



New Massachusetts Law **Lets You Set Up a Trust to Care for Pets**

By: Martha Lufkin

If you wonder what will happen to your much loved, well cared-for pet when you die, you may be interested in a new law enacted in 2011. A new Massachusetts statute which became effective in April lets you set up a trust to pay for the care of your pet when you can't care for the pet yourself, or when you are gone from this earth.

Previously, there had been resistance to allowing such a trust. One concern was the possibility of abuse by the trustee in charge of the funds, who might benefit at the pet's expense, or exploit the trust to the detriment of the creator's family or heirs. With no possibility of a trust, a solution had been to give the pet to the caretaker under the pet owner's will, and also make a gift of cash to the caregiver who would agree to take and care for the pet. But there was no enforceable obligation to care for the pet.

Under the new law, how would the trust for pets work?

A trust lets an individual set aside funds for a trustee to hold for someone else's benefit. The trustee – which in a trust for pets would most likely be an individual -- has legal title to the funds, without the right to use the assets personally. The beneficiaries, on the other hand – in this case the pets -- get the full benefit of the funds, with no legal power to manage, withdraw or own the assets. (In most cases, a trust has people as beneficiaries; many parents use trusts and trustees to keep their children from unwise extravagances).

Under the Massachusetts law, the trust would terminate when the pet dies, or if there is more than one pet, when the last pet dies. When the trust ends, the remaining funds would be paid according to the instructions set out by the trust creator in the trust instrument. If no instructions are given, the funds would go to the trust creator, or if not living, to those who take the residuary estate under the creator's will, or to the creator's heirs, meaning certain blood relatives.

The legislature foresaw that there might be excess zeal in the case of pet trusts. A court may reduce the amount to be kept in the trust, if the amount substantially exceeds the amount required for the intended use on the pet's behalf, and if the court

finds that there will be no substantial adverse impact on the pet's maintenance, health or appearance. The amount removed will be paid as if the trust had terminated.

The trust document should list the trustee and if possible a successor trustee. But if one is not named, the court can name one, and the court can also order that the funds be transferred to another trustee if necessary so that the intended use on the pet's behalf is carried out. The court can make other determinations to carry out the creator's intentions. The creator can name a person to enforce the trust's intended use. And the pet can be transferred to the trustee, or to a different caretaker.

The MSPCA has praised the new law, saying it will take a burden off pet shelters and rescue organizations.

Previously, Massachusetts was one of few states not allowing the device. At least 43 states and the District of Columbia had enacted pet trust statutes. According to the MSPCA, about one-third of Massachusetts households include a dog or cat.

To set up a valid trust to take advantage of the new statute, you should consult a lawyer.

The information presented in this article reflects the personal views of the author and should neither be construed as formal legal advice nor the creation of an attorney-client relationship.

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