



Learning from Helmsley: Plan for Your Pet

By Jennifer Fernicola

July 19, 2008

NEW YORK -- While Leona Helmsley's \$12 million bequest to her dog, Trouble, was deemed excessive and reduced to \$2 million by a court in June, it left many pet owners concerned about their post-mortem wishes.

These days, more and more pet owners are setting up pet trusts, where funds are set aside for use by a designated caregiver. The trust comes along with instructions for the care of the pet and enough money to cover the pet's expenses.

Although instructions for the care of a pet can be left in a will, it "does not protect if you become incapacitated," said Rachel Hirschfeld, founder and principal of the Law Offices of Rachel Hirschfeld.

"Also, wills do not get probated right away," said Hirschfeld, of the problems that could arise if a pet needed care right away. "A will is a death warrant for pets."

A freestanding pet trust, on the other hand, can become effective when the pet owner is no longer able to care for the pet, such as incapacitation.

STATUTORY PET TRUSTS

Previously, if a pet owner left a pet and a lump sum in a will to a caretaker, the caretaker could dispose of the pet and spend the money. Courts, before 1990, had no power to enforce the request of the pet owner.

Now, 38 states and District of Columbia have pet trust statutes. In those states, if a pet owner makes an arrangement for a pet in a will, called a "statutory pet trust," it is enforceable. If the matter is brought before the court, it must ensure that the funds are used for the benefit of the animal.

For example, if a pet owner prepares a will under New York law, which has a pet trust statute, but the pet, owner or caretaker moves to Delaware, which does not have such a statute, it does not invalidate the statutory pet trust.

But, as in the case of Helmsley's dog, courts may still reduce the amount of the trust if it is deemed excessive.

In states where pet trust statutes do not exist, pet care provisions in wills governed by those states will not be enforced by the court.

The states that have not enacted a pet trust statute are Connecticut, Delaware, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Oklahoma, Vermont and West Virginia.

Freestanding pet trusts, however, will stand everywhere, which is one of many reasons why pet owners are turning to this option.

FREESTANDING PET TRUSTS

Freestanding pet trusts are valid everywhere because it is a separate legal instrument from a will. They can become effective at incapacitation, as opposed to a will, which is only effective at death. They also do not require probate. Wills can take a very long time to be probated. Plus, a pet owner can be extremely specific with instructions for the care of a pet.

“The more one writes about the care of the pet, the more it explains the standard of care the owner is looking for,” Hirschfeld said.

To ensure instructions are followed, a pet owner can establish a system of checks and balances by designating a beneficiary, guardian and trustee, as well as alternate positions. The pet owner may specifically mention and give authority to several people to guarantee that the caretaker is adhering to the pet owner’s express directions.

If funds remain in the trust after a pet passes, a pet owner may stipulate that the remainder go to a non-profit organization, which would then have a legal right to it.

In that case, if an heir attempts to get the remainder, they will have to contend with the non-profit beneficiary.

If the funds in the trust are exhausted during the pet’s lifetime, the caretaker’s duty continues while the trustee determines how to best provide for the pet.

Since only pet owners know what is best for their pet, it should be the owner who states how the pet will be cared for when they are no longer able to. Proper planning can better ensure that a pet is cared for in the way the pet parent would want.



The recent reduction of Leona’ Helmsley’s bequest to her dog has many pet owners wondering if their last wishes will be followed or overruled. (Pet Pulse Photo Illustration by Mike Lloyd)