

Estate Planning for Furry and Feathered Friends

Angelia Nystrom

Director of Specialty Programs

UT Institute of Agriculture

Are these of equal value?



Pets Are Personal Property



Leona Helmsley

Bequest of \$12 Million for
benefit of Trouble



Dusty Springfield

- Nicholas
- Imported Pet Food
- Sleeps on night gowns
- Play her music for him at night



Oprah may be providing for her pets...



Historical Treatment of Animals in Estate Planning



Our British friends have looked favorably on gifts to support specific animals.

US Courts have not....

Pet Trusts violate Rule Against Perpetuities

Animals DO NOT have standing to enforce Pet Trusts

U.S. States Now Favor Planning for Pets

- 49 states plus the District of Columbia allow for planning for pets
- Only **Minnesota** has failed to enact laws authorizing pet trusts



Current Treatment of Animals in Estate Planning

- Uniform Probate Code
- Uniform Trust Code
- Tennessee law relating to Pet Trusts
T.C.A. § 35-15-408

Types of Wills Under Tennessee Law

Nuncupative (Oral) Will

Holographic Will

Attested Will

Tennessee Requirements

- No particular language required
- Intent of the Testator readily ascertainable
- Testator must be eighteen (18)
- Testator must have testamentary capacity

Signature Requirements

- Signed in the presence of two disinterested witnesses
- Witnesses sign in the presence of each other and in the presence of the Testator
- Will may be “self-proving” at its execution

Intestate

Tennessee Intestacy Statute

a) Share of Spouse

1. If there are no surviving children, the spouse gets the entire estate.
2. If, in addition to the spouse, there are surviving children of the decedent, the spouse takes either one-third, or a child's share of the entire estate, whichever is greater.

Tennessee Intestacy Statute

b) Share of Other Heirs When There is No Spouse

1. To the issue of the decedent. If a child of the decedent is deceased with children surviving, then the children “stand in the shoes” of the parent. This is called per stirpes.
2. To the decedent’s father and mother equally, or to the survivor of them, if any.

Tennessee Intestacy Statute

b) Share of Other Heirs When There is No Spouse

3. To the decedent's brothers and sisters and the descendants of the brothers and sisters by representation.
4. The estate shall be divided equally, one-half to the decedent's maternal grandparents and one-half to the decedent's paternal grandparents or to their issue.
5. To the State of Tennessee.

Remember:

Will provisions apply only to assets solely in a decedent's name and not designated to a named beneficiary.

Ways to Provide for Pets

- Outright Gift of Pet with Dollar Gift to Care for Pet
- Leave Pet and Funds for Care to Veterinarian or Animal Welfare Group
- Enforceable Inter Vivos or Testamentary Pet Trust

Why Pet Trusts Work



Measuring life is
the life of the
trust beneficiary—
the human
caretaker

Trustee has the
power to enforce
the terms of the
trust

Types of Pet Trusts

- Inter Vivos
- Testamentary



Pet Identification

- “Animals Owned at Death”
- Specific Pets

Detailed Description

Vet Records

Tattoo

Microchip

DNA



Pet Caretaker

- Actual beneficiary of trust
- Care for pet consistent with owner's wishes
- Should not be same person as trustee



Trustee

- Managing funds to care for pet
- Deal with trust administration matters, incl. oversight of caretaker
- Make arrangements for pet's final disposition



Funding and Distribution

- Funds to pay for care for life expectancy
- Consider size of owner's estate
- Specify method for distribution
 - Pay caretaker a fixed sum
 - Fixed sum plus reimburse for extraordinary expenses
 - Reimbursement of expenses only

Remainder Beneficiaries

- Designate individual



- Designate a charity

Instructions for Care

- General Instructions for Care
- Specific Instructions
- Breed-related Instructions
- Discretion in Trustee

Euthanasia



Pet Protection Agreement

- Contract between pet owner and caretaker
- Name caretaker
- Provide instructions for care
- No trustee necessary
- Funding may or may not be provided



Federal Tax Consequences

Income Tax

Gift Tax

Estate Tax

Resources

UT Foundation and UTIA Publications

Tennessee Code Annotated

Professor Gerry W. Beyer

— www.professorbeyer.com

ABA Resources: Real Property, Trust and Estate Section

Angelia M. Nystrom, JD, LLM

Director of Specialty Programs

114 Morgan Hall

Telephone: (865) 974-7423

Email: anystrom@tennessee.edu