

INTRODUCTION TO “PET PLANNING” FOR ANIMAL OWNERS

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(Last Updated November 10, 2024)

WHAT IS PET PLANNING?

Pet Planning is estate planning for pets. It is the process of planning and preparing in advance to maintain your own relationship with your pets as long as possible, and to provide for and protect your animals in the event of your future death, temporary or permanent inability to care for them, or inability to care for them without assistance. Pet Planning involves planning for the needs of both pets and their people.

Pet Planning often involves adding pet-specific terms to routine estate planning documents many pet owners already have, including:

- Powers of Attorney
- Last Wills and Testaments
- Traditional Trusts for general estate and family planning

Pet Planning sometimes involves creating more specialized documents just for pets, such as:

- Pet Powers of Attorney
- Pet Trusts



In Ohio, there are no limitations on the type or species of animals that may be planned and provided for. Dogs and cats are the animals most frequently planned for, in part because they are the most common household pets. Horses and birds are often planned for as well, due to both their popularity as companions and their longer life expectancies. The information provided here can also be used to plan for other household pets, exotic and non-traditional pets, service animals, commercially valuable animals, farm-type animals, and others. The words “pet” and “animal” are used interchangeably in these materials.

POSSIBLE FUTURE CIRCUMSTANCES TO PLAN FOR:

Pet Planning is for the benefit of both pets and their people! Ideally, your Pet Plan should cover four possible future life circumstances. Pet Planning tools and terms can be used to:

- (1) Maintain and protect *your relationship* with your pets and animals if you lose the mental capacity to make your own decisions due to dementia, stroke or other brain injury, illness, medication side effects, or cognitive decline;
- (2) Provide for and protect your pets and animals if *you are temporarily unable* to care for them due to travel, illness, hospitalization, rehabilitation, or similar cause;
- (3) Provide for any *assistance you may need* to continue living with or caring for a pet or animal due to illness, advanced age, physical disability, dementia, etc.; and
- (4) Provide for and protect your pets and animals if *you are permanently unable* to care for them due to death, long-term illness or disability, nursing home or other long-term care facility admission, or any other reason.

Some of these scenarios may overlap but considering them individually will help ensure that your Pet Plan covers all possible future circumstances and there are no gaps in your planning that may leave your animals or your continuing relationship with them unprotected.

Legal Disclaimer: The information provided here is for educational purposes only and is not intended as legal advice. These materials provide an overview of Pet Planning and the available planning options. Please consult with an attorney of your choice to create a Pet Plan that addresses your individual circumstances and planning objectives.

BENEFITS OF PET PLANNING (FOR PETS AND PEOPLE):

The benefits of Pet Planning are almost too numerous to count. The many ways that pets benefit from being planned and provided for are somewhat obvious. But people and communities also benefit and, in many cases planning ahead can actually save money in the long run.

Benefits for Pets: Pet Planning obviously benefits pets. Animals need someone to care for them, somewhere to live, and money available to pay for their care expenses. Like minor children or special needs family members, pets depend on us for all of their care. When an owner dies or is unable to provide care, pets may be left days or longer without food, water, medication, or a way to appropriately relieve themselves. Some pets may even die from lack of care. Others may be surrendered to high kill-rate shelters, unnecessarily euthanized, abandoned or dumped, or sold for research, dog fighting, or other unsavory purposes. Pets that spend time in a shelter or are “passed around” from home to home may develop behavior problems or health issues that are difficult to resolve. Even those pets who are lucky enough to be placed in a loving permanent home could find themselves in peril if a new owner dies or becomes unable to provide or afford pet care.





Benefits for Pet People: The many ways that people benefit from Pet Planning are less obvious, but not less significant. For starters, people benefit tremendously from our associations with animals! The impact of human-animal relationships is a growing area of serious academic study, but we already know that pet ownership is associated with lower blood pressure and cholesterol, higher oxytocin levels, a stronger immune system, better cardiovascular health, and lower all-cause mortality. Taking care of pets helps people take better care of

themselves – pet owners exercise more and are more mindful about their own eating habits and taking their own medications. Recent research indicates that living with pets may slow the progression of Alzheimer’s disease and other forms of dementia. Many disabled and older people live alone – their pets may be their closest or only remaining “family” or their most important source of social interaction and companionship. Planning designed to keep kids and pets together provides an anchor if children lose their parents. Planning ahead also gives valuable peace of mind to contentious owners who feel responsible for the future wellbeing of their animals.

Financial Benefits: In many circumstances, Pet Planning may be financially beneficial. It is true that creating a Pet Plan costs money, BUT there are also costs associated with failing to plan ahead. Pets that are abandoned in a residence make a terrible mess and cause significant property damage that must be paid for by someone (property owner, landlord, estate, or subsequent property owner). In addition, neglected pets often have increased veterinary or grooming expenses and may require a period of physical and behavioral rehabilitation before they can be placed in a new home. The estates of deceased pet owners who fail to plan ahead may incur unnecessary or increased costs for veterinary treatment, grooming, boarding or in-home care, rehabilitation, attempts to place a pet, court costs, etc. These costs must be paid for by someone and are avoidable if you plan ahead. Pet Planning can help avoid unnecessary expenses and financial waste.

Community Benefits: Our communities also benefit from Pet Planning. Pets that aren’t planned for often become a community problem. Communities suffer and incur expenses for the control, care, and euthanasia of stray dogs, roaming cats, and other abandoned animals. Loose or stray animals are a safety risk to themselves, other animals and humans. Non-native species wreak havoc on our natural ecosystems and cost money to control. Most community animal control departments, humane organizations, and shelters are already overwhelmed with abused, neglected, and abandoned animals. Failing to plan ahead for your own pets may add to their burdens and divert limited resources away from other causes. Or these organizations may lack resources to provide for your pet at all when the need arises. In Ohio, there are currently not enough organizations accepting unplanned for pets when an owner dies, becomes ill, or needs long-term care.



In summary, Pet Planning benefits pets, pet people, and our communities, and helps to prevent unnecessary and wasteful expenditures. But the most important reason to plan ahead for your pet is to ensure that your wishes for your pet's future will be honored and fulfilled.

PET PLANNING IS FOR EVERYONE WITH PETS:

News reports and social media stories about extravagant celebrity pet planning can leave the impression that pet planning is for multimillionaires or eccentrics, not regular pet owners. Nothing could be further from the truth. Pet Planning is for everyone with pets! You don't need to be rich – you just need to be part of the growing majority who care about the fate of our non-human family members.

Pet Plans can range from very simple to extremely complex. Keep reading – there are Pet Planning options available to fit every family, pet, and budget. Pet Planning is for everyone with pets!

People who are not currently pet owners but who may be in the future can also benefit from the addition of simple, default Pet Planning terms in their Wills and Powers of Attorney.

ARE PETS FAMILY OR PROPERTY?



Demographic studies and polls have demonstrated that roughly 97% of animal owners consider their pets family members, best friends, or valued companions. However, animals are considered tangible personal property under the law, not family members or friends. Tangible personal property are items you can touch, such as a car, jewelry, clothing, furniture, and animals. The general laws governing estate planning treat pets similar to furniture. No matter how we feel about them, we must treat pets as property when planning for their future care. Our furry, feathered and scaled family members are property under the law.

Since pets are considered property, they **cannot** be designated as beneficiaries in a Will or Trust. Pets cannot be named as the beneficiary of any type of asset or income. Gifts to animals in any form are void or ineffective.

EXISTING LAWS ARE NOT A GOOD FIT FOR PETS:

Pets may be considered tangible personal property under the law, but pets are very different from furniture! A pet is not set and forget – animals require daily care and have social and emotional needs. We cannot put them in storage or set them on the curb for pickup like furniture! Moreover, we are usually more concerned about an animal's wellbeing than its maintenance costs, economic value or income earning potential. General estate planning laws are designed to protect the economic value of things, not the sentimental value or quasi-family member status of pets.

In general, existing estate planning laws (with the exception of Ohio's Pet Trust statute) are not good fits for pets because:

- (1) The law includes many authorities and permits many acts that may not be appropriate for pets, such as allowing someone else the authority to sell, exchange or reject a pet, or use a pet for research, breeding, or other unwanted purposes;
- (2) The law lacks needed authorities and may prohibit acts that are appropriate and needed, such as euthanizing a suffering pet, spending money to benefit pets, or acts that don't benefit a person directly;
- (3) There are a lot of uncertainties regarding how the existing general estate planning laws apply to pets – there are few existing court cases to provide guidance;
- (4) Powers of Attorney, Wills and Traditional Trusts are intended to benefit persons, not pets; and
- (5) Power of Attorney Agents, Executors, and traditional Trustees owe duties to persons, not pets.

Nonetheless, we can use the existing estate planning legal framework to protect and provide for pets. Planning for pets may be quite different from planning for other types of tangible personal property, but it is possible to do so within the existing laws governing estate planning. However, since existing laws are not very good fits for pets, we must *take deliberate steps* to plan for and protect our pets. We can do this by adding pet-specific terms to our estate planning documents – we can deliberately create what the law allows but does not provide.

The estate planning tools we can use to plan and provide for pets, and that are discussed in these materials, include General Powers of Attorney, Pet Powers of Attorney, Wills, Traditional Trusts, and Pet Trusts. Pet Powers of Attorney and Pet Trusts are tools specifically designed and used for pets. Pet-specific terms can also be added to your routine estate planning documents, including your General Power of Attorney, and your Will or Traditional Trust.

WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a grant of legal authority. A Power of Attorney gives another person the power or authority to act on your behalf as your “agent” or “attorney-in-fact.” You may grant another person the authority to make decisions for you and act on your behalf for almost any matter or purpose. The two most common types of powers of attorney are:

- (1) Durable General Powers of Attorney for personal business and financial matters; and
- (2) Health Care Powers of Attorney for personal health care matters.

The authority granted to a Power of Attorney agent may be very broad or may be limited to specific matters. A “general” power of attorney grants broad authority to act on your behalf. People routinely use General Powers of Attorney to authorize another person to assist with the variety of decisions and activities that fall within the scope of personal business, legal, and financial matters. A “limited” power of attorney is a narrower grant of authority that pertains to only certain matters. For example, a Limited Power of Attorney may be used to grant another person authority to renew your vehicle registration, attend the closing for the sale of your home, or make veterinary treatment decisions for a pet in your absence.



Powers of attorney can be used to plan and prepare for both known and unknown future situations when you may not be able to act or make decisions for yourself due to absence or incapacity. They are especially useful to plan for the possibility that you may become mentally or physically unable act on your own behalf at some point in the future. Some of the more common reasons powers of attorney become necessary are dementia, neurological disease, illness, accidents, and age-related cognitive decline. Powers of attorney are also used to prepare for planned events such as travel or surgery.

A Power of Attorney must be created before you need it, i.e., before you become unable to act on your own behalf. The Power of Attorney may be effective immediately upon creation, or your agent may have authority only upon the occurrence of a future trigger such as your incapacity to make decisions or act for yourself. The latter is called a "springing" power of attorney. A “durable” power of attorney continues to be effective if you become disabled or lose the mental capacity to revoke the power. In Ohio, all powers of attorney are durable unless stated otherwise.

A Power of Attorney may be granted for an indefinite time period, with no termination date, or may be temporary and limited to a specified time period. A Power of Attorney dies with you or terminates on your death. Your Power of Attorney also terminates if you revoke the power, upon the expiration of a temporary time period, or upon the accomplishment of a limited purpose. The power of attorney terms may include additional grounds for terminating an agent’s authority, such as misconduct.

Although there are many different types of powers of attorney, we will focus here on the two that are most useful to pet owners: General Powers of Attorney for personal business and financial matters, and limited Pet Powers of Attorney for animal care. Pet-specific terms may be added to a pet owner’s Durable General Power of Attorney, or a separate power of attorney can be created just for pets. Nearly every Pet Plan will include one or more Powers of Attorney.

Power of attorney terms, for reference:

Power of Attorney: A grant of power or authority to act on behalf of another

POA: Abbreviation for “power of attorney”

Principal:	The person granting authority to another to act on his or her behalf
Agent:	The person who has authority to act on behalf of the principal
General POA:	Broad in scope – grants authority over a wide range of matters
Limited POA:	Narrow in scope – grants authority over only specific matters
Durable POA:	Remains effective during periods of time that the principal lacks mental capacity
Springing POA:	The agent’s authority to act on behalf of the principal “springs” into effect only upon the occurrence of a future triggering event, such as a specific date, the principal’s incapacity, or other need

WHAT IS A PET POWER OF ATTORNEY?



A Pet Power of Attorney, sometimes called a Power of Attorney for Pet Care, is a separate, stand-alone, limited power of attorney just for pets. You can use a Pet Power of Attorney to grant an agent authority to make decisions and provide day-to-day pet care, veterinary treatment, alternative pet placement, and related matters. Specific “pet powers” that may be granted are discussed beginning on Page 23.

In addition to specific “pet powers”, a limited Pet Power of Attorney Agent may need a few additional powers and authorities that are routinely granted to general agents, including the powers to: (1) access your financial accounts, (2) charge your credit cards or extend your credit, (3) access your home or farm to care for or remove animals, and (4) use, maintain, purchase and insure pet-related property, equipment, and supplies. You will want to make sure that your Pet Power of Attorney and Durable General Power of Attorney work together so there are no conflicting authorities or gaps in authority.

Thoughtful and comprehensive preparation and drafting are very important when using Pet Powers of Attorney. A limited agent has only those powers that are expressly granted – if a power isn’t explicitly granted within a Pet Power of Attorney, it isn’t included.

A Pet Power of Attorney has several potential advantages over a Durable General Power of Attorney:

- (1) The agent’s sole responsibilities and duties to the principal are for the care of the principal’s pets;
- (2) A Pet Power of Attorney is more likely to be interpreted and enforced in a manner that benefits pets since its sole purpose is to maintain and provide for the principal’s pets;

- (3) A separate Pet Power of Attorney is easier to amend or replace than a Durable General Power of Attorney that may be on file with various financial institutions; and
- (4) A Pet Power of Attorney may be more readily accepted and understood by veterinarians, groomers, boarding facilities, trainers, and other non-lawyers.

Pet Powers of Attorney and Durable General Powers of Attorney can work equally well to provide for the care of your pets. However, if there is a conflict, disagreement, or uncertainty, provisions for pets in a Durable General Power of Attorney may be considered secondary or of lesser importance. General POA Agents or courts could determine that caring for your pet does not benefit you and money could be better spent on your own care or preserved as an inheritance for your beneficiaries or next-of-kin. Under such circumstances, a Pet Powers of Attorney would be a more protective option for your pets and your pet-related wishes.

WHEN TO USE A PET POWER OF ATTORNEY:

Creating and managing two powers of attorney rather than just one Durable General Power of Attorney does require more effort and expense. For many pet owners, the additional time and costs may not be warranted. However, there are a number of common scenarios where having a Pet Power of Attorney is needed to avoid conflicts, properly provide for pets, and ensure that your wishes for your pets are honored and fulfilled.

A separate Pet Power of Attorney may be used anytime, but may be the best planning option under any of the following circumstances:

- (1) When your general power of attorney agent isn't a "pet person," is unlikely to follow your animal related wishes, or doesn't share your values or standards regarding animal care;
- (2) When your family members or next-of-kin are likely to disagree with or contest your pet-related wishes and plans;
- (3) When different agents will be responsible for different animals;
- (4) To provide for different species of animals, particularly those that are not common household pets (horses, exotics, working dogs, etc.);
- (5) To provide for the special care or specific needs of an individual animal;
- (6) To cover a limited purpose or time period, such as emergency veterinary treatment while you are traveling, hospitalized, or unavailable;
- (7) When it is likely that your pet plan may change over time or change more frequently than your general estate plan; or
- (8) When the care of your pets is VERY important to you, and you want to maximize the likelihood that pet-related terms will be interpreted and enforced as you intend.

WHAT CAN PET OWNERS DO WITH A POWER OF ATTORNEY?

A Power of Attorney may be used to provide for and protect your pet during your lifetime and to preserve your own continuing relationship with your pet. A Power of Attorney terminates at your death, so it is only effective for lifetime planning. During your lifetime, a Power of Attorney may be used to care for a pet during your temporary absence, provide any assistance you may need to continue living with and caring for a pet if your abilities decline, and provide for the alternate placement of your pet if you become permanently unable to live with or care for your animals.



You can use a Durable General Power of Attorney or Pet Power of Attorney to do any or all of the following during your lifetime:

- (1) Select a “pet friendly” agent (and alternates) to make decisions and care for your pet
- (2) Grant “pet powers” or pet-related authorities to your agent
- (3) Place pet-related limitations on the agent’s authority or prohibit certain acts
- (4) Designate temporary pet caregivers if you are ill, injured, absent, etc. (possibilities include your POA Agent, friends or family members, boarding facilities, and professional in-home pet caregivers)
- (5) Provide for any assistance you may need in the future to continue living with or caring for your pets (in-home caregivers, mobile groomers or veterinarians, dog walkers, stall cleaners, pet sitters, transportation assistance, housecleaning, yard maintenance, etc.)
- (6) Plan for pet-friendly alternate living arrangements for yourself if/when appropriate (condo, apartment, independent living, assisted living, etc.)
- (7) Establish standards and provide instructions for your pet’s future lifestyle and care
- (8) Authorize or direct pet-related expenditures (you may distinguish between what your Agent may pay for, what your Agent must pay for, and anything your Agent is limited or prohibited from paying for)
- (9) Create pet-related duties that require your Agent to provide pet care, spend money, maintain certain living arrangements, etc.
- (10) Provide for the permanent placement and transfer of ownership of your pets if you become permanently unable to live with and care for a pet (these terms will often mirror the terms of your Will, or a pet may be transferred to the trustee of a Trust)
- (11) Provide means for terminating your agent’s authority for misconduct and means for court enforcement of pet-related terms if necessary



Like all of our traditional estate planning tools, powers of attorney are intended to benefit persons, not pets. We can use powers of attorney to provide for and protect pets because humans benefit from our ownership of and relationships with animals. However, the Power of Attorney terms must be carefully drafted to provide for and protect our pets. General laws governing powers of attorney are not very good fits for pets.

The law allows us to plan ahead to protect our pets, but our pets are not automatically provided for or protected under the law.

WHAT IS A WILL?

A Will or Last Will and Testament is a legal document that takes effect at your death. The terms of your Will determine how your property will be distributed and to whom. The person you designate as Executor will be responsible for winding up your personal affairs and managing your property until it can be distributed. Your Will may also contain special instructions or grant specific authorities that may be needed to administer your estate.

When you pass away, your Will is admitted to probate. Probate is the formal, court-supervised, legal processing for validating your Will, appointing an Executor, and settling your estate. Your Executor and the probate court are both required to carry out your wishes as expressed in your Will. The more clearly and thoroughly your intentions are expressed, the more likely they will be carried out!

Some of the more common Will terms for reference:

Testator:	Person who creates and signs a Will
Executor:	The estate fiduciary, nominated by the Testator and appointed by a probate court to administer the estate carry out the terms of the Will
Beneficiaries:	Persons to whom the testator leaves property (cash gifts or other assets)
Devises:	Gifts of real estate contained in a Will
Bequests:	Gifts of personal property contained in a Will (cash, household and personal items, vehicles, animals, etc.)
Remainder: or Residue	The balance of your estate property remaining after making any specific gifts of real estate or personal property to particular beneficiaries

The terms of your Will do not control the disposition of any property or assets that are titled to pass outside your probate estate, such as property owned jointly with another person with rights of survivorship, or property owned by the Trustee of a Trust. Similarly, a Will does not direct the disposition of any property or assets that are controlled by beneficiary designations, such as payable on death (POD) accounts, transfer on death (TOD) accounts, and life insurance policies, retirement accounts, and employee death benefits with designated beneficiaries.

WHAT CAN PET OWNERS DO WITH A WILL?

A Will serves more limited functions than a Power of Attorney or a Trust since it is effective only upon your death and only for the short period of time necessary to administer your probate estate. Nonetheless, a Will is a very effective tool for carrying out simple Pet Plans. You can use a Will to do any or all of the following after your death:

- (1) Transfer your pet or animal to a beneficiary (family member, friend, rescue, sanctuary, etc.) – NOTE, designate alternate beneficiaries or disposition plans because beneficiaries often refuse to accept a pet
- (2) Transfer money for future pet care expenses to a beneficiary or new owner
- (3) Give your Executor authority to place and transfer your pet – this is a great back up plan in case none of your designated beneficiaries accept your pet, but may also be used as a primary plan
- (4) Transfer pet-related equipment, supplies, and other “stuff” (if it goes with the pet)
- (5) Select a “pet friendly” Executor and alternates
- (6) Grant “pet powers” authorities to your Executor for interim pet care and placement
- (7) Include instructions regarding interim pet care or placement and any limitations on the Executor’s authority
- (8) Authorize or direct your Executor to spend estate funds or use estate property for interim pet care, placement, and other animal-related expenses and needs
- (9) Protect your Pet Plan and intentions by:
 - a. Creating clear and thorough Will terms (so your intentions are known)
 - b. Including no contest or conditional gift forfeiture clauses
 - c. Providing for the removal of an estate fiduciary for pet-related cause

It is especially important that your Will contains terms authorizing or directing your Executor to spend money from your estate for the interim care of your pets until they are placed in a new home and to pay any expenses associated with placing your pet. Probate courts are not required to approve such expenditures because they do not benefit the estate as a whole. Many probate courts are sympathetic to the needs and requirements of living animals, but not all courts are. Similarly, if you want your Executor to use your home, farm, vehicle, trailer, etc. for the interim care of your animals until they are permanently placed, this should be set forth in the terms of your Will.



DISPOSITIVE OPTIONS FOR PETS IN A WILL:

One of your primary objectives when creating a Will is to provide for the placement and transfer of your pet to another following your death. Since pets are considered property, they cannot be designated as beneficiaries in your Will. However, you can use your Will to leave your pet to someone else and may choose to include a sum of money to assist with future pet care expenses. For example, you cannot leave \$10,000.00 to your dog, but you can leave your dog and \$10,000.00 to your neighbor.

There are eight primary dispositive options you can include in your Will to place and transfer your pet when you pass:

- (1) Transfer your pet to a designated beneficiary (designate alternate beneficiaries too);
- (2) Transfer your pet plus money for pet care to a beneficiary (the gift of money may be conditioned upon accepting your pet) – please note that the beneficiary under a Will is not required to use any money accompanying the pet for pet care;
- (3) Transfer/surrender your pet to a rescue organization or no-kill shelter (your pet has a better chance of being accepted if accompanied by a significant cash donation);
- (4) Transfer an animal to a sanctuary or retirement facility (most are pay-to-stay and required an upfront entrance fee);
- (5) Give your Executor authority to place your pet in a suitable home, or with a rescue, etc. (in legal terms, this is a fiduciary power of appointment) – this is a great back-up plan if your primary bequests fail, but can also be used as a primary planning option;
- (6) Give someone else authority to place your pet (in legal terms, this is a non-fiduciary power of appointment);
- (7) Require your Executor to consult with or follow the recommendations of another person regarding the placement of your pet; or
- (8) Provide for the sale of an animal following your death (you may include terms or conditions of sale, options to purchase, identify prohibited buyers, etc.).

Any of these dispositive options for Wills may also be included in your Power of Attorney terms to provide for the permanent placement and transfer of your pets during your lifetime if you become permanently unable to live with or care for an animal. Each of these options may also be incorporated into the terms of a Traditional Trust to avoid the probate process for your pet.

WHEN SHOULD A WILL BE USED FOR PET PLANNING?

Of all available post-death planning tools (Wills, Traditional Trusts, and Pet Trusts), a Will is the least protective option for a pet. However, a Will is also the simplest and least expensive planning

option. With the rise in both pet ownership and the status of pets as our family members and friends, many pet owners may have multiple pet-friendly and trustworthy family members or friends to leave a pet to. A Will may be an appropriate and adequate Pet Planning option whenever:

- (1) Someone will be immediately available when you pass to care for your pets during the gap in time between your death and probate of your estate;
- (2) You have multiple potential beneficiaries to leave a pet to and high trust in those people;
- (3) The beneficiaries can afford a pet and have no money management or creditor concerns;
- (4) You are transferring a pet and money to a rescue, shelter, sanctuary or retirement facility;
- (5) You have high trust in your Executor to appropriately provide for and place pets;
- (6) You have no desire or need for post-death control;
- (7) Your estate will be solvent, i.e., creditors will not claim or interfere with your animal; and
- (8) You prefer or need the simplest and least expensive planning option.



In essence, when you choose to use a Will for Pet Planning, you are exchanging post-death control and protection for simplicity and lower cost. Post transfer, the beneficiary is free to do whatever the beneficiary wants with the pet. There are no strings attached and nothing to prohibit a beneficiary from selling, surrendering, euthanizing, or mistreating your pet (provided that the mistreatment is not severe enough to be considered a crime). Similarly, if you leave money to a beneficiary of your Will for pet care expenses, the beneficiary is not required to actually use the money for your pet.

However, if you have high trust in the people you have selected as beneficiaries and to serve as Executor, and you are not creating a Trust for another reason, a Will may meet your Pet Planning objectives. Pet Trusts may be the most talked about Pet Planning tool, but Wills are still the most used post-death planning option. Many pet owners do not need a Trust to meet their planning goals. However, if the criteria listed above do not apply to your personal situation and circumstances, a Trust may be a better Pet Planning option to provide for and protect your pet.

WHAT IS A TRUST?

To understand what a Trust is and how it works, it is helpful to start with an overview of the key components. Every Trust must have a creator, a trustee, property, and at least one beneficiary or purpose.

Settlor or Grantor:	The person who creates the trust and contributes property to the trust
Trustee:	The person who manages and distributes trust property according to the trust terms
Trust Property:	Assets and income used to benefit a beneficiary or fulfill a purpose
Trust Beneficiary:	A person who benefits from the trust and trust property; A beneficiary may directly receive distributions of income or assets, or goods and services may be provided for the beneficiary's benefit
Trust Purpose:	An objective the trustee must use the trust property to carry out, such as funding a particular type of research, the maintenance of a cemetery plot, or the care of a pet
Trust Agreement:	Terms governing the trust relationship between the settlor and the trustee, and the management, distribution, and use of trust property

A Trust is a relationship where the trustee manages and distributes trust property for the benefit of a trust beneficiary or to fulfill a trust purpose. The trust relationship is created by agreement between the settlor or grantor and the trustee regarding how the property held in trust will be managed and distributed for the benefit of a trust beneficiary or to fulfill a trust purpose.

A trust agreement between the settlor and trustee is usually in writing and a written trust agreement offers the best protection for everyone involved. In simple terms, a trust agreement sets forth the settlor's intentions and instructions to the trustee on how trust property should be managed, used, and distributed for the benefit of a trust beneficiary or trust purpose. The trustee is considered the legal owner of trust property, but the trustee must follow the settlor's intentions, any instructions, and the trust terms. A trust agreement is legally binding on the settlor, trustee, and trust beneficiaries and will be enforced by a court if necessary. However, a Trust does not go through probate, so it is not automatically subject to the same court oversight or review as a Will.



Trusts can be used for many different purposes. Some of the most common purposes include general estate planning, probate avoidance, exerting post-death control over property, estate or gift tax savings, planning for a special needs beneficiary, Medicaid planning, creditor protection for trust beneficiaries, general asset protection, and Pet Planning. The two types of trusts that are most often used for Pet Planning purposes are general or traditional estate planning trusts and Pet Trusts. Additional information on both of these types of trusts is provided below.

WHAT IS A “TRADITIONAL TRUST”?

A “Traditional Trust” is a term of art rather than legal significance. It is used here to distinguish a general estate planning trust that may include provisions for pets from a statutory Pet Trust. For

our purposes, a Traditional Trust includes most common types of family planning and estate planning trusts that are intended to provide for human family members and other beneficiaries.

Traditional Trusts may be used to transfer ownership of pets or maintain pets long-term, but the intent is to benefit the human beneficiary. When using a Traditional Trust, a pet is transferred or maintained for the benefit of a human beneficiary, not the pet's own benefit. Money and property used for pet care (and often the pet itself) are held in a Traditional Trust for the direct benefit of a person. Though, a pet may certainly benefit indirectly from being cared for and maintained for a person.

The majority of Traditional Trusts are revocable individual or family trusts. A revocable trust can be changed, added to, or revoked/terminated anytime during the Settlor's lifetime. A revocable trust is an excellent Will substitute since it avoids probate and provides more flexibility and opportunity to plan for future contingencies.

BEST PET PLANNING FITS FOR TRADITIONAL ESTATE PLANNING TRUSTS:



When using a Traditional Trust, ownership of a pet may be transferred to a trust beneficiary, or a pet may be maintained in trust long-term for the benefit of a trust beneficiary. A Traditional Trust is created and administered for the direct benefit of persons, though pets may benefit indirectly under the trust terms. For example, the Trustee may pay for pet care expenses from the Trust on behalf of the pet's beneficiary or a beneficiary may be required to care for a pet as a condition to receiving other property or disbursements from the Trust.

Since Traditional Trusts are intended to benefit persons, not pets, they are not our most protective planning option for animals (that honor goes to Pet Trusts). Nonetheless, a Traditional Trust is still a good option and may be the best Pet Planning fit in some circumstances. When the true intent is to benefit a person, a Traditional Trust is a better option than a Pet Trust. Using a Traditional Trust is a good Pet Planning option for any of the following purposes:

- (1) Probate avoidance or as a Will substitute (the most common use – your pet is transferred directly to a beneficiary upon your death, but without going through probate);
- (2) Lifetime planning to keep owners and pets together (can be more protective than a Power of Attorney under some circumstances);
- (3) Keeping kids and pets together after the loss of parents;
- (4) Maintaining a service or emotional support animal for the benefit of a human beneficiary;

- (5) Maintaining an animal for a beneficiary who is a spendthrift, has low income, or with creditor concerns;
- (6) Exchanging real estate for pet care (a beneficiary cares for your pet and receives your real estate in exchange);
- (7) Maintaining a valuable, income-producing, working, or competitive animal;
- (8) Operation, sale, or dissolution of an animal-related small business; or
- (9) As a Pet Trust substitute (not really a “best” fit, but still a common use when a pet owner already has a Traditional Trust or is creating one for general estate planning).

WHAT IS A “PET TRUST”?

A “Pet Trust” is a statutorily enforceable trust relationship for the care of one or more animals. A Pet Trust may be used to maintain and care for an animal and to manage and disburse trust property



and money to pay for the animal’s care. A Pet Trust is established for the purpose of providing for and protecting an animal rather than for the benefit of trust beneficiaries. In Ohio, Pet Trusts can be used to plan for any animal alive during your lifetime.

Historically, trusts for animals were often invalidated by courts or were considered merely honorary, i.e., not unlawful but still unenforceable. Enforceable trusts for the care of animals are relatively recent statutory creations. Since January 1, 2007, Pet Trusts are statutorily authorized and enforceable in Ohio under Section 5804.08 of the Ohio Revised Code, which states in its entirety:

O.R.C. Section 5804.08 Trust to provide for care of animal.

(A) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(B) A person appointed in the terms of a trust or, if no person is so appointed, a person appointed by the court may enforce a trust authorized by this section. A person having an interest in the welfare of an animal that is provided care by a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed.

(C) The property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor if then living or to the settlor's successors in interest.

To summarize, Subsection (A) of O.R.C. 5804.08 permits the creation of a trust to provide for the lifetime care of one or more animals that were alive during the settlor’s lifetime. Subsection (B) provides for enforcement of a trust for the care of animals and the appointment of an enforcer who can act or bring suit on the animal’s behalf. And Subsection (C) permits a court to reduce the value of the trust principal if it is deemed excessive. Following the passage of O.R.C. 5804.08, trusts for the care of animals are both valid and enforceable in Ohio.

Exercise caution when reviewing Pet Trust information from other sources. Although the term “Pet Trust” usually refers to a statutorily enforceable trust for the care of animals, it is sometimes used for any trust or quasi-trust that provides for a pet.

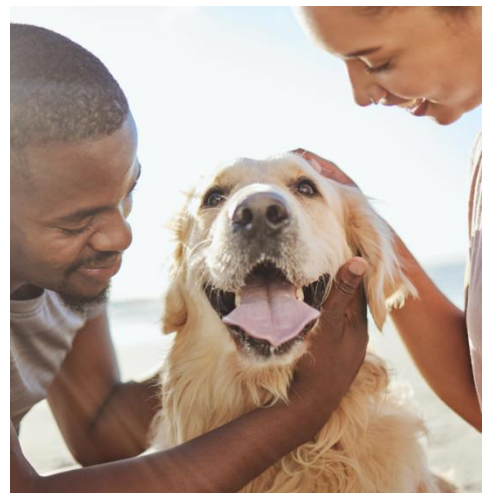
TRADITIONAL ESTATE PLANNING TRUSTS VERSUS PET TRUSTS:

Statutory Pet Trusts for the care of animals are distinguishable from Traditional Trusts that provide for human beneficiaries, though they may contain many similar pet-related terms. A few of the most important differences can be summarized as follows:

<u>Traditional Estate Planning Trust:</u>	<u>O.R.C. 5804.08 “Pet Trust”:</u>
Has one or more current beneficiaries	Has a current purpose (no current beneficiary)
Benefits human beneficiaries – the animal is maintained for the benefit of a person	Benefits the animal – the animal is maintained for its own benefit
Trustees owe duties to the human beneficiaries (not the pet)	Trustees have a duty to care for the animal and carry out the purpose of the trust
Enforceable for the benefit of humans (limited enforcement of pet-related terms)	Enforceable for the benefit of animals (statutorily authorized enforcement)

The purpose of a traditional estate planning trust is to benefit the persons who are trust beneficiaries while the purpose of a Pet Trust is to care for and benefit animals. When using a Traditional Trust, animals are maintained for the benefit of people, while a Pet Trust can be used to maintain animals for their own benefit and wellbeing.

Pet Trusts are our one and only pet estate planning option designed and intended for the direct benefit of animals rather than persons. Unlike our traditional estate planning tools (Powers of Attorney, Wills, and Traditional Trusts), the purpose of a Pet Trust is to provide for animals, not persons, and a Pet Trust will be enforced for the benefit of animals, not persons. Consequently, a Pet Trust is nearly always the most protective planning option for a pet. When using a Traditional Trust, the needs or desires of human beneficiaries will usually come before and may even trump animal needs. Conversely, when using a Pet Trust, animal needs and care will almost always trump human desires.



WHAT CAN PET OWNERS DO WITH A TRUST?

Depending on its terms, a Trust may be used to provide for and protect your pet during your lifetime, preserve your own continuing relationship with your pet, transfer ownership of your pet upon your death, or maintain your pet with a designated caregiver throughout your pet's remaining lifetime. Two of the most attractive features of trust planning are: (1) the ability to exert some control over how your pet will be treated and cared for after you die, and (2) flexibility to tailor a plan to your specific needs.

A Trust may be used to care for your pet on your terms throughout the animal's remaining lifetime. In some states, Pet Trusts are limited to twenty-one (21) years in duration. This can be a problem when planning for animals with longer typical lifespans. In Ohio, a Pet Trust may be used to provide for and protect your pet or animal throughout its remaining lifetime, no matter how many years that may be.

In addition to everything pet owners can do with Powers of Attorney or Wills, you can use a Traditional Trust or Pet Trust to:

- (1) Avoid post-death gap in authority and pet care – a Will becomes effective only when probated while a Trust is effective right away
- (2) Avoid probate – transfer your pet to a family member, friend, rescue, sanctuary, etc. without going through probate
- (3) Exercise post-death control over how your pet will be treated and cared for
- (4) Monitor the pet's beneficiary or caregiver, the pet, and the level of care provided
- (5) Maintain a home, farm, vehicle, trailer or other property for animal care
- (6) Remove and rehome a pet that is not being appropriately cared for, or replace the pet's beneficiary or caregiver
- (7) Protect money and property for pet care from a spendthrift beneficiary, a beneficiary's creditors, or other misuse
- (8) Designate successor pet beneficiaries and pet caregivers in case the original beneficiary or caregiver is or becomes unable to care for a pet
- (9) Ensure money and property for pet care is available for successor pet beneficiaries and pet caregivers

WHEN SHOULD A PET OWNER USE A PET TRUST?

There are no set rules regarding when it is and is not appropriate to create a Pet Trust rather than using another planning option. Ironically, while interest in Pet Trusts is growing, there may be less actual need for Pet Trusts than in the past. With pet ownership on the rise and more and more people treating their pets like family, many pet owners have multiple family members or friends

who would be suitable and responsible future animal caregivers. In such cases, a Will or existing Traditional Trust may meet your Pet Planning objectives.

Nonetheless, the level of protection a Pet Trust provides is incomparable. Pet Trusts are our only planning tool intended to provide for pets and enforceable for their direct benefit. Duties are owed for the care of the pet rather than to human beneficiaries, which reduces the likelihood of future conflict between the needs of pets and the desires of human beneficiaries. There are many circumstances where these extra layers of protection for a pet are well worth the additional cost and estate planning complexity. A Pet Trust is an excellent planning option when any of the following apply:



- (1) Your true intent is to provide for and benefit your pet, not to provide and maintain a pet for the benefit of a human beneficiary;
- (2) You want to ensure your pet's high standards of care, or leave a lot of detailed instructions;
- (3) You want to impose broad oversight and monitoring requirements for the protection of your pet;
- (4) There is a good chance that your family members may disagree with or challenge your Pet Plan;
- (5) You want to ensure that the trust will be interpreted, administered, and enforced for the benefit of your pet rather than human family members;
- (6) The value of the money and other property you intend to set aside for animal care is substantial or is a large portion of the overall value of your estate;
- (7) You want to protect money or other property for pet care from potential creditors or future Medicaid spenddown (would require an irrevocable Pet Trust);
- (8) You don't have a traditional estate planning trust, but you want some of the benefits of trust planning, including:
 - a. No post-death delay or gap in authority or pet care;
 - b. Continuity of pet care and financial management by designated successors;
 - c. Ensuring that money or other property will be available and used for future pet care
 - d. Protection from a spendthrift caregiver or the caregiver's personal creditors;
- (9) You have a traditional estate planning trust, but the trustees you have selected are not "pet friendly" or your proposed pet caregivers are not beneficiaries of the trust;
or

- (10) You want “the very best” or the most protective planning option available for your pet!

A FEW DISTINCTIVE ASPECTS OF PET TRUSTS:

Pet Trusts are quite unique compared to traditional estate planning trusts that benefit human beneficiaries. It is impossible to cover all of the differences here, but there are a few that need to be considered early in the Pet Planning process.

Pet Trust People:

While the purpose of a Pet Trust is to care for a pet, people are needed to administer and enforce Pet Trusts on behalf of animals. These responsibilities are often split among multiple individuals. There are three primary roles that people must fill in Pet Trust administration and enforcement:

Trustee: Manages trust property and may be responsible for pet care
A Pet Trust must have a trustee

Caregiver: Cares for the pet
A separate caregiver is not required but may be appointed

Trust Enforcer: Enforces the Pet Trust and oversees the Trustee and Pet Caregiver
or Protector Not required, but highly recommended

These roles can be split among three different individuals, or one person may fill multiple roles. For example, a very simple Pet Trust may have a Trustee who manages trust property and provides pet care and no separate enforcer. A moderately complex Pet Trust may have a Trustee-Caregiver who is supervised by a Trust Protector, or a separate Trustee and Pet Caregiver who are empowered to enforce the Pet Trust terms against each other. The more individuals involved, the greater the protection for the pet. However, the more individuals involved, the more it costs to administer and maintain a Pet Trust.



Pet Trust Enforcement:

Historically, trusts for the care of animals were considered unenforceable because no one had the power to enforce the trustee’s obligations. Unlike a human beneficiary, an animal cannot enforce its own trust. Someone must be empowered to enforce the terms of trust and the fiduciary responsibilities on behalf of a pet. Statutory Pet Trusts are not automatically self-enforcing, but the statute does provide for the appointment of an enforcer in the terms of trust or by a court.

Every pet owner who creates a Pet Trust should take advantage of the opportunity to appoint one or more enforcers. Someone needs to be “looking over the shoulder” of the Trustee and Pet Caregiver (or Trustee-Caregiver) to ensure they are appropriately caring for the pet, managing trust property, and complying with the trust terms. Enforcement powers may be granted to any of the following persons: (1) an appointed Enforcer or Pet Trust Protector, (2) an independent Trustee

and Pet Caregiver who have power to enforce each other’s responsibilities, or (3) the remainder beneficiaries of the Pet Trust. Keep in mind however, that remainder beneficiaries may have a conflict between their own interests and those of the pet.

Excess and Remainder Pet Trust Beneficiaries:

A Pet Trust has no current beneficiaries, but beneficiaries may be designated to receive any excess trust property or any trust property remaining after the death of the last pet. Family members, friends, animal welfare organizations, and other charities may be designated as excess or remainder beneficiaries.

Careful thought should be given to who you designate as excess or remainder beneficiaries. These persons or organizations will have the power (legally referred to as “standing”) to petition a court to reduce the value of a Pet Trust, terminate a Pet Trust, or question a Trustee’s pet-related spending. If not carefully selected, excess and remainder beneficiaries can make a real nuisance of themselves and may undermine your intentions for your pets. For this reason, avoid designating anyone who might not support your Pet Plan as an excess or remainder beneficiary. Local animal charities or welfare organizations are often the safest choice. Designating a local animal charity or welfare organization as the excess and remainder beneficiary eliminates the possibility that your next-of-kin or general estate beneficiaries may challenge or attempt to override your Pet Planning wishes. Local organizations are also less likely than large, national charities to challenge a Pet Trust – their reputation in the local community is important for their continuing support.

Pet Trust Funding:

A Pet Trust must be funded with enough money and other property to pay for the pet’s ongoing care and the costs of trust administration. Sufficient resources must be available to care for your pet according to your standards and instructions, to maintain the trust throughout the animal’s lifetime, and to enforce or defend the trust if necessary. The funding must fit the purpose and structure of the trust. The more complex a Pet Trust is, the more costly it is to maintain.



Funding is one of the most challenging aspects of Pet Trust planning! Pet owners and estate planners alike struggle with determining how much is enough, and the majority of Pet Trusts are probably underfunded. There are no concrete “rules” to follow, but there is a list of factors that should be considered when funding a Pet Trust.

Factors to consider when funding a Pet Trust include:

- (1) The annual costs of caring for an animal
- (2) The animal’s probable remaining life expectancy
- (3) The number of animals cared for in trust

- (4) Future inflation
- (5) Potential costs of unusual, emergency, or extraordinary animal care costs
- (6) The costs of property investments, property maintenance, and significant purchases
- (7) The anticipated costs of trust administration over the duration of the trust, including fiduciary compensation
- (8) The possibility of extraordinary trust administration costs, including litigation, enforcement, and damages
- (9) A “cushion” to guard against faulty computations and prevent court termination of an uneconomic trust, and a “rainy day fund” for unforeseen expenses

While we hear stories in the news about owners who leave millions in trust for their pets, more Pet Trusts are underfunded than overfunded. Pets are left completely unprotected when the money runs out. Sometimes, a Pet Caregiver or Trustee chooses to continue caring for a pet gratuitously, but many are unwilling or unable to do so.

10 KEY TRUST PLANNING QUESTIONS FOR PET OWNERS:

A Trust can be used as a Will substitute to avoid probate – your pet (with or without money for future care) may be transferred via trust to a new owner or beneficiary following your death. In the alternative, a Trust may be used to hold and maintain your pet in trust for a period of time or throughout its remaining lifetime.

Planning to hold and maintain a pet in trust is a lot more complex than planning for the disposition of a pet in a Will or using a Trust merely to avoid probate. Much of the complexity involved can be distilled down to the following ten key Trust planning questions for pet owners. If you choose to use a trust to plan, provide for, and protect your pet, you will need to consider:

- (1) Will (or might) the Trust be used to care for your pet during your lifetime or only after your death?
- (2) Who will physically care for your pet? (make sure you designate alternates or successors)
- (3) Who will make pet care decisions? (make sure you designate alternates or successors)
- (4) Who will own the pet? (Trustee or beneficiary)



- (5) How should your pet be cared for and maintained after your death? (standards, instructions, and limitations)
- (6) How will the costs of pet care be paid?
- (7) What pet care costs will be paid from the Trust?
- (8) Will property be maintained and used for animal care? (home, farm, vehicle, trailer, extensive equipment, etc.)
- (9) Will your pet and its care be monitored? If so, how often and how?
- (10) How will your pet-related intentions be enforced?

With answers to each of these ten key questions, you can assist your attorney in drafting pet-related Trust terms that are both cohesive and comprehensive.

“PET POWERS” OR FIDUCIARY AUTHORITIES:

A fiduciary (POA Agent, Executor or Trustee) who is responsible for animals will need specific pet-related authorities or “pet powers” to maintain and care for the animals. Some of these authorities may be implied under existing law, though exactly how current estate planning laws apply to pets remains unclear. Best practice is to explicitly grant “pet powers” within your estate planning documents. Explicit pet powers provide valuable guidance regarding your intentions and expectations to the fiduciaries who will be responsible for carrying out your wishes, pet professionals who may do business with your fiduciaries, and any reviewing court.



While not intended to be an exhaustive list, any or all of the following “pet powers” may be granted to a Power of Attorney Agent, Executor, or Trustee:

- (1) Determine and provide general day-to-day animal maintenance and care
- (2) Determine and provide for veterinary treatment (routine, non-routine, emergency, and/or alternative treatment) and sign authorizations and liability releases
- (3) Provide hoof care for hooved animals
- (4) Transport, pick-up and drop-off your pets (or authorize another to transport, pick-up, or drop-off your pets)
- (5) Provide grooming, exercise, training, and behavioral intervention as appropriate
- (6) Hire trainers, pet sitters, dog walkers, stall cleaners, and other animal service providers

- (7) Place your pet in another home, transfer ownership, or surrender your pet as you direct if you are permanently unable to live with or care for the pet
- (8) Market or advertise your pet for adoption or sale
- (9) Enter into contracts or agreements for animal care
- (10) Create and fund a trust for the care of animals
- (11) Maintain or obtain pet-related insurance coverage (health, mortality, loss of use, liability, etc.)
- (12) Maintain or purchase equipment and supplies
- (13) Humanely euthanize a pet upon the recommendation of a veterinarian or if appropriate for other reasons
- (14) Spend your money and use your property for animal maintenance and care
- (15) Maintain property used for pet care (home, farm, vehicle, trailer, etc.)

There are a few additional authorities that a Power of Attorney Agent or Trustee who is responsible for caring for pets during your lifetime may need:

- (16) Provide any assistance you may need to continue living with and caring for a pet
- (17) Provide for temporary animal care or boarding during your absence, illness, etc.
- (18) Provide and pay for alternate pet-friendly housing (condo, apartment, independent living, assisted living)
- (19) Make breeding or competition decisions (if authorized)
- (20) Extend your credit or borrow money to pay for pet care expenses or veterinary treatment (Agent only)

A Trustee who is overseeing the care of your pet by another, such as a trust beneficiary, Pet Trust Caregiver, or other care provider may also need the authority to:

- (21) Monitor the pet's beneficiary or caregiver and the care provided
- (22) Inspect the pet and its living arrangements
- (23) Remove and rehome the pet if it is not being cared for appropriately

All of these "pet powers" may be expressed as authorities that a fiduciary may exercise as appropriate. A fiduciary will have a degree of discretion regarding if, when, and how to exercise authorities. Many of these pet powers may also be expressed as instructions or directives to a fiduciary. A fiduciary has less discretion over carrying out a directive and usually must follow the instructions and terms provided. It is important to consider and distinguish between what your fiduciaries may do (authorities) and what they must do (directives) for your pets.

PET-RELATED LIMITATIONS ON FIDUCIARY AUTHORITY:

Power of Attorney Agents and Trustees have broad authority under the law to deal with tangible personal property, including animals. Many of these broad authorities may not be appropriate for pets or may need significant modification to align with an individual pet owner's expectations or intentions. For example, most pet owners do not want their pet to be sold, exchanged for another pet, or donated to a research lab. Pet owners may also want to place reasonable limitations on how their animals may be "used", such as prohibiting experimentation, competition, breeding, or commercial exploitation. Without express limitations, an Agent or Trustee may have all of these unwanted authorities with respect to pets and more.

Animals enjoy some degree of protection from fiduciary misconduct under the Ohio criminal code. For example, it is illegal to abandon an animal, cause an animal serious physical harm, or deprive an animal of adequate food, water, or shelter. Engaging in animal fighting is also a crime. However, all these offenses remain under-investigated and under-prosecuted.

Similarly, engaging in some of the objectionable activities could be considered a breach of fiduciary duty. A Power of Attorney Agent has a duty to act in accordance with the principal's reasonable expectations or in the pet owner's best interest. A Trustee has a duty to carry out a Settlor's intentions and act in accordance with the Trust terms and purposes. Some limitations on the exercise of fiduciary authority may be implied under law due to the nature of the relationships between humans and companion animals. However, no court has ruled on this yet, so it is best to be proactive and expressly state any limitations or prohibitions that are important to you within your Pet Planning documents.



An Executor of a pet owner's probate estate enjoys less freedom of authority than a Power of Attorney Agent or Trustee. An Executor has less authority under law and is also constrained by the terms of the Will and probate court oversight. For these reasons, it is not necessary to include a list of limitations or prohibited acts in every Will. However, there is no harm in including any limitations and prohibitions that are important to you, and it lays the groundwork for removing an Executor in the event of any violations.

Common pet-related limitations on a fiduciary's authority or acts that may be prohibited within Power of Attorney, Will, or Trust terms include:

- (1) Selling, exchanging, leasing, or abandoning animals
- (2) Giving away, donating, surrendering, or transferring ownership of animals, except as provided within the document terms
- (3) Pledging animals as security
- (4) Using animals for research, experimentation, testing, or meat trade

- (5) Participating in any form of racing, fighting or other competition
- (6) Breeding the animals (may be prohibited or limited)
- (7) Using animals for labor or any commercial activity or purpose
- (8) Kenneling, crating, chaining, pasturing, or keeping animals primarily outdoors
- (9) Potentially unsafe activities (examples: off-leash exercise, young children or other animals in a home, group turnout, other triggers)
- (10) Exposure to substances the pet owner may consider unhealthy (examples: vaccines, chemical insect repellants or growth regulators, chemical herbicides or fertilizer, preservatives, overly processed diets, etc.)
- (11) Using animals for a specific unwanted purpose (for example a horse owner may prohibit use for horseback riding lessons or multi-day trail rides)



Please note that these common limitations will not apply to every situation. For example, if an animal owner is a breeder or regularly shows or competes, he or she may intend for such activities to continue. Similarly, an individual dog owner may regularly kennel or crate animals overnight or when no one is home for safety, and some horses are happier in a pasture than in a stall inside the barn. On the flip side, pet owners are free to create additional prohibitions and limitations that may be unique

to their circumstances. Limitations on a fiduciary's pet-related authority may need to be customized to the circumstances, particularly when dealing with animals other than common household pets.

PET-RELATED STANDARDS AND INSTRUCTIONS:

The terms of your estate planning documents communicate your wishes to your fiduciaries (POA Agent, Executor, or Trustee), beneficiaries, reviewing courts, and third parties who may do business with your fiduciaries. Your Power of Attorney Agent has a legal duty to act in accordance with your reasonable expectations to the extent actually known. The Executor of your Will has a legal duty to administer your estate and distribute your assets in accordance with the terms of your Will. And, the Trustee of any Trust you may create has a legal duty to administer the trust in accordance with its terms and purposes and consistent with your intentions. The more clearly and completely your pet-related wishes are articulated, the more likely they will be followed.

Two of the best means of communicating your wishes for your pet are providing standards and instructions. Standards tell your fiduciaries how to care for and maintain your pet and determine the range or degree of fiduciary discretion. Here are a few of the most common standards for illustration:

- My Agent shall maintain my Pets in the *lifestyle and manner they are accustomed to*

- The Trustee shall care for and maintain my horses *consistent with my past practices*
- My Executor has *complete discretion* to place my animals in suitable permanent homes
- My Agent is encouraged to spend my income and principal *generously* to maintain my Animals in their accustomed lifestyle
- The Trustee shall pay or distribute income and principal of the trust estate *reasonably and consistent with my past practices* for the care and maintenance of the Cats and shall take care that the trust estate is not exhausted while any of the Cats remain living

Instructions are more specific than standards and limit the degree of fiduciary discretion even further. Here are a few examples of common instructions or directives:

- My Agent shall take all reasonable steps to ensure that I remain living with my pets in my own home as long as possible, including providing and paying for any in-home assistance or pet care services I may need
- My Executor shall pay or reimburse from my estate all expenses incurred after my date of death for the care, maintenance, housing, boarding, in-home care, grooming, exercise, training, veterinary treatment, advertising or marketing, placement and/or transportation of any of my pets or animals, premiums due on any insurance policy covering my pets or animals, and any similar or related expenses as costs of administration or otherwise prior to making any disbursements to my general or residuary beneficiaries or heirs, irrespective of the amount of such expenses
- If none of the beneficiaries designated in Section __ are willing and able to accept ownership and the responsibility of caring for my dog, the Trustee shall place my dog in a permanent home with no children under the age of fourteen and no cats or small household pets
- My Executor shall spay or neuter any intact or unaltered pet or animal prior to transferring the pet or animal to a beneficiary or other successor owner

You are free to be as creative as you want in preparing standards and instructions for your fiduciaries. It is particularly important to include this additional guidance for your fiduciaries and courts if you want anything unusual or extraordinary for your animals. Your instructions may pertain to almost any matter, so long as they are not contrary to law or public policy or impossible to carry out. Please do not include instructions to euthanize a healthy, adoptable animal – courts across the country have refused to enforce such instructions. Funeral directors and cemeteries in Ohio are also unable to comply with any instructions to bury human and pet remains together – there are no currently no whole-family cemeteries located in Ohio. In addition, consider



possible future changes in circumstances and try to avoid standards and instructions that may be impracticable in the future or are unduly burdensome for others to carry out.

General instructions that apply to all animals or that are unlikely to change with circumstances or the passage of time can be included within your estate planning documents (Powers of Attorney, Wills, Trusts). More specific instructions to your POA Agent or Trustee that may change in the future are better placed in a separate document that you can update periodically. Separate instructions to your POA Agent or Trustee are binding, especially if referenced in the document terms. Unfortunately, the Executor of your Will is not required to follow any separate instructions you may leave, but it is still a good idea to leave updated pet care instructions for guidance.

SUMMARY OF GENERAL PET PLANNING OBJECTIVES:

There are many options available to plan and provide for pets and considering them all can be a little overwhelming. A summary of our primary overall Pet Planning objectives may be helpful to put all the pieces together and form and plan that meets your individual needs. Your general Pet Planning goals are to:

- (1) Provide a plan for your pet if you die, are unable to provide care, or need assistance;
- (2) Provide a back-up plan;
- (3) Authorize someone else to make decisions and care for your pet if you are unable;
- (4) Grant “pet powers” authorities;
- (5) Specify any limitations or prohibited acts;
- (6) Provide additional guidance, standards and instructions (if desired);
- (7) Direct or authorize pet-related expenditures;
- (8) Create pet-related duties that require fiduciaries to appropriately care for pets;
- (9) Provide means for enforcing pet-related terms; and
- (10) **Ensure that your wishes for your pet are known and will be carried out!**

MISCELLANEOUS PET PLANNING MATTERS:

There are a few additional miscellaneous matters that are important to consider when planning to provide for and protect your pets.

Compensating Fiduciaries:

Caring for a pet requires much more time and effort than maintaining other types of tangible personal property. In addition, since most pets have minimal or even zero economic value, fiduciaries are not automatically compensated for this time and effort. Family members and

friends do not always expect to be compensated for caring for or placing a pet, but many fiduciaries do. This should be factored into and provided for in your Pet Plan.

Unknown Future Pets:

It is the sad reality that most of our animal companions have shorter lifespans than we do. However, most people who lose a pet do choose to get another. The pets you have today may be different from the pets you own when you die or lose capacity. It's important to plan for both your existing animals and potential unknown future pets.

Pet Care Information:

If your POA Agent, Executor, or Trustee is not already familiar with your pets' needs, it is a good idea to prepare basic information and care instructions for each of your animals. A pet can't tell a future caregiver about itself, but you can. Include information about any dietary preferences or restrictions, health conditions and medications, allergies, training, daily routines, grooming and exercise requirements, favorite toys and games, any fears or problem behaviors, preferred veterinarians, groomers, trainers, etc.

Update Your Pet Plan:

The needs of living animals change over time. It is important to review your Pet Plan and pet care information and instructions regularly and update those documents as needed.

Notices:

A Pet Plan is just paper unless someone knows about it and can carry out your wishes. Inform your POA Agent, Executor, and any Trustee where your estate planning documents are kept and make sure they have access to those documents if something happens to you. Carry a wallet card and place notices in your vehicle glove box and the front pocket of your luggage with emergency pet contacts and other pertinent information. Local emergency responders also need to know that you have pets and who to contact in the event of an emergency. The refrigerator, front window, or backside of the front door are common locations where this information is placed, but it is a good idea to contact your local responders for their preferences.

***YOUR PETS ARE DEPENDING ON
YOU TO PLAN AHEAD!***

For Help with Your Pet Planning, Please Contact:

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