



SB 685 (YEE) – THE PET TRUST BILL PLANNING FOR OUR PETS

THE PROBLEM

It is estimated that well over half of American households have at least one pet. Most pet-owning households believe you should have more than one pet, and 40% of dog-owning households have at least one cat.¹ We love our pets, and pets are an increasingly important part of our lives and of our families. Also increasingly, pet owners are seeking to ensure that their pets are cared for after the owner's death or disability. In the past, such arrangements tended to be informal – an arrangement or understanding between the pet owner and a family member or friend. But informal arrangements are inherently uncertain.

Caring for pets demands resources of time and money, and promises made may not be kept once the person to whom the promise was made is no longer there. Also, as families become smaller and more spread out, and as individuals become more isolated, the access to such family or friends becomes more limited. One of the reasons that animals are surrendered to shelters is that their owners have died or become incapable of caring for them, and no one is ready or willing to look after the pets.

However, there is a way in which a pet owner can ensure that his or her pets will be properly cared for in the event that he or she dies or is

disabled: this is through the establishment of a pet trust.

A pet trust is a legal instrument that permits the pet owner to provide for the care of his or her pets by setting aside a sum of money for the pets' care, to be managed by a trustee. The trustee will pass on funds from that sum to a caregiver, who will use the funds for the benefit of the pets, according to instructions given by the pet owner.

It is estimated that between 12% and 27% of pet owners include pets in their wills.² In some of these cases, the will provides the instructions and basis for a "testamentary" pet trust, a trust that takes effect when the pet owner dies. Alternatively, a pet owner may create an *inter vivos* or "living" pet trust, whereby the pet trust is in effect immediately for the benefit of the pets.

While anyone may create a pet trust, there is a major problem with California pet trust law at present, evident from a reading of the law. The statute, which is printed in full on page 3, reads that "A trust for the care of a designated domestic or pet animal may be performed by the trustee for the life of the animal..." The language is permissive, rather than mandatory.

¹ American Veterinary Medical Association, *U.S. Pet Ownership & Demographics Sourcebook (2002 Edition)*, Schaumburg, Illinois, 2002.

² Gerry W. Beyer, "Prepare for Your Companion Pet's Future," Paper presented to the Phoenix Landing Foundation, Sept. 16, 2006, Alexandria, VA, accessed at http://www.professorbeyer.com/Articles/Animals_Phoenix_Landing_9-16-06.pdf, on Nov. 14, 2006.

In other words, a trust “may be performed”, or it may not!

In any other kind of trust, the trustee is duty-bound to carry out the instructions laid out by the creator of the trust. In the pet trust code, in contrast, the trustee may carry out the trust, but is not obligated to do so. There is no enforcement capability in this trust language, and therefore such trusts are “honorary” rather than enforceable by law.

This is a situation which can be easily remedied. That remedy would bring peace of mind to pet owners, and would bring consistency and proper legal oversight into planning which protects defenseless animals, ensures that people’s last wishes are honored and carried out, and reduces the burden on shelters and animal care facilities throughout the state.

THE SOLUTION

The solution is simple. SB 685 will incorporate the language of the Uniform Probate Code into California law, and will remove the present uncertainty and unenforceability from the administration of California pet trusts.

Pet trusts have been considered, reflected upon and incorporated into uniform codes, particularly in the last fifteen years. The Uniform Probate Code and the Uniform Trust Code have both created appropriate language for pet trusts. The Uniform Probate Code, Section 2-907, has included pet trust language since 1990. This initial language was amended and refined in 1993. The Uniform Trust Code, Section 408, was completed in 2000. The *Restatement of the Law – Trusts* considers pet trusts in Section 47 and suggests common-sense revisions to trust law to increase the effectiveness and duration of pet trusts.³

³ The American Law Institute, *Restatement of the Law Third, Restatement of the Law – Trusts*, Vol. 2,

The language of UPC Section 2-907 affirms the validity of a pet trust, presumes against the merely honorary nature of the disposition, and is intended to carry out the general intent of the transferor. It protects the trust’s funds from conversion to any use other than for the benefit of the animals, and thereby both protects the animals and respects the wishes of the creator of the trust. This respect and recognition is consistent also with the general disposition of bequests and trusts, which are to be construed insofar as possible as had been intended by their creators.

At least ten states have written the UPC language into state law, and some others have used the UPC language as a model for their own legislation. Similarly, at least eighteen states and jurisdictions have adopted the UTC provision for their pet trusts, while others have used the provision as a model for their revised law.

California is one of the last states to retain pet trusts as honorary rather than enforceable. To protect the interests of California residents, and to protect the animals who have been constant companions to those residents, it is imperative that California implement enforceable pet trust language.

This is an issue which is close to the hearts of all those who work with animals, and particularly those who work with shelter animals. The San Francisco Society for the Prevention of Cruelty to Animals, Sponsor of SB 685, is especially sensitive to the importance of planning for one’s pets. The San Francisco SPCA is home to the Sido Program, which ensures that a participant’s pets will be cared for if their owner predeceases them.

Dogs and cats enrolled in Sido are taken into the San Francisco SPCA Adoption Program when

Section 47, American Law Institute Publishers, St. Paul, MN, 2003.

the owner dies, providing the animals pass health and behavior checks. The SF/SPCA looks after them and works to place them in the best possible home.

The Sido Program is one building block in the structure of animal care and of planning for one's pets. Pet trusts are another. The more that Californians are supported by statute which assists them in preparing for their pets in the case of any eventuality, the more likely it is that those pets will not be surrendered to local shelters, with the awful consequences which that may all too often entail.

EXISTING LAW

California law relating to pet trusts is found in Section 15212 of the California Probate Code.

Section 15212 states that:

A trust for the care of a designated domestic or pet animal may be performed by the trustee for the life of the animal, whether or not there is a beneficiary who can seek enforcement or termination of the trust and whether or not the terms of the trust contemplate a longer duration.

THIS LEGISLATION

SB 685 makes pet trusts valid and enforceable in California. It makes pet trust law consistent with other trust law by obliging trustees to carry out the trust instructions, and by incorporating oversight to guarantee performance. The legislation brings California into line with most states in the US, which have already adopted pet trust language based on the 1993 Uniform Probate Code language or the 2000 Uniform Trust Code.

Most importantly, this legislation protects companion animals and ensures that they receive the continuing care that their owners and guardians planned and intended for them. In so doing, the legislation also keeps loved companion animals out of shelters and animal care facilities, and thereby saves taxpayer dollars and frees services to be used for other less fortunate animals.

SUMMARY

SB 685 ensures that a pet owner who seeks to provide for his or her pets in the event of the owner's death or disability can do so, with the peace of mind that the trust is treated by California law as valid and enforceable. This legislation is vital for people who are seeking to behave responsibly towards the animals they have looked after and loved, and who wish to ensure that those animals do not become a burden to others on the death or disability of the owner. It is vital also for the animals, who all too often may be mistreated, ignored or abandoned, or relinquished to shelters on the death or disability of their owner.

Mahatma Gandhi said that, "The greatness of a nation ... can be judged by the way its animals are treated." We owe it to ourselves and our pets to make sure that we protect and care for our pets as best we can for the duration of their lives. A strong pet trust statute is an important step in building that framework of security and care.

QUESTIONS & ANSWERS

- Q. We've already got legislation on the books to permit pet trusts. Isn't that enough?**
- A. No. Present legislation permits "honorary" pet trusts, but the language is permissive. If the trustee decides not to carry out the terms

of the trust, there is no legal basis to enforce performance.

Q. Do any other states have statutes specifically validating pet trusts?

- A. California is in the minority of states that do **not** have statutes which ensure the welfare of pets through enforceable pet trusts.

Q. Are there any models which we can use to update California law?

- A. Absolutely! This is an issue which has been considered on the national level, and which has been incorporated into uniform codes. The Uniform Probate Code, Section 2-907, has included pet trust language since 1990. This initial language was amended and refined in 1993. The Uniform Trust Code, Section 408, was completed in 2000.

Q. Don't most pets just go to friends and family if a pet owner dies? Do we need to bother with a law to enforce pet trusts?

- A. Go to any shelter and ask the staff how many of the animals are there because the owner died. Even if an owner has made informal arrangements for his/her pets, these arrangements are not necessarily honored by surviving kin or acquaintances. Even with the best will in the world, pets demand a financial commitment, as well as a commitment of time and energy. Pet trusts help to ensure that pets continue to be cared for. They reduce pressure on shelters, and therefore on public services and funds.

Q. Isn't a pet trust unfair to a person's other beneficiaries? A person with a pet trust could just pass all his money on to his dog, leaving his kin out in the cold.

- A. Wills and trusts are the means for individuals to bestow their worldly possessions as they see fit.

A pet is not, and cannot be, a direct beneficiary of a trust, and a trustee is responsible for the reasonable disbursement of funds on behalf of the pet. In any case, trust beneficiaries may be, for example, friends, relatives, and/or charities. That decision is in the hands of the creator of the trust.

Pet trusts reflect the love, compassion, and good, sensible forward planning of the trust creator, who wishes to ensure that his or her pets continue to be cared for when he or she is no longer able to care for them.

SUPPORT

San Francisco SPCA (Sponsor)

Action for Animals

Animal Switchboard

Humane Society of the United States

Marin Humane Society

PAWS (Pets Are Wonderful Support)

Peninsula Humane Society

San Francisco Dog Owners Group (SFDOG)