

Louisiana Pet Trusts and How to Avoid Some



Situations

By Christian N. Weiler

Many people consider their pets as more than companion animals. Many consider their pets as family members. In August 2015, the Louisiana Legislature enacted La. R.S. 9:2263 titled “Trust for the Care of an Animal” or, more commonly referred to as, a “Pet Trust.” Louisiana was one of the last remaining states to enact a Pet Trust law (currently 49 states plus the District of Columbia have enacted Pet Trust laws).

According to the American Pet Products Association (APPA), it is estimated that this year the pet industry will reach \$62 billion in the United States. Also according to the APPA, 65 percent of U.S. households own at least one pet.

This author has had personal experience with several estate-planning clients who were concerned about the well-being and care of their pets upon death. Now, the Louisiana Legislature has offered a solution. While some may think considering

a pet in estate planning unnecessary, for some clients, a legal estate planning document ensuring care for their pet after death provides peace of mind and a defined mandate for future caregivers.

Background: Louisiana Pet Trust

The controlling provisions of a Pet Trust are found in La. R.S. 9:2263. A Louisiana inter vivos or testamentary trust may be created to provide for the care of one or more animals in existence on the date of the creation of the trust. The trust instrument should designate a caregiver for each animal. An animal’s caregiver will have physical custody of the animal after the death of the owner(s) and will bear responsibility for the animal’s care. If a caregiver is not designated or if the designated or appointed caregiver is unable or unwilling to serve, the trustee is

free to appoint a caregiver or he/she may act as the caregiver. The trust instrument also may designate a person to enforce the provisions of the trust. If a person is not designated to enforce the provisions of the trust or if the designated person is unable or unwilling to do so, the caregiver, the trust settlor or any of the settlor’s successors may enforce the trust terms.

Under the Pet Trust provisions, trust assets may be used only for the care of each animal and for compensation and expenses of the trustee and the caregiver. Louisiana law indicates “reasonable compensation” may be afforded to the trustee and the caregiver. A Louisiana court may determine that the value of the trust “substantially exceeds the amount required to care for each animal and for reasonable compensation and expenses of the trustee and the caregiver.” Upon such a determination, the court may partially terminate the trust, but only as to the excess assets held in trust.

A Pet Trust terminates upon the death of the last surviving animal provided for in the trust. The trust instrument may designate a person to receive the trust's principal upon a partial or complete termination. In the absence of a designation, the trust assets are distributed to the settlor, if living, or to the settlor's successors upon termination.

Unless otherwise provided for, a Pet Trust shall be governed by the provisions of the Louisiana Trust Code. Consequently, a trustee's fiduciary duty and obligation to render an accounting remains.

According to the Comments found in La. R.S. 9:2263, the Pet Trust provisions are modeled after similar provisions in the Uniform Trust Code, the Uniform Probate Code and laws from a variety of other states.¹ The Comments also state that a Pet Trust "creates a unique exception to a foundational principle of Louisiana law and allows an animal to serve as the beneficiary of a trust, through a mechanism sometimes referred to as a 'statutory pet trust.'" The Comments to the Pet Trust provision also state: "This Section contemplates the existence of a tetra partite, rather than tripartite relationship, under which there exists a settlor, trustee, caregiver, and beneficiary."

However, this author questions some of these Comments and found material differences between the various state laws. In some states, there is no mention of a caregiver in the applicable law and it is permissible for the trustee to retain one or more persons to assist with animal care and well-being. If a Pet Trust names a caregiver, is that caregiver not also a beneficiary of the Pet Trust since he/she receives funding needed for the day-to-day maintenance and care of the pet? The pet is presumed to be a beneficiary under the Comments; however, this animal has no other rights under Louisiana law. Additionally, this provision now found in the Trust Code seems to conflict with the law of persons.² Furthermore, as discussed below, while the Louisiana Trust Code now provides for an animal to be a beneficiary, there is no federal law to the equivalent, resulting in some uncertain tax consequences.

A Pet Trust can be funded with any-

thing from cash and investment assets, to retirement benefits and life insurance. The only limitation on funding a Pet Trust is that an excessive amount of funds may be prohibited from being transferred to the Pet Trust. As stated above, if a court finds that the value of the trust "substantially exceeds" the amount required to care for each pet and for realistic compensation and expenses of the trustee and caregiver, the court may terminate the trust as to the excess portion. However, what exactly is meant by "substantially exceeds"? Guidance for developing an answer to excessive funding would likely require knowledge on the life expectancy of the pet and the average cost of maintenance for that type of animal. Furthermore, drafting a Pet Trust with an explanation of the settlor's maintenance and care desires, including a description of the pet's current lifestyle, will presumably help to establish the amount of appropriate funding of the Pet Trust. How a trust is to work for distribution purposes is as varied as the funding mechanism. A Pet Trust is really only limited by a client's imagination or the attorney's creativity.

What are the Tax Implications of a Pet Trust?

Pet Trusts are funded with assets transferred into the trust to provide for the care and well-being of the animal. While this transfer or funding does not trigger income tax, the earnings of this trust are taxable. If the trust is a revocable inter vivos trust, it would be considered a grantor trust for federal income tax purposes, resulting in taxation to the trust's settlor. If the trust is irrevocable, the trust would be considered a "complex trust" under federal income tax laws and distributions from the trust would be taxable, presumably to the named caregiver. Consequently, a Pet Trust could result in unintended consequences to the pet's caregiver.

Alternatively, if the animal is deemed as the trust beneficiary, all trust income, whether distributed or not, is taxed to the trust itself; however, trusts usually pay income taxes at a higher rate of tax. This approach was recognized by the IRS in Revenue Ruling 76-486.³ The future income tax obligations of the trust or care-

taker should be taken into consideration when establishing and funding the trust.

Based on the Internal Revenue Code, the IRS ruled in Revenue Ruling 78-105⁴ that charitable remainder trusts which name animals as income beneficiaries or pay income for the benefit of animals will not qualify for a charitable federal estate tax deduction. The IRS ruled on several scenarios, with the primary thrust limiting a trust beneficiary as a "person" which includes an individual, trust or other company and excludes animals.

Conclusion

The overall goal of this revision to the Louisiana Trust Code by the Legislature is intended to honor the legality of a settlor's bequest at his/her death, or in life. Louisiana-domiciled clients concerned about the well-being of their pets after their deaths can now consider a Pet Trust in their estate plans. The Pet Trust provision provides for personalization or customization and merely acts as a basic framework for the attorney drafting such a trust, whether it is an inter vivos or a testamentary trust. When advising clients, however, attorneys should make them aware of the potential ramifications of such a trust, particularly the unique and complex federal tax implications.

FOOTNOTES

1. See, Comment (a) citing to: Unif. Trust Code § 408; Unif. Prob. Code § 2-907; 12 Del. C. § 3555; Cal. Prob. Code § 15212; N.C. Stat. § 36C-4-408; Tex. Prop. Code Ann. § 112.037; Fla. Stat. Ann. § 736.0408.

2. La. Civ.C. art. 24 *et. seq.*; see Comment (b).

3. Rev. Rul. 76-486, 1976-2 CB 192.

4. Rev. Rul. 78-105, 1978-1CB 295.

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