

Chapter 15B

Making Provisions for the Care of Your Animals After Your Incapacity or Death

Bette Heller, Esq.
Bette Heller, P.C.

SYNOPSIS

- 15B-1. Overview of Handling Animals in an Estate Plan
 - 15B-2. Trusts for Animals
 - 15B-3. What About Incapacity?
 - 15B-4. Alternatives to Trusts
 - 15B-5. Tell Your Attorney What You Want
-

15B-1. Overview of Handling Animals in an Estate Plan

One of the most overlooked aspects of estate planning is making provision for animals should their owners become incapacitated or die.

Statistics show that a great majority of households contain pet animals, such as dogs and cats. In most cases, these pet animals are considered as part of the family. In addition, many people also own what are usually considered to be “farm animals”, such as horses, donkeys, goats, llamas, potbelly pigs, etc., which they also consider as their “pets”, but which are indeed “livestock” and regulated by the laws regarding livestock.

This section will discuss how to handle such pets and other animals in an estate plan.

15B-2. Trusts for Animals

Legal Concerns

A “Pets Trust” is a trust created for the care of a particular animal, or animals. In many states, these trusts are not valid because there is no beneficiary who can enforce its provisions and they violate the rule against perpetuities.

Colorado does honor “Pets Trusts”, and our statute, C.R.S. § 15-11-901 (2) and (3), is one of the best. It provides that a trust can be set up for the care of one or more designated animals

during their lifetime; and can also continue for the lifetimes of their offspring which are “in gestation” when the pets become present beneficiaries of the trust.

A Word of Caution

Since trusts can be created for the care of any type of animal, as long as it is not part of a business venture, it is helpful to call these “Animal Trusts” rather than “Pet Trusts.” As mentioned above, there are animals that some people consider their “pets”, which are really livestock. Calling these animals “pets” could eventually result in the loss of their livestock designation, which would in turn result in the loss of many protections that they currently have under the Department of Agriculture.

Trust Provisions

An “Animal Trust” can be included in a will or revocable living trust, to take effect upon your death. A charitable remainder trust can also be created if you are making a charity the remainder beneficiary after the death of the animal(s).

A trust for animals should specify the following provisions:

- ▶ Description of the animal(s) to be cared for.
- ▶ Who is to be the caregiver, and the successor caregiver.
- ▶ Who is to be the trustee, and the successor trustee.
- ▶ What types of things can be paid for by the trust:
 - Medical care;
 - Food and shelter;
 - Grooming;
 - Training;
 - Travel with the caregiver, etc.;
 - Descriptions can be very specific or left up to the trustee to decide.
- ▶ Whether both income and principal can be used for the care of the animal(s); or just income, leaving the principal for the remainder beneficiaries;
- ▶ Are capital gains to be considered income or principal?
- ▶ When will the trust end?
 - ▶ After a specific period of years, or
 - ▶ After the death of the animal(s).
- ▶ Who is to receive the remaining funds of the trust after the trust ends?
- ▶ Who is to receive the trust funds if the trust fails?

Miscellaneous

In Colorado, “Animal Trusts” are subject to the same rights and restrictions regarding administration that all other trusts are subject to, such as trust registration rules, accounting rules, and rules of fiduciary conduct.

Because the current beneficiary is an animal that does not pay income taxes, all income earned by an “Animal Trust” is considered to be accumulated in the trust and income taxes will be paid by the trust at the trust’s income tax bracket.

As specified above, laws vary from state to state:

- ▶ Special language should be included in the trust to try to make sure that the intent of the maker of the trust will be upheld, even if the trust is being administered in a state that does not recognize “Pets/ Animal Trusts”.
- ▶ If moving to another state, have legal documents reviewed by an attorney in that state.
- ▶ Also, there is always the possibility that the provisions for the care of animal(s) might be challenged by a disgruntled remainder beneficiary or heir of a decedent.

As with any other trust, if the language of the trust is ambiguous or misleading, the trustee may find him/herself in front of the court requesting an interpretation or involved in a contest regarding the administration of the trust funds. Therefore, it is important that the drafter try to consider all contingencies and draft clearly.

15B-3. What About Incapacity?

Provisions should also be made for the care of your animal(s) in case you become incapacitated and can no longer take care of them.

Provide in your durable power of attorney for finances that:

- ▶ Funds should be used for the care of your animal(s);
- ▶ Your attorney-in-fact can use the provisions for animal(s) which are contained in your will or trust, while you are incapacitated.

15B-4. Alternatives to Trusts

A trust is not always the best option for an individual. Each person’s situation should be analyzed based on:

- ▶ Amount of money available for the animal(s)’ care;
- ▶ Amount of money available to set up the trust before death;
- ▶ Whether there are people you can trust to take care of your animal(s) without the need of a trust.

Options other than a trust include:

- ▶ Outright cash bequest to the caregiver;
 - Bequest can be contingent upon the person actually taking custody of the animal(s);
 - There is no control over how the money is then used by the caregiver once he/she receives it.
- ▶ Arrange for family or friends to care for the animal(s);

- ▶ The Guardian program at the Denver Dumb Friends League which keeps the animal(s) in a foster home (not the kennels) until adoption occurs.

15B-5. Tell Your Attorney What You Want

If you want to provide for your animal(s), consult with your attorney so that the appropriate avenues can be explored. If your attorney is unfamiliar with the options mentioned here, suggest contacting us. We are happy to help, because it is really the animals that we are helping.