

THE NEW OLD AGE

After Your Death, Who Takes Care of the Dog?

A pet trust designates a new guardian for companion animals and sets aside funds for their care. Better yet, it's legally binding.

By Paula Span

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In 2016, Tracy Jennings received shocking news: A lifelong friend, a woman who had a farm with animals great and small, had died suddenly in an accident.

A circle of grieving friends hastily arranged new homes for the woman's beloved animals, including three older horses. But just two weeks after her death, her family had the horses euthanized.

"It was very sad, a real kick in the head," Ms. Jennings said. "But we had no legal rights, and she had nothing in writing."

Ms. Jennings, 66, a semiretired landscape designer, lives on a 10-acre farm in Buffalo, Minn., and has her own menagerie: five cats, a golden retriever, two horses and a donkey named Niles. They would not meet a similar fate, she decided.

"There's nothing sadder than seeing pets wind up at a shelter because the older person who cared for them has died," she said.

She had a lawyer draw up a pet trust, a legal document specifying who will care for her animals when she dies or becomes unable to do so herself. Her trust provides money to cover veterinary bills, food, grooming, boarding and unexpected expenses. It specifies which vet to use. Attached guidelines impart care instructions, including particular foods and animals' "personality characteristics."

“These animals are living longer than they used to because of the care they get,” Ms. Jennings said, adding that the trust “gives me less anxiety, more control over their futures.”

Every state has a statute permitting such trusts for pets, and some lawyers who prepare them report growing interest in their use.

“We have a lot of clients where the pet is the center of their universe,” said Bernard Krooks, an elder law attorney in New York who has prepared several dozen such documents. “They worry about what will happen to them after their deaths.”

More typically, aging pet owners “have someone in the family lined up,” Mr. Krooks said. “They don’t formalize it in a document.”

Or, since domestic animals are legally considered property that can be bequeathed, owners can include arrangements for pets in their wills.

Jerry Bunke took that approach for his blue-fronted Amazon parrot, Azul, who not only greets visitors with “hello,” but can also warble the first notes of Beethoven’s Fifth. “For more than 25 years, she has been part of our family,” said Mr. Bunke, 79, a professional musician and producer in Brooklyn.

Azul may well survive him — a parrot can live to 50 or beyond — so a younger, animal-loving cousin has agreed to assume her care after Mr. Bunke’s death, a provision that is now part of his will.

Such agreements with relatives or friends work for most pet owners, said Bette Heller, a lawyer in suburban Denver. She helped draft Colorado’s pet trust statute but cautioned that a trust “is not necessarily the best way to take care of a pet” after an owner’s death.

“They’re for people who don’t have anybody they trust to take care of their animals,” she said. Since she has family members willing to care for her horses, she hasn’t created a pet trust herself.

Pet trusts can also involve substantial sums once clients calculate the costs of care over many years. “If you don’t have enough to take care of a pet for the rest of its life, and to pay a trustee to manage funds and a C.P.A. to file tax returns, then it doesn’t make sense” to have a trust, Ms. Heller said.

But Rebecca Bell, the attorney in suburban Minneapolis who handled Ms. Jennings’s estate plan, tells clients that pet trusts — she charges \$1,000 to prepare one — provide greater protection than wills and other verbal or written agreements.

“A will doesn’t go into effect until you pass,” she said. “A trust goes into effect the moment it’s signed and continues after your death.” That enables a designated caretaker to take over if the owner is alive but cannot provide care, either temporarily — after joint replacement surgery, say — or permanently.

(Incapacitated pet owners can also add instructions for temporary care, along with directions regarding funds, to a financial power of attorney document, Ms. Heller said.)

Another plus: Pet trusts usually apply to animals that people currently own and any others they acquire, without having to be updated.

Primarily, though, the advantage of a trust is legal enforceability.

It generally includes several parties:

- The “grantor” or “settlor” who establishes the trust and provides the funds
- The caretaker appointed to assume responsibility for the animal, and perhaps an alternate if that person cannot shoulder the role
- A trustee, who may or may not be the same person as the caretaker, to manage the money
- And an enforcer or protector who ensures that the terms of the trust are being followed

“In a standard will, if you say, ‘I leave my pet to my sister Susie and \$5,000 for its care,’ she can drop the pet off at a shelter and take the \$5,000,” Ms. Bell said. On the other hand, an enforcer who finds that the caretaker isn’t complying with the terms of the trust can take that person to court.

Mr. Krooks’s law firm, Littman Krooks, created a pet trust for its client Eric Albert, a retired bank executive and dog trainer in Scarsdale, N.Y.

“To say I love dogs would be an understatement,” Mr. Albert, 75, said. “And I don’t like anything unresolved or unplanned for.”

His trust provides \$15,000 for Emma, an 8-year-old husky mix he adopted through a rescue organization, and any other dog that might join his household. A woman with whom Emma boards when Mr. Albert travels has agreed to become her caretaker; if she cannot serve, he has left funds to the North Shore Animal League on Long Island, which can rehome older dogs.

Such trusts can go into intense detail. Some specify organic pet food, mandate acupuncture or note that a dog likes the radio playing when it’s home alone. They can require pet insurance policies to help cover vet bills. Some include compensation for the caretaker.

They tackle questions like: Who decides when an older animal should be euthanized? The caretaker? A vet? Two vets? What will become of its remains?

“You can go crazy with this stuff,” Mr. Krooks said.

In one of the most famous instances of craziness, the billionaire hotel and real estate magnate Leona Helmsley generated headlines after her death in 2007. She had left her Maltese terrier, aptly named Trouble, \$12 million in a trust — while also excluding two of her grandchildren.

A judge agreed to a settlement with the grandchildren and, ruling that Trouble’s trust exceeded what was necessary for her care, reduced the sum to \$2 million.

Less affluent families can come to blows over bequests for pets, too. “It can get uncomfortable,” Ms. Bell said. “I’ve seen the kids win, and I’ve seen the dogs win.”

She doesn't judge her clients' choices, she said. With aging parents, "maybe the children never come to see them. But the pet sees them and loves them every day."