

LEGAL NEWS

A primer on pet trusts

While Americans love their pets, Netflix's new docuseries, "Gunther's Millions," exposes pet adulation at a whole new level.

Gunther, a German Shepherd who is undoubtedly the world's wealthiest dog, woofs down a purported trust fund in excess of \$400 million that finances an absurd life of luxury. Among other extravagances, this pampered pooch dines on meals from private chefs, lives in Madonna's former mansion and travels on private planes and yachts. But for most pets, it's a dog's life and not nearly as large. Nonetheless, Gunther's excesses provide some Kibble 'n Bits to avoid when planning for your pet.

According to a 2022 study by the American Pet Products Association, pet ownership has increased exponentially, as has the recognition of the social and emotional benefits of owning a pet. Yet when pet owners are asked what type of estate planning they have contemplated for their pets, the vast majority simply haven't given this any thought.

Legally, pets are classified as chattel or property, but to owners, they may often represent a loyal companion, best friend or even a part of the family.

As pet owners confront the archaic legal classification of pets, there is understandable angst amongst owners without a plan in place. Failure to plan for the care and placement of an animal could result in that animal being completely forgotten, unintentionally starved or put down by an animal control department.

Being cognizant of issues involv-



JEFFREY D.
KATZ



JARED B.
STAPE

Commentary

ing animal longevity and care needs in planning is also essential. For example, some breeds of parrots and macaws can live beyond 75 years. Certain turtles and tortoises live beyond 100 years. Horses also have long life spans and are expensive to maintain.

Many challenges in animal estate planning arise, but solutions are plentiful. Consider Gunther's pet trust, which is a legally sanctioned arrangement that provides for his care and maintenance. While less extreme trusts are more typical, the arrangement works well for one or more living animals in the event of the grantor's disability or death. The "grantor" is the person who creates the trust.

A Maryland pet trust must be funded, and it must designate a caregiver and a trustee. Trust language can specify the amount of money to be set aside for the pet's care and how those funds will be disbursed; considering the long-term costs of pet support is essential when funding.

As the caregiver will have physical custody of the pet, it is imperative to choose a trusted person who can fol-

low instructions and properly care for the animal.

When creating the trust, specificity in care is paramount. Backups and animal sanctuaries/safe havens can also be appointed. The trustee manages the funds in the trust, provides oversight and makes distributions to the caregiver when appropriate. If no named trustee is available or appointed, Maryland law provides that the court can select someone to serve.

While the same person may serve as both trustee and caregiver, conflicts of interest can emerge, with caretakers feathering their own nests. Selecting different individuals to serve in each role provides checks and balances in the administration of the trust.

The trust should specify when it will terminate, such as upon the death of the pet or after a certain period. Where instructions are unclear or simply not provided, the trust will automatically terminate upon the death of the last surviving animal, and any residuary assets will pass pursuant to the terms of the trust or by operation of law.

While Gunther may disagree, grant-

ors should avoid overfunding the trust, as courts may distribute unneeded values back to the grantor, escheat the interest to the state or otherwise judicially modify the trust.

When drafting, it is also critical to identify each beneficiary animal precisely. Accordingly, the trust should include an attached schedule with the name of the beneficiary pets, photos or depending on the species, even documentation of ear tags or microchips, vet records and county licenses.

As an alternative to a pet trust, a Durable Power of Attorney can achieve similar results at a reduced expense. Responsible pet owners can provide instructions for the care of their animal in a Durable Power of Attorney, in which an agent is given special instructions in the event they become incapacitated. Special instructions should provide the agent with detailed care plans for the animals and authorization to utilize funds for such purposes. However, these powers will terminate upon the death of the grantor.

In short, don't leave your dog or other furry/feathered friend out. Through a pet trust or other contingency plan, responsible pet owners can ensure their pets are cared for no matter the circumstance.

Jeffrey D. Katz is founder/managing partner, and Jared B. Stape is an associate with JDkatz, P.C. Both attorneys concentrate their practices on estate planning and tax law.