



FROM THE LAW OFFICES OF GARAN LUCOW MILLER, P.C.

PERSONAL PLANNING

A Publication on Estate Planning, Wills and Probate

www.garanlucow.com

Garan Lucow Miller, P.C. 300 Ottawa Ave. N.W. 8th Floor, Grand Rapids, MI 49503 800-494-6312

From the Editor

TaraLynn T. Velting

WHO WILL CARE FOR MY PET WHEN I'M GONE?

For many of us, pets are valued members of our families. They often serve as companions and friends to the elderly. In fact, many elderly people will spend more time with their pets than they ever do with their children. Given that, it is natural that people want to provide for their pets after their death. **Fortunately, Michigan is one of thirty-three states that recognizes pet trusts as valid and enforceable.** A pet trust can be established to provide for the ongoing care of your pet, after your death.

WHAT SHOULD I LEAVE MY PET?

So how do you set up a trust for your pet? The first thing you will want to do is meet with your estate planning attorney to discuss your options. There are many things you will want to consider. Perhaps at the top of the list is how much property or assets you want to leave your pet and/or how much the pet will need. If you have specific desires about how your pet is cared for and the standard of living, you will want those expressed in writing. If you intend that your pet have a live-in caretaker at your place of residence and eat only organic, home-cooked food, you might need to set aside more funds than someone who simply wants a caretaker.

CHOOSE A CARETAKER AND TRUSTEE

You will need to choose a caretaker and a trustee for your pet trust. This can be the same person or two different people. Your caretaker is responsible for the actual care of your pet and has standing to enforce your pet trust if your trustee does not follow the directions in your trust. Your trustee is responsible for managing the funds of your trust and distributing those funds in accordance with your wishes to the caretaker for your pet's care. The caretaker and trustee need to be someone you trust to carry out your wishes for your pet. You should name alternate caretakers and alternate trustees, in case those you have first appointed are unable to serve in their appointed roles.

ADDITIONAL PAYMENTS TO CARETAKER AND TRUSTEE?

You need to decide if you want any additional payments made to your caretaker and trustee in consideration of the services they are providing. This may not be a viable option for you depending on the size of your estate, but if you have significant assets you may generate more goodwill toward your pet by providing a little something for the caretaker and trustee that are responsible for your pet.

IDENTIFY YOUR PET

Attempt to clearly identify the pet(s) that is the beneficiary of the pet trust. This will help prevent possible fraud on the part of your caretaker who may "replace" your pet when he dies because she wants to continue receiving payments. A written description, picture, and veterinarian records are all helpful in identifying the pet. A more advanced method would be to place a microchip implant in the pet and retain a DNA sample. However, if your intent is that your pet trust provide for whatever pets you have at the time of your death (instead of naming a specific pet), a more generic description of your pets as a class may have to suffice. If you are naming trusted family members to care for the pet who share your love for the pet, you may not be as concerned about specifically identifying your pet.

MINIMIZE THE RISK OF YOUR PET TRUST BEING CHALLENGED

You will want to minimize the risk of your pet trust being challenged by your heirs. While your pet trust is valid, that might not stop your heirs from challenging it. If you are leaving a substantial part of your estate to your pet, consider putting your reasons in writing. Describe the standard of living for your pet, the benefit you have received during the years you have had together, and your desire to adequately provide for your pet. Consider capping the amount you will give to your pet trust by a percentage of the estate. For example, you will give X amount of dollars to your pet trust, not to exceed 25% of your estate. If you give everything to your pet and disinherit your children without stating why, you certainly run the risk your children may challenge your mental competency and attempt to have your pet trust undone.

HOW WILL YOUR CARETAKER RECEIVE DISTRIBUTIONS?

Designate how your caretaker will receive the funds from your pet trust. You can direct that your trustee pay the caretaker monthly or quarterly, for example. Determine if you will establish a set amount every month regardless of the caretaker's actual expenses or if you want the caretaker to receive additional payments for above-normal expenses, such as

medical or veterinarian expenses. You could have your caretaker submit receipts for reimbursement to the trustee, but that places a burden on the caretaker to keep detailed records of all costs.

FINAL CONSIDERATIONS

You must designate a remainder beneficiary if you want to avoid the court getting involved in the final distribution of your trust after your pet's death. Who do you want to receive any leftover or remaining money in the trust when your pet dies? If you leave it to the caretaker or trustee they may have an incentive to see that your pet meets an earlier death. Consider leaving the remainder to your favorite charity. You should also provide instructions for where your pet should be buried or cremated.

MEET WITH AN ESTATE PLANNING ATTORNEY

You have many options to consider regarding how to best care for your pet when you are no longer able to be with him/her. Make arrangements to meet with an estate planning attorney who can advise you of your options and how you can ensure that your pet will be taken care of when you are gone.

Tara Velting is an associate attorney at the Grand Rapids office of Garan Lucow Miller, P.C. and is a member of the firm's Estate Planning & Settlement Group. She is a member of the National Academy of Elder Law Attorneys, the Michigan Bar Association and the Grand Rapids Bar Association. Ms. Velting earned her J.D. from George Mason University School of Law in Arlington, VA, and her B.A. in History and Political Science from Hillsdale College. You can reach her at 616-742-5500 or 1-800-494-6312; email at tvelting@garanlucow.com.

Garan Lucow Miller, P.C. is a full-service law firm founded in 1948 with offices throughout Michigan. We provide legal services to businesses, individuals and municipalities. For a complete list, please visit our Web site at www.garanlucow.com