

Pet Trusts Basics – Q&A with Professor Gerry W. Beyer

Q. What is a “pet trust”?

A. A pet trust is legal technique you may use to be sure your pet receives proper care after your death or disability.

Q. How does a pet trust work?

A. You choose a trusted person or bank (the “trustee”) and provide them with enough money or property to financially care for your pet according to your instructions. The trustee is bound by duty to oversee the expenses for the care of your pet by a designated caregiver.

Q. What are the main types of pet trusts?

A. There are two main types of pet trusts. The first type, called a “traditional pet trust,” is effective in all states. You instruct the trustee to help the person who is providing care (the “beneficiary”) to your pet after you die by paying for the pet’s expenses according to your directions as long as the beneficiary takes proper care of your pet. The second type of pet trust, called a “statutory pet trust,” is authorized in more than half of the states. A statutory pet trust is a basic plan and does not require the pet owner to make as many decisions regarding the terms of the trust. The state law “fills in the gaps” and thus a simple provision in a will such as, “I leave \$1,000 in trust for the care of my dog, Rover” may be effective.

Q. Which type of pet trust is “better”?

A. Many pet owners will prefer the traditional pet trust because it provides the pet owner with tremendous control for the pet’s care. For example, you may specify who manages the property (the trustee), the pet’s caregiver (the beneficiary), the specific expenses the trustee will pay for, the type of care the animal will receive, what happens if the beneficiary can no longer care for the animal, and finally, disposition after the pet dies.

Q. What if my state does not have a special law authorizing pet trusts?

A. You may still create a traditional pet trust even if your state does not have a pet trust statute.

Q. When is a pet trust created?

A. You may create a pet trust either (1) while you are still alive (an “inter vivos” or “living” trust) or (2) when you die by including the trust provisions in your will (a “testamentary” trust).

Q. Which is better – an inter vivos or testamentary pet trust?

A. Both options have their advantages and disadvantages. An inter vivos trust takes effect immediately and thus will be functioning as soon as you die or become disabled. This avoids delay between your death and the property being available for the pet's care. However, an inter vivos trust often has additional start-up costs and administration fees. These costs are higher because the pet owner must transfer property to the trust now and the trustee has duties with regard to that property even before the trustee is doing anything with regard to the pet. A testamentary trust is the less expensive option because the trust does not take effect until you die and your will is declared valid by a court ("probating the will"). However, there may be no funds available to care for the pet during the gap between your death and the time your will is probated. In addition, a testamentary trust does not protect your pet if you become disabled and unable to care for your pet.

Q. Where can I get a pet trust?

A. You may consult with an attorney who specializes in estate planning and who has experience with pet trusts. Alternatively, there are businesses such as PetGuardian (www.petguardian.com) which provides a pet trust program. Note that these businesses do not provide legal advice and are not authorized to practice law.

Professor Buyer received his J.D., summa cum laude, from the Ohio State University and his LL.M. and J.S.D. degrees from the University of Illinois. Professor Beyer maintains extensive research conducted on pet trusts at <http://www.ProfessorBeyer.com>. Professor Beyer joined the St. Mary's University School of Law faculty in 1981 and has served as a visiting professor at several other law schools including Boston College, Southern Methodist University, the University of New Mexico, and Santa Clara University. Professor Beyer is an Academic Fellow of the American College of Trust and Estate Counsel and maintains membership in the American Bar Foundation, the Texas Bar Foundation, and the College of the State Bar of Texas.