

“And in trust for my pet ...”

The Ohio Revised Code now provides for the creation of animal care trusts.

by Julie S. Mills

Pets have gained new recognition in the Ohio Trust Code, which became effective Jan. 1, 2007. Ohio is now the 35th state to provide for the creation of trusts for the care of specific animals, most commonly pets. Ohio Revised Code 5804.08 provides for the creation of trusts for care of animals alive during the lifetime of the settlor (person creating the trust), but only for as long as the animals are alive, and only in amounts not excessive for the intended purpose.

Previously in Ohio there were concerns of whether trusts for the care of animals were enforceable and valid, although at least one Ohio appellate court held that a trust for a specific animal was enforceable and did not violate the Rule Against Perpetuities.¹ The new legislation offers more guidance and assures animal owners that a trust:

- Can be created for living animals that can extend through the life of the last of the surviving animal;
- Can be enforced by a person designated within the trust, a third person having an interest in the welfare of the animals, or if no one is designated, a person appointed by the court; and
- Can be funded to provide for the intended purpose, but nothing more.

Counsel for the settlor should consider the question of whether the intended animals benefiting from the trust are those in gestation at the time of the settlor's death and whether those animals are, or should be, deemed to be “alive” during the settlor's lifetime.

Careful consideration must be given to funding. A formula set forth in the instrument and calculated at death of the settlor is an open-ended amount and risks challenge by the other trust beneficiaries at the time of the calculation. Alternatively, applying a specific dollar amount is somewhat arbitrary and risks being inadequate or excessive. It does assure, however, that the funding does not disturb the settlor's general estate plan. Whether a post-death funding formula is used, or a specific dollar amount is entered, the trust should recite factors considered in arriving at either, such as estimated expenses for veterinary care, food, recreation (toys, dog parks, etc.), occasional boarding (during caregiver's holidays

and vacations), and cover the anticipated life expectancy of the animals. Consider whether to factor burial or cremation expenses—much different sums for house pets than for farm animals. Consider whether burial expenses are permitted under a statute extending benefits, only so long as the animals are alive.

The likelihood of a challenge is reduced if a fixed amount is used and an animal protection charity (cat league, humane society, etc.) is designated as the beneficiary for any amounts determined excessive, as well as for any remaining funds on the termination of the trust at the death of the last animal. With a formula calculated at the death of the settlor, a list of the factors and a clear expression of the “intended purpose,” reduces the likelihood of a successful challenge to the calculated amount. As long as the funding amount does not exceed the amount needed for boarding the animals it cannot be found excessive.

The pet owner should find solace and comfort from legislative recognition of the value of caring for pets and other animals, often considered to be members of the family. The attorney should find similar comfort from the Ohio Trust Code provision that provides guidance for drafting enforceable, reasonably funded trusts for the benefit of an identifiable class of living animals. ■

Endnote

¹*In re Estate of Searight*, 95 N.E.2d 779, 87 Ohio App. 417 (Wayne Co., 1950).

JULIE S. MILLS IS AN ATTORNEY IN COLUMBUS.