The Ins and Outs of Drafting Comprehensive Pet Trusts and Ancillary Boilerplate Provisions

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What If?

...What if 2/3rds of your clients came with a special needs child in their immediate family unit? Do you think your practice skills and offerings would or should change?
The majority of your clients will have some “pet” as a part of their household.

Many of these clients consider the pet as a “companion” or family member.

Thus, best practice is not ignoring nonhuman animals in estate planning and should be considered fundamental planning.
Time is of the Essence for Living-Beings

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

Being _dependent_ is one inherent element of being a “domestic” companion animal.
• The reason most people do not do specific planning (tax, charitable, or “pet”) is that they are not presented with the application and options.

• Your estate planning questionnaire should in some way should cover pets

“Do you have animals/pets that you consider as family? No __ Yes __ and give details.”
Pet Trusts are merely a form of “special needs trusts” (SNTs) or special assets trusts (business, QSST/ESBT, QPRT, etc.).

- Estate planning for nonhuman animals is thus “special needs” planning for a family member with incapacity.

- Pet Trusts are also structured “directed trusts” (various directing parties).
Pet Trusts & Animal Concern is Everywhere in Law

• “Pet Trusts” are authorized by statute in Illinois (760 ILCS 3/408) and in all other 49 states and the District of Columbia.

• Animals are also recognized in Illinois by enabling statutes for court considered resolution of “family matters”:
  • Marriage dissolution petition (750 ILCS 5/42)
  • Temporary relief – such as protective orders that can include animal well-being (750 ILCS 5/501)
  • Settlement agreements (750 ILCS 5/502), and
  • Disposition of property and debts (750 ILCS 5/503)
Pet Trusts & Animal Concern is Everywhere in Law (Cont.)

• Illinois has many other statutes effecting animal interests: Animal Welfare Act, Humane Care for Animals Act, Animal Control Act, Feeding Garbage to Animals, Brand Act, Dead Animal Disposal Act, Domestic Animals Running-at-Large Act, Horse Meat Act, and numerous other animal health statutes.

• Illinois is viewed as one of the top ranked states’ laws for the welfare and interests of animals.
• Something overlooked by most attorneys is that nonhuman animals (including domestic companion animals) are at-law tangible personal property.

• Thus, when the typical attorney prepares and facilitates a **general assignment of tangible personal property to a revocable living trust**, they are actually transferring the legal ownership of any nonhuman animal “owned” by the trust settlor. Is this a surprise ... to the attorney, the client, a trustee of the trust, i.e., ABC Bank & Trust Company?
Threshold Questions

• **Should there be a separate, standalone power of attorney** just for the animals with a named agent best suited for animal care?  
  • The general agent might be a counterproductive person.

• **Should the Pet Trust be “IN” or “FOR”?**  
  • Is the animal corpus IN the trust?  
  • Is the trust FOR the animal who is outside of the trust?
Threshold Questions (Cont.)

• Should the Pet Trust:
  • Be a part of the regular revocable living trust?
  • A standalone trust?
  • Funded with the animal “now” (living) or upon the death of the owner (testamentary)?

• What dollar amount should fund the trust fbo the animal(s)?

• Who should be the involved fiduciaries (trustee and directing parties)?
  • Trustee.
  • Caretaker.
  • Enforcer.
  • Trust Protector.
Standards of Care are Important

• Clearly articulating the standards of care for the animal-beneficiaries is important in order to **create justification** for the **funding amount** and **control expectations** for the animal and from remainder beneficiaries.

• Remember: The court has jurisdiction to reduce the funding amount if deemed excessive and remainder beneficiaries are inherently incentivized to view Pet Trust funding as excessive.

• Material Purpose: Standards of care assist in articulating the material purpose of the trust.
Articulate Dollar Limits

• There needs to be a testamentary limit on funding an Animal Trust:

  • **Safeguard** any marital or charitable **deductions**.

  • Reduce frustration, anxiety, or inherent conflicts with remainder beneficiaries.
Identification of the Animal Beneficiary

- Clearly identifying the animal-beneficiary can be important so that a Caretaker cannot easily substitute an animal-beneficiary.
Nonhuman Animal Life and Needs

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

• Have “boilerplate” animal care provisions in each of financial power of attorney, trust, and will.

• Consider having a standalone power of attorney just for the custody and care of the animal(s).

• Does this get entangled in the funding mechanisms (i.e., does the general assignment of tangible personal property specifically exclude animals)?
When there is the heightened desire for a specific “Animal/Pet Trust,” then have an Animal Trust article embedded into the revocable living trust that creates the “comprehensive” Animal Trust.
Provided Resources

- Comprehensive Discussion Paper with Exhibits.
- Sample Boilerplate Provisions for Power of Attorney, Trust, and Will.
- Drafting Checklist for Comprehensive Animal Trust.
- Sample Comprehensive Animal Trust.
What If…?

• IF 2/3rds of your clients came with a special-needs child in their immediate family unit, do you think your practice skills and offerings would or should change?

• Expand your perspective and definition of “family” member and offer planning for the inter-species family members!
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