



## Trusts, They're Not Just for People Anymore!

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Many of us think of our pets as members of the family. Research by The American Pet Product Manufacturers Association shows that in 2007 pet owners spent over \$40 Billion on our pets. This includes everything from buying clothes, toys, treats and insurance to paying for expensive veterinary procedures. We provide for them and pamper them, but what happens to your pets if something unexpected happens to you?

Legally pets are considered personal property, like a car or jewelry. Therefore, if they are not included in the estate planning process your beloved pets could be dropped off at the local shelter, left with a caregiver that does not care or euthanized. Proper planning can provide you with peace of mind, not only in the event of your death, but also in the event of illness, injury, military deployment or merely an extended out-of-town business assignment.

One option is to make a "Conditional Gift to a Caregiver". This is done by providing in your will that your pets, along with a sum of money, be given to a designated Caregiver. While this is a simple solution, it has its flaws. The first is that the Caregiver has only a moral, and not legal, obligation to care for your pets. Secondly, most wills are not immediately read and probated. Additionally, this does not address any of the pre-death scenarios discussed above.

Setting up a Pet Trust is another option. Since 1993, many states have added new statutes that allow people to leave funds and other types of property directly to their pets. While pet statutes can make it easier to leave your pet money, they are not without drawbacks. Each statute is different and many states allow judges to reduce the amount given to pets if they believe the amount is excessive, as seen with Leona Helmsley's dog, Trouble. Trouble was left \$12 million, but this amount was reduced to \$2 million by a New York Judge.

Currently Georgia does not have a pet statute. However, we can still protect our pets with a Traditional Trust. While it may be slightly more complicated, the Traditional Trust may be preferable due to its increased flexibility and accountability. For example, under a statutory trust, the pets are the beneficiary

and are unable to communicate regarding the care they need. However, the beneficiary of a Traditional Trust is the Caregiver, not the pets, who would have standing in a court of law to request enforcement of the Trust provisions.

There are a few decisions you need to make when setting up a trust for your pets. A Trustee (and an Alternate) needs to be selected. The Trustee manages and distributes the funds for the pets' care and also oversees their care. He or she needs to be someone you trust regarding financial matters and who agrees to undertake the responsibility. In exchange, the Trustee is typically paid an amount to serve as Trustee.

A Caregiver (and an Alternate) is chosen to take possession of your pets and care for them. The Caregiver is the beneficiary of the trust and should be carefully chosen and agree to accept this responsibility. Specific instructions are left so that the Caregiver knows the standard of care you expect and the Trustee insures that this standard of care is being met. In exchange, the Caregiver is also typically paid for his or her services.

For both legal and practical purposes, the Trust must be funded. Funding can come from a variety of sources such as a direct transfer of cash, retirement or similar accounts, life insurance policy (either an entire policy or a portion of an existing policy), or through your will. The Trust should be at least partially funded when it is established.

The Trustee should have a power of attorney to transfer your funds into the trust. A general power of attorney does not restrict the powers of the Trustee. Alternatively, you may limit the power to take effect only upon the occurrence of certain conditions such as severe illness or injury.

You can also leave money or property to the trust in your will which will be transferred upon your death. An existing will can be modified through the use of a codicil (amendment) to accomplish this purpose.

A Remainder Beneficiary is named in the trust to receive any funds that remain after the last pet passes away and the trust terminates. You may want to consider leaving these funds to a local shelter or pet organization.

Pet Trusts are very flexible to make sure that your desires are carried out. They can be modified or terminated by you at any time prior to your death. To assure that the documents are correctly prepared and signed, you should consult with an estate planning attorney who understands the importance of including pets into the estate planning process.

It is best to plan ahead. Waiting until an emergency arises is neither in your pets' best interest or yours. For example, the validity of the documents may be contested on the grounds that you were not mentally fit at the time of signing. Remember, when you prepare for your future, prepare for theirs as well.

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Article printed in the September 2008 GeorgiaPetDirectory.com newsletter.