

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #992

Date: 13-Jul-06
From: Steve Leimberg's Estate Planning Newsletter
Subject: Drafting a Pet Trust

LISI Commentator **Jeffrey A. Baskies**, a partner in the Fort Lauderdale, Florida office of **Ruden McClosky** and frequent **Estate Planning Journal** contributor lets the dog wag the tail and allows the fur to fly with his pet peeve, no, make that pet trust provisions.

We heard Jeff was doing his best to protect man's (and a lot of womens') best friend and we wanted to share his adventures with LISI members.

Now my dogs Bounder (93 pound Golden Retriever) and Mutt (8 pound toy poodle) want Jeff to do the same for them!

We now paws for Jeff's story:

EXECUTIVE SUMMARY:

More and more clients are concerned with the welfare of a dog or cat or other pet that they want cared for after the client's death. This commentary discusses the thought process of an attorney in an actual case. Jeff invites LISI members to share their thoughts with him.

FACTS:

At the beginning of July, a client signed a revocable trust which included provisions for a Pet Trust to be funded with \$1 million dollars for the post-death care of his two dogs. As Pet Trusts are still relatively new, it seemed the story behind the creation of the pet trust was interesting enough to tell.

BACKGROUND

As in Dagnet, I will change the names (and a few of the basic facts) "to protect the innocent" – not to mention my attorney-client privilege. However, the gist of the story is worth telling.

The client is a successful business-person with a net worth of approximately \$10 million.

He is single, does not have children, and is not particularly close with his remaining family (two sisters and their families).

He has two dogs for which he has a great deal of affection.

The client has several good friends he trusts. He wants both to leave them money at his death and he wants them to care for his pets.

The client was referred by a partner of mine – we'll call him Morty – who joined us in the meeting.

THE CLIENT MEETING:

During the meeting, the client began by discussing how he wanted to leave some assets to his friends and the residue to his sisters and/or their families. But, he told

me, he needed to ensure his dogs were well provided for.

I asked "*who will take them and care for them?*"

He suggested a few of his friends likely would. He then named three friends in successive/alternative order to care for the dogs.

Then the client told me that the dogs cost a lot to groom and maintain, and he wanted to leave some money for their care.

I asked if he wanted to just leave some money outright to the friends he named to care for the dogs.

He replied that was probably not formal enough for him. He told me he wanted to leave "a lot of money" to ensure their proper care and he wanted to create a trust for their benefit.

Although some practitioners might find that a bit weird, since January 1, 2003, Florida law allows Pet Trusts, and many Florida estate planners have drafted pet trusts.

So the natural next question was: "*Just how much money are we talking about?*"

"*One million dollars,*" he replied.

"**Now that's a pet trust,**" I thought.

But it's his money and given the client's apparently greater affection for his pets than his other beneficiaries, it seemed fair enough to me.

So, I then asked "*Given the size of this trust, who should manage the money for your dogs?*"

He answered that his friend who was going to care for the dogs should also be the trustee as he'd know the dogs' needs most directly. That seemed reasonable enough.

Then I asked: "*If there is any money left over when the dogs die, who gets it?*"

"*Leave it to whichever friend is caring for the dogs at that time,*" the client answered.

Again, that seemed reasonable enough. The client already told me he wanted to leave money to his friends, and it seemed important to the client that one of his friends willingly give the best possible care for the beloved dogs. So why not reward him with the remainder of the \$1 million trust?

But then over my shoulder, Morty said, in a very resolute tone: "*Wait a minute, Client, you can't do that. If your friend needs money, he'll kill the dogs and take the million bucks. I guarantee it!!*"

Now that one hit me like a sledge-hammer. Perhaps I am naïve, but I assumed the client trusted his friends enough that he did not expect the friends to euthanize his dogs just to grab the money.

Then again, maybe that was just wishful thinking on my part, because the client responded by saying: "*I didn't really think about that, Morty, but you are right. I want him to care for the dogs, not kill them for the money.*"

So I suggested that instead of giving the friend the residue of the trust, what we should do is offer him a monthly stipend/salary from the trust, so he'd be economically incented to take care of the dogs as best he could so they'd live as long as possible and he'd get paid every month. That seemed a logical response, to me.

But the client responded: "*Monthly payments don't work either as I do not want the dogs to be kept alive in suffering (should they ever reach the point where they otherwise should be put to sleep) just so my friend gets paid the salary.*"

Thus, a stalemate arose – albeit it a bizarre, strange and unusual one.

THE ULTIMATE SOLUTION:

Our ultimate solution was to:

- create the pet trust in the revocable trust,
- name the friend who was acting as the pets' guardian to also be trustee (although we suggested naming an independent trustee to serve along with the friend),
- offer a reasonable (albeit relatively small monthly stipend) for care of the pets, and
- name charitable beneficiaries as the remainder beneficiaries of the trust.

But to show the friend his appreciation, the client left a separate outright bequest of \$1 million to the friend unrelated to care for the dogs – so the friend would benefit economically as a result of the client's death, but would not be incented to either kill the dogs to get the money or to keep them alive to continue a substantial salary.

THE PET TRUST LANGUAGE

Here is an example of pet trust language similar to the trust I used. If it is helpful to you, that's great.

If you have comments or suggestions on how to improve it, that's great too. Please email those to me and we'll try to share best practices. E-mail me at jeff.baskies@ruden.com . All your pet trust questions are encouraged.

DISTRIBUTION AND TRUST FOR PETS

A. Custody and Distribution. For purposes of this Agreement, all references herein to "Grantor's pets" shall refer to Grantor's dogs, presently A and B, and any other dogs hereinafter owned by Grantor and living at the time of Grantor's death. Upon the death of Grantor, if any of Grantor's pets survives Grantor, then Grantor's pets, along with the amount of One Million Dollars (\$1,000,000), shall be distributed to Grantor's friend, X, as custodian for the pets and Trustee of the money, which sum shall be held as a separate trust for the benefit of Grantor's pets in accordance with the provisions of Section B of this Article. If, for any reason, X fails or ceases to serve as custodian for the pets and Trustee over the Trust for Pets, then Grantor's friend, Y, is hereby appointed to serve as alternate or successor custodian and Trustee. It is Grantor's intention that the custodian of Grantor's pets shall serve as the Trustee of the Trust for Pets herein established. If, upon the death of Grantor, Grantor has no living pets, this

distribution hereinabove provided shall lapse.

B. Trust for Pets. *Trustee (the same being the custodian of Grantor's pets as outlined above) shall hold and administer the trust for Grantor's pets as follows:*

1. Intent. *Grantor has great affection for his pets, and intends that they will be cared for and supported in a fashion similar to that which Grantor provided for them during his lifetime. In order to further that intention, Grantor has created this trust to provide the financial wherewithal to ensure their care and comfort. In furtherance of Grantor's intent, Trustee shall liberally construe the provisions hereof and use the funds directed to be held hereunder in the broadest possible manner to achieve Grantor's intention that Grantor's pets be provided for in a comfortable and supportive environment commensurate with their support during Grantor's lifetime. In that regard, Grantor's pets should be extremely well fed, groomed and cared for, and they should be afforded any and all reasonable luxuries.*

2. Income and Principal. *Trustee shall collect the income of the trust and, after paying therefrom the necessary expenses of administration that are properly chargeable against such income, shall pay so much or all of the net income and such amounts from the principal as Trustee deems necessary or advisable, for the health, support, lifetime care and maintenance of Grantor's pets. All distributions and the expenses of Grantor's pets as described herein shall be paid first from income, and if income is insufficient, then from principal. Any income not so paid shall be accumulated and added to principal, annually.*

3. Termination. *Upon the death of the last to die of Grantor's pets, the trust shall terminate and any then remaining balance thereof shall be distributed to the following charities:*

COMMENT:

Practicing estate planning can lead to interesting situations.

Sometimes we act like family counselors to clients with children or grandchildren who need guidance and direction.

Sometimes we act like mediators, working to negotiate touchy emotional and economic issues between spouses or generations.

Sometimes we are asked to act like friendly uncles sharing wisdom with younger generations.

And sometimes, we create pet trusts so that clients' dogs or cats can live more comfortably than the average citizen in our community.

No matter what our partners say, our estate planning practice is not boring - but it is going to the dogs (and cats)!

EDITOR'S COMMENT:

Believe it or don't: LISI's LawThreads reported that "Proposed federal legislation would permit the creation of a charitable remainder trust for the life of a pet animal". See HR 1796 .

Consider the administrative difficulties a charitable pet trust would pose for the IRS (and the opportunities for **NumberCruncher**). The Treasury would have to develop actuarial tables showing life expectancies of various animals (or animals in general). Think of the additional actuarial complexity with cats! (Clearly a job for **Larry Katzenstein's TigerTables!**)

Seriously, LISI previously reported that several colleges with Veterinary Schools are already working with donors to provide care for their pets under situations that are very close to CRT funding. Pet owners are often willing to be very generous to an institution in return for caring for their pet for the remainder of its life. There are provisions in the Uniform Trust Act of 2000, which has been adopted by more than half the states, that authorize pet-care trusts and permit courts to appoint a "pet guardian."

Alexander Bove, Jr. in his **THE COMPLETE BOOK OF WILLS, ESTATES, & TRUSTS**, 3RD EDITION notes that there is a way in a will to provide for pets - without leaving them funds directly (which of course, you can't do - since a beneficiary must be a person or legal entity capable of appearing in court and accepting the bequest - and the courts would disregard the bequest and the estate would pass to the next person named) and that is through a conditional bequest.

Alexander concludes that the best solution in some cases would be to leave the sum to a charity whose function it was to provide for such animals - on the condition that the charity assume the care of the testator's animals after his/her death.

But he suggests an interesting alternative as well: Consider, in the case of a wealthy client such as Jeff's, the creation of a charity specifically for the care of animals.

For instance, a charity could be formed called "House of Cats". The money could provide for the construction and maintenance of a home for cats (the client's cats included) that could include dormitories, social areas, exercise grounds, and - of course - "rat holes" for daily sport. (Cocktail Lounges would obviously be inappropriate).

Think I'm putting you on? Alexander notes that the late Jonathan Jackson of Columbus, Ohio did just that - doubtlessly through a special clause in his will!

HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!

Jeff Baskies

Edited by Steve Leimberg

CITE AS:

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CITES:

Estate Planning for Pets	Gerry W. Beyer	Probate and Property	July/August 2001	15 Probate & Property No. 4, p. 6	This article discusses various methods of providing for the care and custody of pet animals, including trusts, outright bequests, instructions for final arrangements, and nomination of caretakers.
Planning for the Arfterlife	Rosemarie Maldonado	Investment News	November 26, 2001	Vol. 5, No. 47	The article provides an overview of a growing trend in estate planning for pet owners to make testamentary provisions for their animals.
Posthumous Pet Protection Provisions	Helen W. Gunnarsson	Illinois Bar Journal	2004	92 Ill B. J. 395	This article discusses recently enacted Illinois legislation that validates trusts for the benefit of pets.
Separation, Custody, and Estate Planning Issues Relating to Companion Animals	Rebecca J. Huss	Colorado Law Review	2003	74 Univ. Colo. Law Review 181	This article, briefly discusses the domestication of companion animals, including the impact of anthropomorphism and neoteny on how animals are viewed in U.S. society. Second, it reviews the current legal status of animals, including the change in language in some jurisdictions from "owner" to "guardian" to describe the human-animal relationship. Third, it considers the voluntary and involuntary separation of companion animals from their human families. Fourth, it examines custody issues in the context of the placement of animals after the divorce of the human family members. Finally, the article analyzes estate planning issues relating to companion animals. http://www.animallaw.info/articles/arus74colorev181.htm

From LISI Links Database	
Link	Description
Bide-A-Wee Golden Years Retirement Home for Pets	Organization cares for pet animals of deceased or disabled owners.
Texas A&M College of Veterinary Medicine Stevenson Companion Animal Life Care Center	Center provides care for animals left behind after the death or disability of the owner
The Estate Planning for Pets Foundation	Web site of a nonprofit organization devoted to spreading information about how to provide for care of domesticated animals after your death or disability. Includes sections "For Pet Owners", "For Lawyers" and "For Skeptics"