

PET TRUSTS

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In Virginia at least, trusts for pets are no longer solely for rich and famous animals like Leona Helmsley's dog, Trouble, or Tinker, the cat owned by London widow Margaret Layne. In a departure from Virginia's common law, Code of Virginia Section 55-544.08 expressly permits individuals to create enforceable trusts for the care of an animal including burial and post-death expenditures. These so-called "pet trusts" provide a mechanism by which the trust's creator may have some assurance that his animals will be cared for so long as they live. Before creating such a trust, though, an individual should carefully consider the following factors.

A. CREATING THE PET TRUST.

A pet trust is typically created in one of two main ways. First, the language regarding the pet trust may be placed in the pet owner's will. Second, the pet trust is integrated into an existing *inter vivos* trust (revocable living trust) of the pet owner. Either way, the pet trust should specifically designate which pet or pets are to benefit from the trust, who may enforce the terms of the pet trust, and what will happen to assets (1) that are not needed to care for the pet(s) in question or (2) that remain once the animal(s) have died. Although Paragraph B of Section 55-544.08 indicates that the governing instrument of the pet trust will be liberally construed, specificity is important-- both to bring vague declarations of trust within the scope of the section and to presume against the precatory nature of the disposition. A vague instrument will require court action to interpret, something that is costly and time-consuming.

B. ENFORCING THE PET TRUST.

In creating a pet trust, the pet owner should give thought to naming an individual that would have the authority to enforce the trust's terms, as contemplated by Paragraph C of Section 55-544.08. The pet owner would be wise to refrain from making the assumption that the chosen care taker will have the some enthusiasm in caring for their animal that the pet owner does. The pet owner may not wish, then, for the care taker and the individual who may enforce the instrument to be the same person. While the above-referenced Paragraph C further permits "a person having an interest in the welfare of the animal" to petition the court to name a person to enforce the terms of trust (or to remove a person who has been named), the better approach by the pet owner is to avoid such a time-consuming and expensive process through advance planning. Further, as Paragraph D of this section specifically waives all reporting requirements unless required by the court or the trust instrument, the pet owner has no assurance that the terms of the trust will be followed without the nomination of an individual that the pet owner trusts to enforce the trust's terms.

C. TERMINATION OF THE PET TRUST.

The pet trust ends upon the death of the last surviving animal for which the trust was created. Virginia pet trusts currently do not apply to the progeny of any animals for

which the trust was created. Paragraph E of the pet trust statute provides that any funds that are needed to care for the animal will be distributed to the pet owner (if alive), the residuary beneficiaries of the pet owner's will, or the residuary provisions of the pet owner's *inter vivos* trust. If none of the above situations are applicable, the assets pass to the pet owner's "successors in interest." Because the pet owner may not wish for any remaining assets to pass to any of these potential beneficiaries, thought should be given to naming a proper beneficiary of any remaining assets in the pet trust itself to avoid unintended consequences.