding, and now go far beyond just food, veterinary care, and toys. There are many ways of providing for the animal that the owner may want to facilitate – unique to the “family” circumstances and goals. Just as the client considers providing for his or her human family in a variety of ways based on worldview, relationship, needs, desires, and resources, the human will view the provision and transition of his or her non-human family member in a variety of ways.
Before Getting Legal. Before we get to legal concepts, the animal owner might consider: (1) carrying an animal card to apprise emergency personnel that the patient has an animal at home that needs caretaking; (2) post a door or window sign/sticker that indicates there is a non-human person present in the residence should circumstances warrant awareness; and (3) preparing an animal document that gives appropriate information about the animal (name, breed, preferences, medical, etc.) and have this placed for finding. See samples in Exhibit H. These are also available from the Humane Society of the United States and the American Society for the Prevention of Cruelty to Animals.

Administration Empowerment. It is fundamental to provide for the animal’s immediate care and protection via power of attorney, trust, assignment of animal property into the trust, and Will. There can be empowered and collaborative parties (co-fiduciaries, caretaker, advisor, directing parties under a trust [such as a protector]). Upon the death or incapacity of the animal owner, an appropriate person must have prompt access to, possession of, decision-making power, and ability to commit financial resources for animal well-being care. Then, the empowered person facilitates the transition of the animal in accordance with the animal estate plan.

Most Common Problem. The most common problem with respect to estate planning for family animals is that there is no such planning. This is further complicated in that estate plans (that do not cover animals) still technically affect them. Since technically animals are considered tangible personal property, general assignments of tangible personal property to trust place the animals in a trust that likely does not have an expressed provision for this special class of ‘living asset’ nor allows a power of attorney (that might have an animal provision) from reaching into the trust to effect animal care. Here, the general truism applies also to animals in estate planning, “A failure to plan, is a plan to fail.”

Summary of Animal Estate Planning Approaches. The author believes the following represents animal estate planning that ranks for ‘something’ to okay to better to best:

4- Known understanding of the family member, friend or other person to succeed ownership of the subject animal with acquiescence for other parties in (dis)interest. Ideally, this should take the form of a written declaration of gift of the animal. If the gift is done by Will, there is the issue of the Will being admitted to probate before having legal effect. If the gift is done by a form of testamentary assignment, there is the issue of having a testamentary devise inconsistent with the formalities of a Will. If the gift is done through a trust, there is the issue of where ‘title’ to the animal lies and circumstances then surrounding the custody and care of the animal.

3- Use of the ‘pet trust’ is the obvious tool of anyone who knows about animal planning techniques. Too often this is merely creation of a testamentary pet trust. In which only finances are eventually located. This leaves open all the transitional holes of animal custody and care.

2- Expressed coverage for family animals in the power of attorney, trust, and Will. This probably includes interim care instructions (the ‘who’) and outright disposition. This might also include a testamentary “Pet Trust.” Here, consideration of the effect of any assignment of tangible person property should be considered (what’s its effect on animals as tangible personal property)?

1- A living “Pet Trust” that current covers family animals and transitions during the owner’s incapacity and death. This is the approach recommended by the author. See Exhibit E. Here, there is a supplemental article within a living trust that automates the handling of any
animals. The ancillary documents of assignments (general or specific to animals),
financial/property power of attorney, Will, and the master portions of the living trust also
inherently ‘push’ animals to the Pet Trust while the Pet Trust ‘pulls’ animal interests into it.
During the animal owner’s lifetime, the living trust through its ‘sub’ pet trust handles the custody
and care of the animal and the trust settlor of the master trust and the pet trust fulfill all the
fiduciary roles. During the capacity of the settlor (and trustee of both the master living trust and
the pet trust), the settlor merely provides for the care of the subject animal. During the incapacity
of the settlor the trustee of the master trust and the trustee of the pet trust (if different) coordinate
funding for financial resources of the subject animals. Upon the settlor’s death, the pet trust is
funded with a testamentary amount and the pet trust then runs independently in accordance with
its provisions.

Think of Pet Trusts and related-integration provisions similar to specialized technique
planning for special needs, Medicare, business interests, S corporation stock (QSST/ESBT),
QPRTS, and ‘gun trusts.’

Since pet trusts (‘purpose trust’ without a human current beneficiary) are creations of
statute, make sure you read the applicable statute into which you’re drafting. There may be
limitations to consider, such as the type of animals permitted as beneficiaries or whether the
offspring of a designate animal may be included as a beneficiary. This reading and the settlor’s
intentions may cause planning of the pet trust to shift to more favorable state’s trust situs.

**Outright Gift.** The simplest plan for placement of an animal is a specific bequest that
may include an accompanying financial gift to provide for animal care. However, immediate
care and protection needs to be assured through planned enablement.

**Adoption.** The estate plan can provide a process for finding a suitable adoption home for
the animal. There should be a clear articulation of adoption placement and not euthanizing or
turnover to a (kill) shelter. Maintaining animal family units by keeping multiple bonded animals
together and not separating them may be a goal. Also, articulating that there should be human
family visitation rights may be a goal. Specificity increases the complexity of placement and
then inherently requires recognition of more transitional care time and financial resources.

**Powers of Attorney.** Animals are legally considered property. So, during the owner’s
lifetime, managing animal interests by powers of attorney is done most appropriately by a power
of attorney for property. See sample provisions is Exhibit F.

At the least, animal management powers should be embedded in the general property
power. In addition, there can be consideration of naming (or allowing the agent to engage) an
advisor and/or caretaker. The agent and the agent’s representative need empowered access to and
possession of the animal, as well as the ability to commit financial resources for the animal’s
care and well-being. These powers may include funding a planned complementary pet trust with
finances and/or the animal and any (with or without compensation) disposition (such as
adoption) or discretionary authorization to euthanize the animal.

Consider having a separate agency (separate and apart from the general power of attorney
for property), coordinated with the general property power so as not to create a conflict or
cancellation – one power inadvertently revoking another. The agent of the separate instrument
can be the animal caretaker with the consideration of an advisor appointment. Again, the agent
and the agent’s representative need empowered access to and possession of the animal, as well as the ability to commit financial resources for the animal’s care and well-being.

The selection of a named agent (for the principal for the animals) may be important. The general property or financial agent may not be suitable. From a darker perspective, the agent might be unsympathetic or even hostile to the animals. If there is a human-to-human relationship break-down, the named agent (a spouse who has a mean-streak) might even use the legal cover and discretion of a power of attorney to inflict pain on the other spouse through abuse (empowered discretionary care and handling) of the animals. I am not a fan of a “springing” power of attorney (one that becomes effective only upon the proven incapacity of the principal) as they very well not be effective at the immediate time when needed. The attorney should cause the client to really think about the “who” that will be charged with the care and well-being of the animals.

Just as Illinois law enables a short-term guardianship for human minor children, having a limited property power of attorney covering non-human animals might be considered.

**Insurances.** Insurance coverage for the non-human animals very well may be appropriate and expressly authorized. Kinds of insurance might include: health, extended property for an animal of exceptional worth (such as a show or race animal), or liability for certain breeds or exotics. Health insurance can include: exams, lab, x-rays (MRIs, CAT scans, ultrasounds), prescriptions, emergencies, surgeries and hospitalization, specialists, accidents and injuries, diseases, illnesses, allergies, infections, chronic conditions, hereditary conditions, congenital conditions, wellness, flea/heartworm prevention, deworming, vaccinations, birthing (cesarean section), prosthetics and orthopedics, dental, behavioral issues, holistic and alternative therapies, and more.

**Pet Trusts.** 760 ILCS 3/408 authorizes trusts for the benefit of “designated domestic or pet animals” (“pet trust(s)”). All states have some form of pet trust law. The big design questions include: Will the trust be inter vivos or testamentary? What animals will be the subject beneficiaries of the trust and how will they be identified? How much money will fund the trust? What are the standards of care for the animals? Who will be the remainder beneficiary? Who will be acting in the trust (trustee, caretaker, enforcer, trust protector)? See Exhibit E for a sample comprehensive animal trust. Some more detailed trust design considerations include:

1. “For” (a financial only trust with an animal beneficiary). A pet trust contemplates the holding of financial resources for the benefit of the designated domestic or pet animal.

2. “In” (the trust holds ownership of the animal as well has financial funding). Since animals are considered property, a trust should be able to hold ownership of the animal. Make sure financial resources are available for access and expenditure. Consider using a separate assignment of “designated domestic and pet animals” into trust. Authorize an agent under a power of attorney to fund the trust with finances and/or the animal.

3. Should the trust be created and funded inter vivos or testamentary?
4. Identifying the subject animal is important. Some pet trusts may run for many years and with relatively significant financial resources. Prevent fraud. Can the beneficiary-animal be inappropriately substituted to keep the trust going? Can a remainder beneficiary allege the beneficiary-animal is no longer and how can that be disproven? Photographs, descriptions of unique markings (blotches of colored fur and scars), tattoos, veterinary records (including blood chemistry), and even DNA samples can be considered in identification. Microchips may also be used for identification, noting that they can be removed in implanted into a different animal.

5. Consider the trustee duties of care and distribution. What are the standards of living and care desired? Are there any unique care requirements (medication, routines, etc.)?

6. What should be the appropriate amount to fund the trust? Considerations include: probable life expectancy of the animal; standard of living; special needs of the animal or species; medical (hospitalization)/dental needs; food and other dietary needs; variety of other ancillary matters (such as boarding, sitters, grooming, insurance, socialization, toys, transportation, disposition of remains {burial or cremation} etc.); and potential fiduciary (trustee, caretaker, enforcer, trust protector) fees and related costs of providing care and management.

A testamentary funding should be carefully evaluated and articulated and specific in amount so that there is no open-endedness so as to frustrate any marital deduction, any charitable deduction, or the remainder beneficiaries (and invite a contest over reasonableness of funding amount). Articulation of standard of care/living can avoid complaining about the amount.

7. Caretaker. Separate from the trustee, it very well may be appropriate to appoint a caretaker empowered to monitor and have decision-making authority, full custody of, care for the designated animal, and the ability to direct payments of trust assets. See directed trust discussion below. The trustee should monitor the caretaker – should this be left to the trustee’s fiduciary duty or the confirmation procedures (visits and veterinary review and reporting) set within the trust?

8. Trust Protector. Again, separate from the trustee, it very well may be appropriate to appoint a protector or enforcer to oversee the trustee and caretaker for the carrying out of the trust’s intended purposes. The protector can be empowered to remove the current trustee and caretaker, appoint a successor trustee and caretaker, advise and approve care, expenditures, adoption, disposition of remains, change remainder beneficiaries, etc.

9. The caretaker and protector should be articulated as a directing party pursuant to the Illinois Directed Trusts statute. 760 ILCS 3/808. A trust purpose “enforcer” is expressly authorized by the “pet” trust statute. 760 ILCS 3/408(b)(3). The protector can consent to a trust decanting. 760 ILCS 3/1223(b). Therefore, it’s important to appoint the role of a Pet Trust “enforcer” (even if the enforcer and caretaker are one-in-the-same) so decanting of a Pet Trust can be more easily facilitated, if needed.

10. As applicable, the caretaker and protector should be empowered to have decision-making authority, access to and have possession of the animal, and be able to commit
financial resources for the animal’s care and well-being. These powers may include (with or without compensation) animal disposition (such as adoption) or discretionary authorization to euthanize the animal.

11. A “softer” role of an advisor may also be considered.

12. Consider whether the pet trust empowered (directing) parties will serve in a fiduciary or non-fiduciary capacity.

13. Consider empowering an adoption out, including whether there should be a financial distribution from trust to the adopting family as an out-of-trust care fund. Of course, there can be an adoption while maintaining the pet trust for the financial care provision of the animal.

14. The trust might authorize human family visitation rights.

15. Consider empowering disposition of remains, euthanasia, and certainly payment of final expenses from the trust (beyond the termination event – the lack of an active animal beneficiary).

16. Remainder beneficiaries can mirror the general estate plan, make distributions to a “charitable organization described in Internal Revenue Code Sections 170(c) and 2055(a), as determined by the trustee [protector] in its sole discretion,” or a specifically named charitable organization. Having the remainder go to a charity may alleviate any expectancies of animal-unsympathetic remainder beneficiaries who might question the cost of care of the animal (as affecting their remainder financial gain).

**Triangle Relationship.** When there are two humans and one or more non-human animals in relationship and the human-to-human relationship falters, how do you deal with the “living property” when the value is not financial? You can look to: dissolution of marriage law, pre/post nuptial agreements, or joint ownership and custodial agreements.

If there is a question of ownership of an animal (such as co-ownership), separate and specific animal assignments into a designated trust should be made to clarify the care of the subject animal.

**Drafting Considerations.**

1. The simplest testamentary fashion of dealing with a pet is a specific bequest of the animal (plus any financial gift to assist in the animal’s care). But there are still issues of the animal’s temporary care and transportation. A bequest via a Will requires consideration of probate authorization. A distribution via a trust is more automatic if the animal is already the ‘owned’ subject of a trust.

2. Standards of care (standards of distributions) are always very important in drafting. For a non-human animal, ‘proper care’ may be inherently carried out by the animal owner for the subject animal, but third parties and courts will need a lot of help in carrying out the intentions of the animal owner.
   i. Ascertainable standards (“health and maintenance”) may be very understandable at law and as applied for humans, but they do depend for
humans depending on ‘customary’ living standard for the human and resources available. For the subject animal, this is more difficult in practical application. When standards of care used are not ‘ascertainable,’ then assistance in meaning is even more important.

ii. Generally, “welfare” for animals has to do with subsistence and avoidance of suffering.

iii. Generally, “well-being” for animals has to do with a positive life.

iv. Generally, “best interests” for animals is the highest standard that focuses on the interests of the animal. Generally, this may be a standard that goes beyond most ‘owners’ really want and loses practical application. Further, public policy does not seem to embrace “best interests.” “Well-being” is probably the best term of utilization and then having a good definition and examples.

v. Some specific reference to standards might include:
   a. Food, medication, dental, boarding, transportation, neutering/spaying, routine expenses, extraordinary expenses (surgeries, procedures, treatments).
   b. “I well understand the costs of maintaining the well-being of my animals may be or become significant. I place very significant intrinsic value on the well-being of my animals. Therefore, I grant broad discretion to my trustee/agent to commit financial resources to maintain and enhance my animals’ well-being, at the same standard of well-being as I have provided or would provide should circumstances change (such as my animals’ age, health, or socialization). My trustee/agent may consider my trustee/agent’s perception of the happiness of my animals. I well understand that such costs and discretion may be considered excessive by some persons and especially those who have financial interests in my estate. However, any review of my trustee/agent’s actions must consider the intrinsic value of my animals in relationship to my and their very real sentence and cognition.”

vi. Insurances acquisition - such as health, extended property for an animal of exceptional worth (such as a show or race animal), or liability for certain breeds or exotics.

vii. Standard of living: Standard at the time of owner’s death or other?

viii. Range of discretion: Sole, absolute? Liberal or more conservative?

ix. See the sample pet trust, Exhibit E, for elaborated sample definitions.

3. Maintaining the socialization of multiple animals. Keeping the animals together.
4. Visitation rights of human family members.
5. During the owner’s lifetime, consider using a power of attorney covering care for the animal. See Exhibit F for sample provisions. An option is to have the power of attorney authorized to fund a pet trust with financing and/or the animal itself (the trust owning the animal).
   i. Consider a separate power of attorney just for animal care. Here the agent would be the animal caretaker, rather than the regular financial agent arranging for animal caretaking.
   ii. The author’s approach is to have the standard revocable living trust with a separate inter vivos pet trust article with any animals being assigned property of the pet trust. The pet trust trustee and caretaker are the settlor
during settlor’s life and capacity. The successor pet trust trustee seeks financial resources from the living trust trustee. Basically, everything pertaining to the animals is covered in the revocable trust and tangible personal property assignments, the Will and power of attorney merely make certain that animals and their interests are pushed to the pet trust.

6. Expressly refer to any empowering statute, such as the Domestic or Pet Animal Trust statute – 760 ILCS 3/408. Express intention for care of animals and the amount of funding.
   i. Note: The court may reduce the animal trust set aside if it determines the amount substantially exceeds the amount required for the intended use. 760 ILCS 3/408(b)(5). Therefore, a build out (see above) of the trust purposes and standards of care become important, especially if the remainder beneficiary is not sympathetic to the animal’s interests.

7. Limit monetary funding so as to preserve (make ascertainable) the marital deduction, charitable deduction, and interests of remainder beneficiaries.

8. Carefully integrate financial funding between operating documents and where financial resources lie. Make sure financial resources are available for access and expenditure. What will be the funding and from where?
   i. Some planners suggest life insurance to fund a pet trust. There is an issue of having an insurable interest – Can an animal have an insurable interest in the insured? Insurable interest is a moot issue if the regular living trust is the beneficiary and the pet trust can count on funding from the regular living trust.

9. Assignment of “title” of the animal to the trust can be done via a tangible personal property assignment (general or specific) or an empowered agency.
   i. Should the trust be created and/or funded inter vivos or testamentary? The author’s approach is to have the pet trust be inter vivos and a built in article within the regular living trust. The living trust and the pet trust coordinate to arrange for any animal interests to settle into the pet trust.

10. Expressly designate the covered animal (including the female animal’s offspring). Covered or designated animals might be generally defined as “any non-human animal, and her female offspring, intentionally acquired and owned or intentionally permanently possessed by me [the human owner].”
   i. How should the subject animal-beneficiary be identified both now and in the future? Photo, detailed description, veterinary records, DNA, microchip, etc.?

11. Empower and coordination (via directed trusts statute) pet trust:
   i. Trustee
   ii. Caretaker.
   iii. Protector-enforcer.
      a. Advisor.
      b. In the event that a protector-enforcer, caretaker, or advisor is not named, who can appoint one?
   iv. Who can name successors in the event of a vacancy?
   v. Directing party status.
   vi. Fiduciary capacity.

   i. How is compensation determined?
   ii. Expense reimbursement.
iii. Gross up for any income taxes on distributions that are not compensation.

13. Empower access to, delivery, possession of, and decision-making power.
14. Commitment of and access to financial resource for care and well-being.
15. Hiring of professionals, consultants or other care providers: Veterinary, boarding, sitter, grooming, transportation, advisors, lawyer.
16. Disposition (such as adoption-out). Potential award of care funds or continued pet trust for financial support. No “kill-shelters.”
17. Euthanizing.
19. Termination of the pet trust – when there no longer is a covered animal.
   i. Death and disposition of remains.
   ii. Adoption out, without further financial responsibility.
   iii. Final costs and outstanding expenses and expenses of wrapping up trust (such as income tax preparation).
20. Remainder beneficiaries:
   i. Statement to disregard the interests of the remainder beneficiaries in caring for the animals.
   ii. Who?
      a. Other natural objects of bounty?
      b. Named charitable organizations?
      c. Charitable organizations named by fiduciary.

21. Add any accrued trust income to trust principal.
22. Exempt allocated animal financial resources from apportionment of general administration expenses and taxes. Craft the set-aside as a specific legacy-distribution.
23. Waive any Rule Against Perpetuities. Note: It’s likely that the pet trust statute exempts the pet trust from the common law Rule Against Perpetuity.

**Income Taxation of Domestic or Pet Animal Trust.** Since the animal is not a human-taxpayer, payments for the animal’s care cannot be distributable net income (DNI). The trust should be treated as a “complex” trust for fiduciary income tax purposes (Form 1041).

However, some of such payments on behalf of the animal very well may be considered administration expenses and thus deductions against income, such as fees of the trustee and other directing parties, accounting and tax preparation, lawyer fees in connection with trust administration, etc. Payments for the direct care of the animal should be considered a consumption of trust assets (non-DNI distributions) without a corresponding deduction. Therefore, as a complex trust the net taxable income will be paid by the trust as the trustee prepares and files Form 1041.

It should be recognized that there is some tax theory and even IRS pronouncements that may be contrary to the above (a complex trust in which the animal is the beneficiary), for example presuming that the caretaker is the trust beneficiary and any distribution to the caretaker is one that draws on taxable income as distributable net income. If this becomes the prevailing view of those involved in the pet trust tax preparation, “grossing up” distributions to the caretaker to offset accompanying tax liability should also be empowered by the trust.
IV — Conclusion.

In planning for your human clients, ask about significant animal responsibility or interests and who should be designated to be in charge. Ask about care, disposition, and funding of the animals’ well-being.

Consider augmented documentation (and see attached Exhibits with sample provisions):

1. Power of attorney.
   i. Embedded provisions in the general power of attorney.
   ii. Separate animal power of attorney, coordinated with the general power of attorney to avoid conflicts.

2. Trust.
   i. Embedded provisions in the “regular” revocable trust.
   ii. Separate animal trust.
      a. Pet Trust for finances.
      b. Trust to hold title to the animal(s).
      1. Assignment of ownership to the trust and/or empowering an agency to convey ownership to the trust.
      c. Make sure financial resources are available for access and expenditure.
   iii. Directing party provisions.


People view their animals as vital relationships and the animal as a person of significance and intrinsic value. By recognizing this, estate planners can better serve their clients and expand the menu of estate planning services. Estate planning for non-human animals is the practical, ethical, moral, and responsible thing to do.

END

EXHIBITS FOLLOW
Exhibit A
Contrasted Estate Planning

Classic Human Documentation

- WILL
- Executor Guardian

- TRUST Testamentary or Inter Vivos
- Trustee
- Trust Protector
- Distribution Trust Advisor
- Investment Advisor
- Special Asset Manager

- POWER OF ATTORNEY Property or Financial
- Agent

- POWER OF ATTORNEY Health Care
- Agent

Potential Animal Documentation

- WILL
- Limited Executor or hiring named caretaker

- PET TRUST Testamentary or Inter Vivos
- Trustee Caretaker
- Trust Protector/Enforcer/Advisor

- POWER OF ATTORNEY Limited
- Agent - Caretaker

- Special Needs Concept
- Trust Funding Via Pourover or Assignment

- Funding mechanism and amount are vitally important

Beware of: Conflicted fiduciary conflicts of interests & Battle of documents in conflict.
Exhibit B
760 ILCS 3/408
Illinois 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 trust 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) to the settlor, if then living;
(C) if there is no 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;
(D) to the transferor’s heirs under 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.

MIDURA NOTE: It’s important to name an “Enforcer” so there is a “Protector” able to act in the event of the need for a decanting. See 760 ILCS 3/1223.
Trust for care of animal.
   (a) In this Section:
      (1) “Animal trust” means a trust or an interest in a trust created to provide for the care of one or more designated domestic or pet animals.
      (2) “Protector” means a person described in paragraph (3) of subsection (b) of Section 408.
   (b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this Article as if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the decanting power.
   (c) A protector for an animal has the rights under this Article of a qualified beneficiary.
   (d) Notwithstanding any other provision of this Article, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefited the animal.

MIDURA NOTE: It’s important to name a Pet Trust “Enforcer” pursuant to 760 ILCS 3/408(b)(3) so there is a “Protector” able to act in the event of the need for a decanting.
Exhibit C

Illinois Dissolution of Marriage

750 ILCS 5/452 – Petition. The parties to a dissolution proceeding may file a joint petition for simplified dissolution if they certify that all of the following conditions exist when the proceeding is commenced:

***

(k) The parties have executed a written agreement allocating ownership of and responsibility for any companion animals owned by the parties. As used in this Section, “companion animal” does not include a service animal as defined in Section 2.01c of the Humane Care for Animals Act.

750 ILCS 5/501 – Temporary relief. In all proceedings under this Act, temporary relief shall be as follows:

***

(f) Companion animals. Either party may petition or move for the temporary allocation of sole or joint possession of and responsibility for a companion animal jointly owned by the parties. In issuing an order under this subsection, the court shall take into consideration the well-being of the companion animal. As used in this Section, “companion animal” does not include a service animal as defined in Section 2.01c of the Humane Care for Animals Act.

750 ILCS 5/502 – Agreement.

(a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into an agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, support, parental responsibility allocation of their children, and support of their children as provided in Sections 513 and 513.5 after the children attain majority. The parties may also enter into an agreement allocating the sole or joint ownership of or responsibility for a companion animal. As used in this Section, “companion animal” does not include a service animal as defined in Section 2.01c of the Humane Care for Animals Act. Any agreement pursuant to this Section must be in writing, except for good cause shown with the approval of the court, before proceeding to an oral prove up.

***

(b) If the court finds that a companion animal of the parties is a marital asset, it shall allocate the sole or joint ownership of and responsibility for a companion animal of the parties. In issuing an order under this subsection, the court shall take into consideration the well-being of the companion animal. As used in this Section, “companion animal” does not include a service animal as defined in Section 2.01c of the Humane Care for Animals Act.

750 ILCS 5/503 – Disposition of property and debts.

***

(n) If the court finds that a companion animal of the parties is a marital asset, it shall allocate the sole or joint ownership of and responsibility for a companion animal of the parties. In issuing an order under this subsection, the court shall take into consideration the well-being of the companion animal. As used in this Section, “companion animal” does not include a service animal as defined in Section 2.01c of the Humane Care for Animals Act.
Exhibit D
Drafting Checklist for Animal Trust

1. The default name of the animal (or ‘pet’) trust is “Animal Trust”. Should there be a different name? If yes, then provide: ____________________________

2. What are the names, species, breeds, sex, and identifiers of the animals contemplated being beneficiaries of the Animal Trust?

Indicate whether such animal is considered by you as a “pet” or has the more advance standing as a “domestic companion.” A “pet’s” standard of care will generally be for his or her “maintenance and health.” A “domestic companion’s” standard of care will additionally include the broader standard of “well-being.”

Important: Articulating standards of care is important. It’s important for the persons caring for your pet/companion animal to understanding with specificity how you want your pet/companion animal treated in your absence. It is also important because third parties (a judge or remainder beneficiary) may not understand the importance and inherent costs of proper animal care and therefore may frustrate your intentions by reducing the care or even reduce the Animal Trust finances.

3. For the standard of care for “maintenance and health,” strike or provide additional criteria:
   • Quality food (including special needs foods for allergies) and fresh water.
   • Maintenance of healthy weight.
   • Housing.
   • Regular veterinary and dental (mouth) care as appropriate to the lifespan of the animal beneficiary (i.e., “dog years”).
   • Hospitalization.
   • Medication.
   • Neutering/spaying.
   • Toys.
   • Appropriate exercise routines.
   • Grooming (including hair and nails).
   • Compensation for individual involved in care (such as walkers or sitting).
   • Travel, boarding and transportation.
   • Micro-chip installation and keeping it current.
   • Insurances (health, property and casualty). Considerations for health insurance might include: exams, lab, x-rays (MRIs, CAT scans, ultrasounds), prescriptions, emergencies, surgeries and hospitalization, specialists, accidents and injuries,
diseases, illnesses, allergies, infections, chronic conditions, hereditary conditions, congenital conditions, wellness, flea/heartworm prevention, deworming, vaccinations, birthing (cesarean section), prosthetics and orthopedics, dental, behavioral issues, holistic and alternative therapies, specialized end-of-life care, euthanasia, burial.

- Other:

4. For the standard of care for **well-being**, strike or provide additional criteria:
   - Diverse interconnected dimensions of physical, mental, and social well-being that extend beyond health.
   - Physical vitality, mental alacrity, social satisfaction, a sense of accomplishment, personal fulfillment.
   - Positive and least stressful conditions.
   - Positive reinforcement training and handling (free-from-fear and not negative correction).
   - Assisting the animal in developing and maintaining self-control.
   - An animal's genetic drives and individual personality traits.
   - Providing a safe, stable, and secure environment.
   - Attending to daily needs, including: physical care (i.e., grooming, quality food, fresh water, appropriate shelter, and exercise) and meaningful interactions.
   - Facilitating interactive socialization with their humans of significance and other non-humans.
   - Maintaining stable, consistent relationships.
   - Meeting the psychological needs of the animal.
   - Liberal construction of the above well-being considerations.
   - Other:

5. **Upon your death**, what is the dollar amount to fund the Animal Trust? $ 
   
   Note: This must be a set amount and not in the discretion of your trustee, otherwise there are adverse tax implications, remainder beneficiary complaint, and heightened review by the court. Any remaining amount will be distributed to your other remainder beneficiaries (human or charity).

6. Should a court find the amount funding the Animal Trust to be excessive, do you prefer the excess amount be distributed to:
   - The then Caretaker of your animals?
   - An animal charity? If so, to whom? (i.e., “local no-kill animal shelter”)
   - Your remainder beneficiaries?
[Alternative to below]
7A. **Upon your death**, do you want your pet/companion animal distributed (adopted out) to a particular person? If so, to whom? What if that person is not available or will to adopt your pet/companion animal?

[Alternative to above]
7B. **Upon your death**, do you prefer your pet/companion animal to be maintained in trust for his or her lifetime?

If yes, then the following questions will become more important.

The following are the possible persons to officially act on behalf of your pet/companion animal for purposes of the Animal Trust: Trustee for the Animal Trust (separate from the trustee of your estate planning trust), Caretaker, Enforcer, and Trust Protector.

You will automatically be the first person to act in each of these roles should you be able.

Animal Trust **Trustee**: The Animal Trust Trustee is generally in charge of the whole operation of the Animal Trust.

**Caretaker**: The Caretaker is responsible for the provide a proper home and loving and proper care for the animal beneficiaries and working with the Animal Trust Trustee to ensure that the financial needs of the animal beneficiaries are met.

**Enforcer**: The Enforcer enforces the intended use of the principal or income of the Animal Trust and the proper care of the animal beneficiaries. The Enforcer will have broad authority to review the Animal Trust records and the Caretaker’s proper care of the animal beneficiaries. The Enforcer may recommend to, and if necessary direct, the Caretaker and the Animal Trust Trustee proper care for the animal beneficiaries. The Enforcer may remove and replace the Caretaker and the Animal Trust Trustee or their successors.

**Trust Protector**: In the event of unforeseen circumstances, the Trust Protector may amend the Animal Trust or terminate it and direct distribution of the Animal Trust estate in such manner as the Trust Protector deems advisable.

For each of these roles, who is the person and that person’s successor should you be unable to so act?

**Note**: You will need to name these persons even if your pet/companion animal is immediately adopted by someone.

**Note**: A single person can fulfill one or more roles.

**Note**: It’s important to name the Trustee and Caretaker. The Enforcer and Trust Protector are options, but not necessary.

**Note**: Each named person can name a successor, so you need not provide more than 1 or 2.
8A. Animal Trust Trustee (name and any relationship to you)?
   (1)
   (2)
   (3)

8B. Caretaker (name and any relationship to you)?
   (1)
   (2)
   (3)

8C. Enforcer (name and any relationship to you)?
   (1)
   (2)
   (3)

8D. Trust Protector (name and any relationship to you)?
   (1)
   (2)
   (3)

9. With respect to any needed end-of-life decisions, is the following satisfactory to you? If not, please provide your direction.
   “The Caretaker may consider the age, treatable health conditions, comfort, and quality of lifetime of an animal beneficiary in making a decision to euthanize such animal. The costs of professional evaluation, specialized end-of-life care, euthanizing, necropsy and toxicology study in case of unexpected death, burial, cremation or other disposition of remains shall be an expense of the Animal Trust. I encourage the Caretaker to consider recommendations of a veterinarian, other significant persons familiar with the animal beneficiary, and [NAME OF A PERSON AND ANY SUCCESSOR]. Quality of life is of paramount concern.”

OR


10. When the Animal Trust no longer has any animal beneficiaries, should any remaining Animal Trust funds be distributed to:
    • An animal charity? If so, to whom?
      (i.e., “local no-kill animal shelter”) Give discretion to the trustee (or trust protector) to distribute to an animal charity?
    • Your remainder beneficiaries?

END OF ANIMAL TRUST CHECKLIST
Exhibit E
Sample Animal Trust Article
For Use in a Settlor’s Revocable Living Trust

Article ___
Animal Trust

Statement of Intention and Material Purpose

Any references to “Animal Trust” under this Trust Agreement shall refer to the provisions of this Article. The Animal Trust is created pursuant to the authority of 760 ILCS 3/408. The Animal Trust shall be held as a separate trust and the administrative provisions of this Trust Agreement are hereby incorporated by reference, except to the extent they are inconsistent with the provisions of the Animal Trust. Any conflicts or inconsistencies between the provisions of this Trust Agreement and the Animal Trust shall be construed in favor of the provisions of the Animal Trust and the Animal Trust provisions shall be controlling.

Any legal interests (such as legal or equitable title or ownership) in a companion or pet animal (along with his or her tangible personal property – inclusive of collars, harnesses, leashes, toys, beds, blankets, clothing, medicine and medical supplies, cages, grooming supplies, food supplies, food and water bowls, etc.) subject to this Trust Agreement, whether during my lifetime or upon my death, shall immediately be transferred to the Animal Trust Trustee (“AT Trustee”). This Trust Agreement and the Animal Trust shall be construed to have the immediate effect of such transfer or assignment of such legal interests upon such animal (along with his or her tangible personal property) becoming subject to this Trust Agreement, without the need of having a written assignment by the Trustee to the AT Trustee. Any animal or animals subject to the Animal Trust are herein referred to as “animal beneficiaries.” The custody and care of the subject animal of the Animal Trust is hereafter provided.

For purposes of this instrument, construction for the care of my companion animals or pets shall recognize that they are more than mere property or chattel; and their individualized personhood and their individual capacities of sentience, emotion, cognition, and agency.

A. Identification of Subject Animals as Beneficiaries of the Animal Trust.

For purposes of this instrument with respect to a companion animal or pet, “owned” by me includes such an animal with intention owned, possessed, leased (during the term of such lease), kept or held by me on a permanent basis. An owned female animal shall include her offspring who at the time of becoming subject to this Animal Trust is pregnant or thereafter becomes pregnant.

[NOTE: “COMPANION ANIMAL” IS MORE LIMITED THAN “PET” AND THE APPLIED STANDARD OF CARE IS “WELL-BEING” BEING BROADER.]
[NOTE: MORE SPECIFIC IDENTIFICATION OF A SPECIFIED ANIMAL IS IMPORTANT TO PROPERLY TRACT THE BENEFICIARY ANIMAL – SUCH AS THE LIFETIME OF THE INTENDED ANIMAL. CONSIDER POTENTIALLY USING DETAILED PHYSICAL DESCRIPTION (INCLUDING BLOTCHES OF COLORED FUR, SCARS AND INJURIES), PHOTOS, AGE/BIRTH DATE, MEDICAL AND
DENTAL RECORDS, DNA (SAMPLING BEFORE ANIMAL IS DELIVERED TO THE CARETAKE OR SOON THEREAFTER), MICRO CHIP, ETC.
[NOTE: INCLUDING A CLASS OF ANIMAL BENEFICIARY FACILITATES COVERAGE OF LATER ACQUIRED ANIMALS.]

For purposes of this instrument, reference to "companion animal" (singular or plural) means [NAME AND ANIMAL CLASSIFICATION OF PET] (as further identified in Exhibit A, attached hereto), a feline (cat), canine (dog), equine (horse), or other domesticated animals [EXAMPLE, BIRD, PIG] maintained by me in or near my household that are owned by me, and any of any female’s offspring in gestation. Companion animal shall include a service animal that attends to me (subject to any servicing agreement). For purposes of companion animal, “domesticated” means a tamed animal living in my household and dependent on me. The term companion animal shall exclude animals owned primarily for commercial purposes (such as farming and breeding).

[NOTE: “PET” IS BROADER THAN “COMPANION ANIMAL” AND THE APPLIED STANDARD OF CARE IS MORE LIMITED.]

[NOTE: CONSIDER SPECIFIC IDENTIFICATION OF A SPECIFIC ANIMAL.]

For purposes of this instrument, reference to “pet” (singular or plural) means a companion animal of mine or other specifically identifiable animal demonstrably and deliberately maintained by me in or near my household for noncommercial purposes (for example, other than farming, breeding or other commercial activities).

[ALTERNATIVE FOR INCLUSION OF REGULARLY CARED FOR FERAL NEIGHBORHOOD CAT OR DOG.]

The term “pet” shall also be inclusive of a cat or dog that does not reside in my home yet for whom I have demonstrated a regular pattern of personal care (such as a neighborhood feral cat or feral dog that is not evidently owned by anyone and who can be the subject of domestication). This definition expressly excludes wild animals, any commercially owned animals, animals owned by others or are regularly cared for by others. This Paragraph shall only apply during my lifetime and only so long as there are direct animal beneficiaries (other companion animals or pets) of the Animal Trust and such direct animal beneficiaries and I are living together in my home. It is not my intention to maintain the Animal Trust solely for feral animals about the place I reside.

The AT Trustee, Enforcer or Trust Protector may from time-to-time inspect the animal beneficiaries and their home life for confirmation of the animal beneficiary’s identity and the quality of life and well-being (inclusive of physical and psychological condition). Non-cooperation by the Caretaker shall be grounds for the Caretaker’s removal. Inspection may be made by a representative, such as a veterinarian, and may include: use of photos, examination of medical and dental records and/or contact with the animal beneficiary’s veterinarian, DNA testing, micro-chip installation or verification, tattoo, scars, injuries, or such other examination so as to verify the identity of the animal beneficiary and his or her well-being.

B. Standard of Proper Care.

[NOTE: THE STANDARD OF CARE FOR A “COMPANION ANIMAL” IS “WELL-BEING”]

The standard of proper care for my companion animals shall be their well-being.
]

The standard of proper care for my pets shall include: maintenance and health, in conditions similar to those I have provided for them. These standards of maintenance and health further include: Quality food (including special needs foods for allergies) and fresh water, maintenance of healthy weight, housing, regular veterinary and dental (mouth) care as appropriate to the lifespan of the animal beneficiary (i.e., “dog years”), hospitalization, medication, neutering/spaying, toys, appropriate exercise routines, grooming (including hair and nails), compensation for individual involved in care (such as walkers or sitting), travel, boarding and transportation, micro-chip installation and keeping it current, insurances (such as health, property, and casualty), routine expenses, and extraordinary expenses (such as surgeries, procedures, treatments, burial, cremation).

For purposes of this instrument with respect to a companion animal or pet, reference to “well-being” includes considerations for:

[ANY OF THE FOLLOWING MAY BE CONSIDERED AND MODIFIED OR ELIMINATED.]

- Diverse interconnected dimensions of physical, mental, and social well-being that extend beyond health.
- Physical vitality, mental alacrity, social satisfaction, a sense of accomplishment, personal fulfillment.
- Positive and least stressful conditions.
- Positive reinforcement training and handling (free-from-fear and not negative correction).
- Assisting the animal in developing and maintaining self-control.
- An animal’s genetic drives and individual personality traits.
- Providing a safe, stable, and secure environment.
- Attending to daily needs, including: physical care (i.e., grooming, quality food, fresh water, appropriate shelter, and exercise) and meaningful interactions.
- Facilitating interactive socialization with their humans of significance and other non-humans.
- Maintaining stable, consistent relationships.
- Meeting the psychological needs of the animal.
- Liberal construction of the above well-being considerations.

I well understand the costs of proper care of my animals may be or become significant. I place very significant intrinsic value on the proper care of my animals. Therefore, I grant broad discretion to the Caretaker to commit financial resources to maintain and enhance the animal beneficiaries’ proper care, at the same standard of proper care as I have provided or would provide should circumstances change (such as the animal beneficiaries’ age, health, and socialization). The Caretaker may consider the Caretaker’s perception of the happiness and contentment of the animal beneficiaries. I well understand that such costs and discretion may be considered excessive by some persons and especially those who have financial interests in my estate. However, any review of the AT Trustee’s and Caretaker’s actions must consider the intrinsic value of animal beneficiaries in relationship to me and their very real sentience, cognition, and agency.
The AT Trustee and Caretaker shall undertake best efforts for the Animal Beneficiaries to adjust and transition due to my absence, whether by my incapacity or death - for example, the Caretaker facilitating visitation with me during my incapacity or viewing my body upon death.

Because my primary intent is for the proper care of the animal beneficiaries, the AT Trustee does not need to consider the interests of the remainder beneficiaries when making distributions. The AT Trustee, in the AT Trustee’s discretion, may use all of the Animal Trust property for the benefit of the animal beneficiaries, even if the result is that nothing will ultimately pass to the remainder beneficiaries.

Any accrued and undistributed income shall be added to principal.

C. **Insurance(s).** The AT Trustee **shall** **may** use Animal Trust property to purchase appropriate insurances to protect the Animal Trust, the AT Trustee and Caregiver from damage or excessive costs. Appropriate insurances include (but are not limited to) health, property and casualty. Considerations for health insurance may include: exams, lab, x-rays (MRIs, CAT scans, ultrasounds), prescriptions, emergencies, surgeries and hospitalization, specialists, accidents and injuries, diseases, illnesses, allergies, infections, chronic conditions, hereditary conditions, congenital conditions, wellness, flea/heartworm prevention, deworming, vaccinations, birthing (cesarean section), prosthetics and orthopedics, dental, behavioral issues, holistic and alternative therapies, specialized end-of-life care, euthanasia, burial, and more in the discretion of the Caretaker or AT Trustee.

D. **Funding of the Animal Trust During Settlor’s Lifetime.** During my lifetime, the AT Trustee may request from the Trustee and the Trustee shall pay to the AT Trustee reasonable amounts for the proper care of animal beneficiaries. “Reasonable amounts” are such amounts required to fulfill my intentions as further provided under this Article.

**[DISTRIBUTION OF ANIMAL OUTRIGHT - ALTERNATIVE TO BELOW.]**
**[DISTRIBUTION ‘IN FEE SIMPLE’ OF THE ANIMAL TO A SPECIFIC PERSON OR ORGANIZATION.]**
**[THIS OPERATES TO TERMINATE THE ANIMAL TRUST IN FAVOR OF A NEW OWNER OF THE SUBJECT ANIMALS.]**

E. **Distribution of Animal Beneficiaries Upon Settlor’s Death.** Upon my death, the AT Trustee and the Caretaker shall cooperate in maintaining interim proper care of the animal beneficiaries and promptly distribute outright (not in further trust) the animal beneficiaries to ___________________________[PROVIDE THE IDENTIFICATION OF THE PERSON OR ORGANIZATION] (the “Terminating Animal Beneficiary”).

**[OPTIONAL]** Further, the AT Trustee shall distribute to the Terminating Animal Beneficiary the sum of $__,000 (to assist in the lifetime proper care of the animal beneficiaries) that shall be considered an outright gift-distribution to the Terminating Animal Beneficiary for any purpose, used in the sole and absolute discretion of the Terminating Animal Beneficiary, and not a constructive trust. Such distributions shall effect termination the Animal Trust, subject to payment for outstanding expenses (such as veterinary, AT Trustee and Caretaker compensation and expense reimbursements, and transportation expenses of the animal beneficiaries and their personal effects to the Terminating Animal Beneficiary) and wind-up procedures (such as filing of final income tax returns). If the Animal Trust does not have sufficient funds to satisfy the distributions in this Paragraph, then the Trustee of this trust agreement shall provide funds necessary to satisfy these distributions.
Should the Terminating Animal Beneficiary become income taxable on distributions from the Animal Trust, then the AT Trustee shall ‘gross up’ or make such adjustments to those distributions so as to offset any income taxes to be payable by the Terminating Animal Beneficiary at the Terminating Animal Beneficiary’s then marginal income tax rate.

Should for any reason the Terminating Animal Beneficiary is unable or unwilling to receive the permanent custody and care of the animal beneficiaries, then the financial gift shall lapse and the animal beneficiaries shall be further managed as follows: I direct the Caretaker to place the animal beneficiaries with another individual or family (that is, in a private, non-institutionalized setting) where the animal beneficiaries will be cared for in a manner that any responsible, devoted pet owner would afford to his or her pets. The Caretaker should provide any needed, reasonable veterinary care that the animal beneficiaries may need at that time to restore the animal beneficiaries to general good health and to alleviate suffering, if possible. Any animal beneficiaries who are suffering and whose care is beyond the capabilities of veterinary medicine reasonably employed to restore to general good health or to alleviate suffering shall be euthanized, cremated, and the ashes disposed of at the discretion of the Caretaker.

The AT Trustee is authorized to expend a reasonable sum from the Animal Trust to ensure that the animal beneficiaries will be well provided for during their natural lives. This amount shall be for the food, supplies, veterinary care, and general upkeep and well-being of the animal beneficiaries for the remainder of their anticipated lifetimes, and the recipient need not account to the AT Trustee. The gift of the animal beneficiaries and the appropriate sum of money shall be made as soon as possible following my death and prior to distribution of any other assets from my estate.

Any expenses incurred for the proper care (including the costs of veterinary services), placement, or transportation of my animals, or to otherwise effect the purposes of this Article up to the time of placement, shall be charged against the residuary estate.

Notwithstanding the forgoing to the contrary, the amount so expended or distributed shall not exceed the above sum provided above to the Terminating Animal Beneficiary.

The tangible personal property of the animal beneficiary (as determined first by the Caretaker or second by the AT Trustee) shall be distributed along with the animal beneficiary.

[RETENTION OF ANIMAL IN TRUST - ALTERNATIVE TO ABOVE.]

[DRAFTING NOTE: LIMIT THE FUNDING POTENTIAL SO AS NOT TO DEFEAT ANY MARITAL DEDUCTION OR CHARITABLE DEDUCTION OR OTHERWISE FRUSTRATE THE REMAINDER BENEFICIARIES BY AMBIGUITY. ALSO NOTE THAT A COURT MAY REDUCE THE FUNDING AMOUNT THAT SUBSTANTIALLY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE – 760 ILCS 3/408(b)(5).]

E. **Funding of the Animal Trust Upon Settlor’s Death.** Upon my death, $______,00 shall be distributed by the Trustee to the AT Trustee for the proper care of animal beneficiaries during the term of the Animal Trust. Notwithstanding anything to the contrary within this Trust Agreement and with the exception of other tangible personal property subject to this Trust Agreement, this pecuniary funding distribution shall take priority (last to abate) over all other specific, general or remainder beneficiary distributions. Further, there shall be no
apportionment or charging of any death taxes or expenses of the death settlement administration of my estate or this Trust Agreement to the Animal Trust.

[OPTION IN THE EVENT THE SETTLOR DESIRES TO DISINCENTIVIZE ANOTHER TRUST BENEFICIARY TO OBJECT TO THE ANIMAL TRUST FUNDING AS EXCESSIVE.]

Should a court determine that the funding of the Animal Trust is excessive, then such excess shall be distributed to the person I have named and is willing to act as the Caretaker. Such distribution shall be considered a gift by me to the Caretaker and the Caretaker may use such gift for any purposes the Caretaker desires (the “Caretaker Gift”). The remaining principal and income of the Animal Trust shall continue pursuant to the terms of the Animal Trust. The AT Trustee shall not consider the Caretaker Gift in providing for the animal beneficiaries (such as a form of animal care advancement or constructive trust for the animal beneficiaries).

[ANOTHER OBJECTION DISINCENTIVIZING OPTION IS TO MAKE THE EXCESSIVE FUNDS PAID TO AN ANIMAL CHARITY.]

Should a court determine that the funding of the Animal Trust is excessive, then such excess shall be distributed to [NAME OF CHARITY/SHELTER].

[ALTERNATIVE PROVISION FOR EXCESSIVE FUNDS – PAYMENT TO REMAINDER BENEFICIARIES.]

Should a court determine that the funding of the Animal Trust is excessive, then such excess shall be distributed to the Animal Trust remainder beneficiary as if the Animal Trust was terminated.

F. Disposition of Animal Beneficiaries During Their Lifetime. The Caretaker may consider the well-being, best interests, happiness, and behavioral or physical needs of the animal beneficiary (or her offspring) in finding a permanent adoptive home for the animal beneficiary and cause such a permanent adoption. A permanent adoption of the subject animal shall terminate his or her status as an animal beneficiary. I encourage that animal beneficiaries’ (when more than one) be considered and maintain together as may be appropriate to their socialization and mental and relational health. It shall not be considered a conflict of interest for the Caretaker to adopt an animal beneficiary (or her offspring). The AT Trustee (who is not the adopting family, nor related to the adopting family), in its discretion when considering my intentions for the animal beneficiaries, may make a lump sum distribution from the principal and income of the Animal Trust to the adopting family for some of the future care of the adopted animal beneficiary. The determination of such distribution shall not consider the interests of the remainder beneficiaries and shall consider only the well-being of the animal beneficiaries.

The tangible personal property of the animal beneficiary (as determine first by the Caretaker or second by the AT Trustee) shall be distributed along with the animal beneficiary.

In making a determination to adopt-out an animal beneficiary, the Caretaker may consider a variety of factors. Some of these factors might include: the presence of other animals in the adoptive home and their health (including vaccination status) and temperament, human health and temperament (including alcohol or drug usage, domestic abuse), stability of home environment, history of animal ownership (such as surrendering of animals, neglect or abuse of animals, losing animals, euthanizing animals for reasons other than illness/injury or aggression), home and zoning that allows pets, adopting family intends to keep the animal beneficiary and not
G. Neuter/Spay. I encourage the Caretaker, yet in the sole discretion of the Caretaker, to neuter or spay animal beneficiaries as my primary intention is for the proper care of the original animal beneficiaries. There are many other animals in need of adoption (such as shelter animals) and I do not want to add to the burdens of society or extend the term or costs of the Animal Trust through the propagation of animal offspring.

It is not my intention to make the Animal Trust a multi-generational trust. Therefore, I encourage the Caretaker and AT Trustee to facilitate the adoption out and/or neutering or spaying of animal beneficiaries and their offspring. The primary purpose of the Animal Trust is for the first generation of animal beneficiaries.

H. End-of-Life Decision. The Caretaker may consider the age, treatable health conditions, comfort, and quality of lifetime of an animal beneficiary in making a decision to euthanize such animal. Euthanizing an animal beneficiary is expressly authorized, in the discretion of the Caretaker. The costs of professional evaluation, specialized end-of-life care, euthanizing, necropsy and toxicology study in case of unexpected death, burial, cremation or other disposition of remains shall be an expense of the Animal Trust. I encourage the Caretaker to consider recommendations of a veterinarian, other significant persons familiar with the animal beneficiary, and __________________ [NAME OF A PERSON AND ANY SUCCESSOR.]. Quality of life is of paramount concern.

I. Term and Termination of Animal Trust. The Animal Trust shall terminate when there are no animal beneficiaries subject to the care of the Animal Trust (such as death or adoption out – the “Termination Date”) and after payment of all final Animal Trust expenses (such as outstanding expenses for fees, expense reimbursements, veterinary, disposition of remains (such as burial or cremation), etc.).

If a sole animal beneficiary is ‘lost’, the Animal Trust may terminate after reasonable due diligence of locating the animal beneficiary. Evidence of due diligence may include police reports, ads in newspapers and social media postings seeking the animal’s return, copies of posters placed in the community, and memorialized inquiries with micro-chip companies, local shelters, local animal hospitals, and pet-finder websites.

Upon termination of the Animal Trust and after such time as is necessary to settle the administration of the Animal Trust (such as filing final income tax returns, payment of outstanding and final Animal Trust expenses, and disposition of animal remains and tangible personal property), the remaining principal (inclusive of any accrued and undistributed income) shall be distributed [as follows: __________________] [to one or more charitable organizations whose mission is the care of nonhuman animals and such organization is described in Internal Revenue Code Sections 170(c) and 2055(a), as determined by the trustee [protector] in its sole discretion] [to the remainder beneficiaries under this Trust Agreement].

Unless the Animal Trust remainder beneficiary objects within 30 days of the Termination Date and takes immediate custody of the remaining tangible personal property of the animal beneficiaries, the remaining tangible personal property of the animal beneficiaries may be donated to an animal shelter or otherwise disposed in the discretion of the AT Trustee.
J. **AT Trustee.** I appoint following person as trustee of the Animal Trust (the “AT Trustee), to act in the order so named:

1. Myself (the settlor).
2. 
3. 

The then acting AT Trustee may at any time during its tenure by written instrument, delivered to the successor appointed AT trustee, appoint a successor AT Trustee even to the extent modifying by amendment this Paragraph and effectively substituting a successor AT Trustee named by me. Such appointment may set term limits and other conditions and provide for successive AT trustees. Such appointment may be revoked or amended by the appointing AT Trustee at any time prior to the appointed AT trustee accepting office.

In the discretion of the named Successor AT Trustee, the Successor AT Trustee may immediately succeed me as the original AT Trustee at any time the Successor AT Trustee believes that I, as AT Trustee, am unable to give immediate attention to management of the Animal Trust and the proper care of the animal beneficiaries.

The AT Trustee shall use the Animal Trust property for all reasonable expenses incurred in the proper care of the animal beneficiaries. The AT Trustee shall work with the Caretaker to ensure that the financial needs of the animal beneficiaries are met. The AT Trustee may make monthly distributions to the Caretaker, to reimburse the Caretaker for out-of-pocket expenses related to the proper care of the animal beneficiaries, as compensation for taking care of the animal beneficiaries, and/or directly to third parties who provide products or services for the animal beneficiaries. An AT Trustee who also acts as the Caretaker may pay Animal Trust funds to himself or herself as Caretaker for these purposes.

At such time as I am not acting as the AT Trustee, the AT Trustee shall provide no less than annually an accounting for the Animal Trust to the Enforcer and Trust Protector and more often such other information reasonably requested by the Enforcer and Trust Protector so that the Enforcer and Trust Protector reasonably understand the administration of the Animal Trust.

Because my primary intent is for the proper care of the animal beneficiaries, the AT Trustee does not need to consider the interests of the remainder beneficiaries when making distributions. The AT Trustee, in the AT Trustee’s discretion, may use all of the Animal Trust property for the benefit of the animal beneficiaries, even if the result is that nothing will pass to the remainder beneficiaries.

The AT Trustee shall be acting in a fiduciary capacity.

K. **Animal Caretaker.** I appoint following person as Caretaker, to act in the order so named:

1. Myself (the settlor).
2. 
3. 
4. The AT Trustee.

The then acting Caretaker may at any time during its tenure by written instrument, delivered to the AT Trustee, appoint a successor caretaker even to the extent modifying by amendment this Paragraph and effectively substituting a successor Caretaker named by me. Such appointment may set term limits and other conditions and provide for successive caretakers. Such appointment may be revoked or amended by the appointing Caretaker at any time prior to the appointed caretaker accepting office.

In the discretion of the named Successor Caretaker, the Successor Caretaker may immediately succeed me as the original Caretaker at any time the Successor Caretaker believes that I, as Caretaker, am unable to give immediate attention to the proper care of the animal beneficiaries.

The Caretaker is responsible for the provide a proper home and loving and proper care for the animal beneficiaries and working with the AT Trustee to ensure that the financial needs of the animal beneficiaries are met.

The Caretaker shall provide quarterly written status reports of the animal beneficiaries’ status within the articulated standard of proper care for the animal beneficiary. Such reports shall be sent to each of the then acting AT Trustee, Enforcer and Trust Protector. Such reports shall contain such detail so as to provide sufficient information to assess the status of the animal beneficiary within the articulated standard of proper care. At a minimum such reports shall include: most recent medical and dental reports, current weight, current food and water intake (including preferences and apparent allergies), current photos, and current video. The Caretaker shall promptly respond to queries by the then acting AT Trustee, Enforcer and Trust Protector.

The Caretaker shall cooperate with the AT Trustee, Enforcer and Trust Protector for periodic inspections of the animal beneficiaries and their home life for confirmation of the animal beneficiary’s identity and the quality of life and well-being (inclusive of physical and psychological condition). Inspection visits may be unannounced at the discretion of the AT Trustee, Enforcer or Trust Protector. Inspection may be made by a representative, such as a veterinarian, and may include: use of photos, examination of medical records and/or contact with the animal beneficiary’s veterinarian, DNA testing, blood testing, micro-chip installation, maintenance or verification, tattoo, or such other examination so as to verify the identity of the animal beneficiary and his or her well-being.

Non-cooperation by the Caretaker with the AT Trustee, Enforcer or Trust Protector shall be grounds for the Caretaker’s removal.

The Caretaker’s taking possession of the animal beneficiaries shall be subject to these provisions and the Caretaker’s agreement to these provisions shall be presumed.

In appointing a Caretaker, considerations might include:

- How and why the animal was originally acquired by me.
- Contribution to and past participation in the “sharing” or caring of the animal (e.g., who took the animal to the vet, who regularly walked, fed, groomed, and otherwise cared for the animals).
• Past cooperation (or lack thereof), both as to the animal and to any other matters.
• Distance.
• Willingness to continue the animal’s relationship with the other significant persons.
• Other factors unique to the circumstances, including relevant attributes of the animal that are at issue.
• Identification and prioritization of the animal’s needs ahead of a caretaker.
• Caretaking that empathizes with and meets the animal’s needs.
• Caretaker’s ability to regulate their own impulses and emotions.
• Caretaker’s appropriate judgment regarding the animal’s welfare and well-being.

Further considerations in appointing a Caretaker might include: the presence of other animals in the Caretaker’s home and their health (including vaccination status) and temperament, human health and temperament (including alcohol or drug usage, domestic abuse), stability of home environment, history of animal ownership (such as surrendering of animals, neglect or abuse of animals, losing animals, euthanizing animals for reasons other than illness/injury or aggression), home and zoning that allows pets, adopting family intends to keep the animal beneficiary and not gift or sell, use as a companion versus guard, housing being inside versus outside kennel, outside access without harness, etc.

The Caretaker shall be acting in a fiduciary capacity.

The Caretaker shall be entitled to seek separate advice and counsel to carry out the Caretaker’s duties and such costs shall be paid or reimbursed by the Animal Trust.

L. Enforcer for the Animal Trust. I appoint following person as Enforcer, to act in the order so named:

1. Myself (the settlor).
2. 
3. 

The then acting Enforcer may at any time during its tenure by written instrument, delivered to the AT Trustee, appoint a successor enforcer even to the extent modifying by amendment this Paragraph and effectively substituting a successor Enforcer named by me. Such appointment may set term limits and other conditions and provide for successive enforcers. Such appointment may be revoked or amended by the appointing Enforcer at any time prior to the appointed enforcer accepting office. The Animal Trust is not required to have an Enforcer.

The Enforcer shall enforce the intended use of the principal or income of the Animal Trust and the proper care of the animal beneficiaries. The Enforcer shall have broad authority to review the Animal Trust records and the Caretaker’s proper care of the animal beneficiaries.

The Enforcer may recommend to the Caretaker and the AT Trustee proper care for the animal beneficiaries. The Enforcer may further direct the Caretaker and AT Trustee proper care for the animal beneficiaries.

The Enforcer may remove and replace the Caretaker and the AT Trustee or their successors. Such appointment may set term limits and other conditions and provide for successors.
Expenses shall be promptly reimbursed upon submission of adequate receipts for reasonable expenditures. Whenever possible and foreseeable, expenses should be communicated in advance of incurrence to the AT Trustee. Routine expenses should be communicated by establishment of a budget.

O. **Animal Trust as a Directed Trust.** The Animal Trust shall be construed as a directed trust pursuant to 760 ILCS 3/808. Each of the Caretaker, Enforcer, and Trust Protector (and their successors) shall be considered directing parties. Any acting Trust Protector (or in lieu thereof any acting Enforcer, or in lieu thereof any acting Caretaker – the Enforcer or Caretaker taking on the role of a protector for purposes of any decanting consent) may consent to a decanting of the Animal Trust pursuant to 760 ILCS 3/1223(b).

P. **Bond.** No bond or other surety shall be required of the AT Trustee, Caretaker, Enforcer or Trust Protector.

Q. **Income Tax Matters.** During my lifetime due to my power to amend and revoke the Animal Trust, I intend for the Animal Trust to be regarded as a grantor trust for income tax purposes pursuant to Internal Revenue Code Sections 671-676. Therefore, during my lifetime and as a grantor trust for income tax purposes, the tax attributes of the Animal Trust shall be my personal responsibility.

It is my intention that only the animal beneficiaries will be deemed a current beneficiary of the Animal Trust. Therefore, upon my death, it is my intention that the Animal Trust be treated for income tax purposes as a complex trust with no individual persons (other than the animal beneficiaries) being treated as beneficiaries for income tax purposes (no distributable net income passing out). I intend for the Animal Trust to pay any and all taxes for its taxable income and capital gains. Should the Caretaker (other than me during my lifetime) become taxable on distributions from the Animal Trust (other than for any compensation), then the AT Trustee shall ‘gross up’ or make such adjustments to those distributions so as to offset any taxes payable by the Caretaker (again, other than for compensation) at the Caretaker’s then marginal income tax rate.

R. **Enforcement of Animal Trust Provisions.** Any person with an interest in the well-being of the animal beneficiaries may petition for a court order appointing or removing a person designated or appointed to enforce the Animal Trust.

S. **Rule Against Perpetuities Application.** Pursuant to 760 ILCS 3/408(b)(7), the Animal Trust is exempt from the operation of the common law rule against perpetuities and I otherwise waive such rule against perpetuities intending the Animal Trust to be deemed a qualifying perpetual trust.

T. **Amendment or Revocation of the Animal Trust.** I reserve the right to amend or revoke the Animal Trust by written instrument delivered to the then acting AT Trustee and the Trustee of this Trust Agreement.

**[OPTIONAL CONSIDERATION]**

U. **In Terrorem or No Contest Clause.** [IF THE DRAFTPERSON BELIEVES WARRANTED, THE ANIMAL TRUST MIGHT CONTAIN AN IN TERRORM OR NO CONTEST CLAUSE THAT “DISINHERITS” A CONTESTING OR OBJECTING REMAINDER BENEFICIARY. THE REMAINDER
BEFICIARY ALWAYS BEING A CHARITABLE ORGANIZATION WITH AN ANIMAL-FRIENDLY MISSION IS A GOOD WAY OF AVOIDING CONFLICTS.]

[OPTIONAL CONSIDERATION]
V. Alternative Dispute Resolution. [HAVING A PROVISION FOR ALTERNATIVE DISPUTE RESOLUTION MAY BE A CONSIDERATION.]

END OF ANIMAL TRUST

EXHIBIT A
OF THE ANIMAL TRUST
Identification of Specific Animal Beneficiaries

XXX
Exhibit F

Sample Will Provision #1:

Domestic Pets. My executor may make reasonable expenditures for the care, maintenance, support and general well-being of any domestic pet (inclusive of maternal in gestation and after-born) I may have owned individually at the time of my death. My executor may board my pet or employ a caretaker for my pet and compensate such caretaker. My executor may acquire insurances for suitable coverage of the pet and my estate. My executor is authorized to make any and all reasonable payments for pet care provided by any person or entity, including my executor. Any such pet animal shall be placed in a suitable forever-home or if a forever-home cannot be found for the pet then given to a no-kill shelter. Euthanasia may be considered only in the most dire circumstances for the pet and only if that is in the apparent best interests of the pet (such as being a humane response to the pet’s pain and suffering). These payments shall be considered a priority pre-residuary administration expense of my estate. The physical, mental, and emotional well-being of such pets, as determined in the sole and absolute discretion of my executor, shall be prioritized over the interests of the remainder legatees, provided, however, that such direct monetary costs shall not exceed $10,000. [OPTION: POWER TO ESTABLISH A PET TRUST] In addition, my executor shall have the power to establish a separate trust for the benefit of my domestic or pet animals (pursuant to 760 ILCS 3/408, any successor provision, or the equivalent of another state’s enabling law – “pet trust”) along with the option to fund the separate pet trust with such animals and/or cash in any amount not to exceed $10,000. [ANY REASONABLE AMOUNT CONSIDERING A WIDE RANGE OF CARE ELEMENTS – HAVING A LIMIT IS ESSENTIAL TO PRESERVE OTHER COMPETING INTERESTS: REMAINDER LEGATEES AND MARITAL/CHARITABLE DEDUCTIONS] All associated costs (such a legal fees and other consultations – in addition to the foregoing $20,000 limits) to properly evaluate and create such pet trust shall be considered additional reasonable administration expenditures by my executor.

Sample Will Provision #2:

I direct my Executor to place such pets with my children, ____________, ____________, and ____________, if they survive me. If none of the above-named individuals survive me or cannot serve for any reason, I direct my Executor to place any and all animals I may own at the time of my death with another individual or family (that is, in a private, non-institutionalized setting) where such animals will be cared for in a manner that any responsible, devoted pet owner would afford to his or her pets. Prior to initiating such efforts to place my animals, I direct my Executor to consult ____________, D.V.M. (currently located at ___________________________________________), or, in the event of Dr. ____________’s unavailability, a veterinarian chosen by my Executor, to ensure that each animal is in generally good health and is not suffering physically. In addition, I direct my Executor to provide any needed, reasonable veterinary care that my animal(s) may need at that time to restore the animal(s) to generally good health and to alleviate suffering, if possible. Any animal(s) who are suffering and whose care is beyond the capabilities of veterinary medicine reasonably employed to restore to generally good health or to alleviate suffering shall be euthanized, cremated, and the ashes disposed of at the discretion of my Executor.
My Executor is authorized to expend a reasonable sum from my estate to ensure that my pets will be well provided for during their natural lives. This amount shall be for the food, supplies, veterinary care, and general upkeep and well-being of a pet for the remainder of its anticipated lifetime, and the recipient need not account to my Executor. The gift of the pet(s) and the appropriate sum of money shall be made as soon as possible following my death and prior to distribution of any other assets from my estate.

Any expenses incurred for the care (including the costs of veterinary services), placement, or transportation of my animals, or to otherwise effect the purposes of this Article ________ up to the time of placement, shall be charged against the residuary estate.

Notwithstanding the forgoing to the contrary, the amount so expended shall not exceed $______. [SET A LIMIT SO AS NOT TO FRUSTRATE ANY MARITAL OR CHARITABLE DEDUCTION OR FRUSTRATE THE REMAINDER BENEFICIARIES.]

Decisions my Executor makes under this Article ________, for example, with respect to the veterinary care to be afforded to my animal(s) and the costs of such care, shall be final. My intention is that my Executor have the broadest possible discretion to carry out the purposes of this paragraph.

The gift of my pet(s) and the appropriate sum of money shall be made as soon as possible following my death and prior to distribution of any other assets from my estate.

[FOLLOWING ALTERNATIVE WHEN THERE IS NO KNOWN PERSON FOR A CARETAKER]

I give all of my [dogs, cats, and other animals] to the [name of a shelter or rescue organization — for example, a humane shelter, the rescue organization from which the animals were adopted, a breed specific rescue organization, or any other animal shelter or rescue organization that holds itself out for this purpose], presently located at [address], with the following requests that the [name of the shelter or rescue organization identified above] take possession of and care for all my animals and search for good homes for them:

(a) Until homes are found for my animals, the animals should be placed in foster homes rather than in cages at the shelter;

(b) If it is necessary to keep some of the animals in cages while making arrangements to find permanent homes, in no event should any animal stay more than a total of two weeks in a cage;

(c) Each pet should receive appropriate veterinary care, as needed;

(d) After attempts have been made for three months to place an animal, my [son], presently residing at [address], should be contacted if it is not possible to place an animal so that [he] can assist with finding a home for the animal;
(e) The shelter should make every effort to assure that none of my animals are ever used for medical research, product testing or experimentation under any circumstances or subjected to discretionary procedures that are not medically necessary;

(f) After placement, shelter personnel should make follow-up visits to ensure that my animals are receiving proper care in their new homes.

If the [name of the shelter or rescue organization identified above] is in existence at the time of my death and is able to accept my animals, I give [$_] to the [name of the shelter or rescue organization identified above]. If the [name of the shelter or rescue organization identified above] is unable to accept my animals, I give my animals and [$_] to one or more similar charitable organizations as my Executor shall select, subject to the requests made above.

**Sample Power of Attorney Provision #1:**

**[CONSIDER CREATING A SEPARATE, STANDALONE “PET” POWER OF ATTORNEY THAT NAMES A SUITABLE AGENT JUST FOR ANIMAL CARE AND INTERESTS. THE ‘GENERAL’ AGENT MAY NOT BE THE RIGHT PERSON FOR ANIMAL CARE.]**

**Domestic Pets.** I authorize my agent to make reasonable expenditures for the care, maintenance, support and general well-being of any domestic pet I may own (inclusive of maternal in gestation and after-born). My agent may board my pet or employ a caretaker for my pet and compensate such caretaker. My agent may acquire insurances for suitable coverage of the pet and my estate. I authorize any and all reasonable payments from my funds for pet care provided by any person or entity, including my agent. If in the longer term I am no longer capable of caring for or having custodial relationship with my domestic pet, then such pet animal may be given away and placed in a suitable forever-home or if a forever-home cannot be found for the pet then given to a no-kill shelter. Euthanasia may be considered only in the most dire circumstances for the pet and only if that is in the apparent best interests of the pet (such as being a humane response to the pet’s pain and suffering). **[OPTION: POWER TO ESTABLISH A ‘PET TRUST’]** In addition, my agent shall have the power to establish a trust for the benefit of my domestic or pet animals (pursuant to 760 ILCS 3/408, any successor provision, or the equivalent of another state’s enabling law – “pet trust”) along with the option to fund the pet trust with such animals and/or cash in any amount not to exceed $10,000. **[ANY REASONABLE AMOUNT CONSIDERING A WIDE RANGE OF CARE ELEMENTS – HAVING A LIMIT IS ESSENTIAL TO PRESERVE OTHER COMPETING INTERESTS: REMAINDER BENEFICIARIES AND MARITAL/CHARITABLE DEDUCTIONS]** All associated costs (such a legal fees and other consultations – in addition to the foregoing $10,000 limit) to properly evaluate and create such pet trust shall be considered additional reasonable expenditures by my agent. The care for the physical, mental, and emotional well-being of such pets shall be determined in the sole and absolute discretion of my agent.

**Sample Power of Attorney Provision #2:**

Pets. If I am unable to care for the pets living in my home for any reason, and no one else who is living in my home is able to care for such animals, I direct my agent to arrange for the care of such companion animals by the first of the following who is willing and able to act in such capacity: ________________ or ________________. If neither of the named individuals is willing and able to care for my companion animals, I direct my agent to make such other arrangements for their care as my agent deems appropriate. I direct my agent to pay all expenses
associated with the care of such companion animals, including (and not limited to) feeding, exercising, veterinary costs, kennel charges, and grooming.

[OPTIONAL]
If I am unable to remain in my own home

    _____ my agent shall transfer the such animals into ____________________________ Trust.

    _____ my agent is authorized to use my agent’s best judgement in either finding good homes for my pet(s) or allowing a licensed [no kill] animal shelter or veterinary hospital to place my pet(s). [I realize that there is the possibility that my pet(s) may be euthanized if suitable homes cannot be found.]

[OPTIONAL]
Additional Wishes. ____________________________
Exhibit G
Sample “Boilerplate” Trust Provisions

[DURING LIFE PROVISION]
Domestic Pets. During my lifetime, the trustee may make reasonable expenditures for the care, maintenance, support and general well-being of any domestic pet (inclusive of maternal in gestation and after-born) I may own individually or which may become subject to this trust. The trustee may board my pet or employ a caretaker for my pet and compensate such caretaker. The trustee may acquire insurances for suitable coverage of the pet, my estate, and the trust estate. The trustee is authorized to make any and all reasonable payments for pet care provided by any person or entity, including the trustee. If in the longer term I am no longer capable of caring for or having custodial relationship with my domestic pet, then such pet animal may be given away and placed in a suitable forever-home or if a forever-home cannot be found for the pet then given to a no-kill shelter. Euthanasia may be considered only in the most dire circumstances for the pet and only if that is in the apparent best interests of the pet (such as being a humane response to the pet’s pain and suffering). The physical, mental, and emotional well-being of such pets, as determined in the sole and absolute discretion of the trustee, shall be prioritized over the interests of the remainder beneficiaries. [OPTION: POWER TO ESTABLISH A ‘PET TRUST’] In addition, the trustee shall have the power to establish a separate trust for the benefit of my domestic or pet animals (pursuant to 760 ILCS 3/408, any successor provision, or the equivalent of another state’s enabling law – “pet trust”) along with the option to fund the separate pet trust with such animals and/or cash in any amount not to exceed $10,000. [ANY REASONABLE AMOUNT CONSIDERING A WIDE RANGE OF CARE ELEMENTS – HAVING A LIMIT IS ESSENTIAL TO PRESERVE OTHER COMPETING INTERESTS: REMAINDER BENEFICIARIES AND MARITAL/CHARITABLE DEDUCTIONS] All associated costs (such a legal fees and other consultations – in addition to the foregoing $10,000 limit) to properly evaluate and create such pet trust shall be considered additional reasonable administration expenditures by the trustee.

[UPON DEATH PROVISION]
Domestic Pets. After my death and during the period of trust estate settlement, the trustee may make reasonable expenditures for the care, maintenance, support and general well-being of any domestic pet (inclusive of maternal in gestation and after-born) I may have owned individually at the time of my death or which may become subject to this trust. The trustee may board my pet or employ a caretaker for my pet and compensate such caretaker. The trustee may acquire insurances for suitable coverage of the pet, my estate, and the trust estate. The trustee is authorized to make any and all reasonable payments for pet care provided by any person or entity, including the trustee. Any such pet animal shall be placed in a suitable forever-home or if a forever-home cannot be found for the pet then distributed to a no-kill shelter. Euthanasia may be considered only in the most dire circumstances for the pet and only if that is in the apparent best interests of the pet (such as being a humane response to the pet’s pain and suffering). These payments shall be considered a priority pre-residuary administration expense of the trust estate. The physical, mental, and emotional well-being of such pets, as determined in the sole and absolute discretion of the trustee, shall be prioritized over the interests of the remainder beneficiaries, provided, however, that such direct monetary costs shall not exceed $10,000. [OPTION: POWER TO ESTABLISH A ‘PET TRUST’] In addition, the trustee shall have the power to establish a separate trust for the benefit of my domestic or pet animals (pursuant to 760 ILCS 3/408, any successor provision, or the equivalent of another state’s enabling law – “pet trust”) along with the option to fund the separate pet trust with such animals and/or cash in any amount not to exceed $10,000. [ANY REASONABLE AMOUNT CONSIDERING A WIDE RANGE OF CARE ELEMENTS – HAVING A LIMIT IS ESSENTIAL TO PRESERVE OTHER COMPETING INTERESTS: REMAINDER BENEFICIARIES AND MARITAL/CHARITABLE DEDUCTIONS] All associated costs (such a legal fees and other consultations – in addition to the foregoing $20,000 limits) to properly evaluate and create such pet trust shall be considered additional reasonable administration expenditures by the trustee.
Exhibit H

Sample Pet Information Resources

Pet Worksheet

PET OWNER CONTACT INFORMATION:

PET OWNER EMERGENCY CONTACT:

PET IDENTIFICATION INFORMATION (Attach Photos – frontal and side)
Pet’s Name(s) and Nick-Name(s):
Type of Pet:
General (color, gender, weight, sex, breed, neuter status):
Birthday:
Adoption Record Location:
Pet License (State/Location), Rabies Certificate:
Microchip Information:

PET EMERGENCY CONTACTS: VETERINARIAN & MEDICAL CARE
Vet’s Name/Practice:
Medical Care Center:
24-Hour Emergency Number:
Location and Directions to After-Hours Emergency Care Center:

Medicine/Medical Treatment Required/Current or Anticipated Medical Conditions:

MEDICAL & VACCINATION RECORDS
Medical History/Concerns:
Medical Records Location (attach as available):
Medications:
Vaccination Record Location:
Vaccinations:
Type: Administered/Due:
Type: Administered/Due:
Type: Administered/Due:
Type: Administered/Due:

HEALTH & DIETARY NEEDS

Standard Food (Brand/Preparation/Portion/Eating-Feeding Habits):
Favorite Food:
Food Allergies and Dietary Restrictions:
Favorite Treats:
Grooming (any preferred shampoo):
PET INSURANCE
Insurance Provider:
Account Number:
Website/Login Information:
How premiums are paid, how claims are submitted, cost of premiums, etc.:
Attach copy of policy.

PET GUARDIAN OR EMERGENCY CAREGIVING
Who would take care of your pets if you couldn’t? Whether it’s for a few days, weeks, or permanently, you need to name a guardian.

Pet Guardian/Caretaker:

Guardian/Caretaker’s Contact Information:

Special Instructions (Include any specific directions the Guardian/Caretaker should follow; if no official Guardian has been named, you should include other relevant instructions in this area.):

Alternative Pet Guardian/Caretaker:

Pet Sitter or Temporary Boarding Facility Contact Information:

FINANCIAL & LEGAL ARRANGEMENTS
Pet Trust (Include the name of Trust, Trustees, specific stipulations, etc.):

Power of Attorney that includes instructions regarding pet care:

Will (Have you made provisions in your Will for your pet? Where is the Will located? If no provisions have been made, describe your wishes below.):

CARE INSTRUCTIONS
Location of Leashes and Supplies:

Location of Food and Water:

Is Pet Allowed to Go Outside?

For Cats (How often is litter changed, and what are litter preferences?):

For Dogs (Walk how often, how long and favorite routes?):

PERSONALITY & BEHAVIOR (favorite toys, form of play, exercise routines or limitations, affection, praise; fears, quirks; use of leashes, harnesses and muzzles)
EUTHANASIA CRITERIA

Additional information that would help someone care for your pet:

END

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