
LAW OFFICES OF
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LEGAL BRIEFING: New York Estates, Powers and Trusts Law Section 7-8.1
PLANNING FOR YOUR PASSING: PET EDITION

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Traditionally, upon a person's passing, they had limited options and methods to ensure their pet was cared for after the owner's death. For example, the pet owner could gift money to another person with a request that the money be used to care for the pet, however this was legally unenforceable. Or, the owner could give the pet to an animal shelter, though most pet owners do not find such a solution satisfactory. A trust providing for the care of the pet was not an alternative at the time.

Thankfully, the laws have changed and New York Estates, Powers and Trust Law Section 7-8.1 authorizes the creation of pet trusts. There are certain requirements, however.

1. The Trust must be for the care of designated pets or domestic animals.
 - a. This can include animals such as dogs, cats, horses, fish, birds, etc.
 - b. The trust may only benefit the pets named in the trust, which can include any pets alive at the time of the owner's death.
2. The Trust must have a Trustee – a designated person or organization who will enforce the terms of the trust.
 - a. Generally, the creator of the trust will appoint the trustee. However, if a trustee is not appointed, or the trustee will not enforce the trust, then the court may appoint a trustee upon the request of any interested person.
 - b. The trustee does not need to be the same person who cares for the pet, but such an arrangement is usually the case.
3. The Trust must be Funded
 - a. The trust must be funded with property that will be used to cover the costs associated with caring for the pet.
 - b. There is a limitation on the amount of property that can be placed in a pet trust, as it cannot substantially exceed the amount required for the maintenance of the pet (i.e., the Leona Helmsley matter).
 - c. Generally, up to twenty thousand (\$20,000) is allowable, though the amount can be greater for pets that are expensive to care for or that have long lifespans (i.e., horses or exotic birds).

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4. The Trust Must be Used Solely for the Benefit of the Pet
 - a. The principal and/or the income cannot be used for the benefit of the trustee.
 - b. Note: However, the trustee will be entitled to a commission set by New York State law.

The Trust Will Last as Long as the Pet Is Alive:

The length of the trust was once limited to twenty-one (21) years after the death of the creator of the trust. However, now, the trust will last as long as the pet is alive, even if that period exceeds the prior twenty-one (21) year limit. Any property still remaining in the trust when it terminates will generally pass according to the terms of the trust. Thus, the creator of the trust has the power to dictate where the trust property will go after it is no longer needed to care for the pet (i.e., family or charity).

The Court Will Assist in Carrying out The Trust Creator's Intent

Finally, the court retains the authority as necessary to carry out the intent of the trust creator and the purpose of the pet trust. For example, the court has the power to compel the trustee to use the trust property only to care for the pet. Thus, you can be assured that even after you are gone, your beloved pets will be cared for.

If you have any questions about any of these planning opportunities for your pets, please contact any attorney of our Firm at 585-730-4773.

This Legal Briefing is intended for general informational and educational purposes only and should not be considered legal advice or counsel. The substance of this Legal Briefing is not intended to cover all legal issues or developments regarding the matter. Please consult with an attorney to ascertain how these new developments may relate to you or your business.

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