Helmsley's Pet Trust Raises Issues For Owners of All Income Levels

By **Frances Carlisle**

After Leona Helmsley died, the news was full of stories about the $12 million trust for her little dog, named Trouble. That was good because it brought attention to the existence of trusts to care for pets, but bad because it appeared that pet trusts were only for the very rich, and rather foolish. But the use of trusts for the care of pets is an appropriate estate planning tool for any pet owner, even one of modest means.

Almost all states have enacted pet trust statutes authorizing the creation of trusts for pets.[1] The New York Legislature passed its pet trust statute in 1996 to permit persons to create enforceable trusts for the care of domestic or pet animals.[2] And the Uniform Probate Code and the Uniform Trust Code each have sections authorizing pet trusts.[3]

Attorneys who do estate planning can benefit from a review of Mrs. Helmsley's plan for the care of Trouble.

Funding a Pet Trust

Leona Helmsley left $12 million in her will to an inter vivos pet trust that she created pursuant to the New York pet trust statute. Her inter vivos pet trust provides for the lifetime care of Trouble, and after the dog's death, the trust remainder passes to the Leona M. and Harry B. Helmsley Charitable Trust.

All of the assets in pet trusts are subject to estate tax, as there is no charitable deduction for any property in a pet trust that passes to a charitable organization or trust.[4] The executors of Mrs. Helmsley's estate wisely petitioned the Surrogate's Court for permission to reduce the amount passing to the pet trust to $2 million, in order to substantially reduce estate taxes. The executors petitioned the court under section (d) of the New York pet trust statute, which provides that the court can reduce the amount passing to a pet trust if it determines that the amount substantially exceeds the amount required for the intended use. The excess passes to the remainderman of the trust. The court ordered the decrease to $2 million.

In general, when providing for the care of an animal, a pet owner should leave only a reasonable amount for that care. In most cases, $2 million would be substantially more than is needed to care for one dog. But special circumstances existed for Trouble, related to the media blitz about the $12 million pet trust. After the publicity, it was reported that more than 40 death and dognapping threats were received, and that the dog was in such danger that she was taken out of her Connecticut home and flown under an assumed name to a secret location. Round-the-clock security is needed for the dog, which costs between $100,000 and $200,000 a year, and that amount is much more than any other expense for the care of the dog. Since security costs are so high, $2 million is a reasonable amount to fund the trust for Trouble.

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More commonly, a large amount may be needed to fund a pet trust if the pet owner has many animals and wants the animals to live together in the family home with a caretaker. This solves the difficult problem of finding homes where all of the animals would live. The residence is placed into the trust, along with enough liquid assets to maintain the residence and to pay a caretaker, as well as of the costs of animal care, such as food and veterinary bills. Some pet owners direct that the residence be sold, but that a less expensive residence be purchased or leased by the trustee where the animals and a caretaker would live together.

Putting a residence in the trust in some cases may be the only way to properly care for the animals according to the pet owner's intent that the animals remain together in familiar surroundings. Similarly, with large animals, such as horses and farm animals, a pet owner may want to put a farm into the trust, and hire a caretaker to live on the property. This may be the best way to assure the proper care of these animals during their lives. There are no cases to date on whether putting a residence or farm into a pet trust would be considered excess funding.

Place Pet in the Trust

In her will, Mrs. Helmsley bequeathed Trouble to her brother, who then did not want the dog.[5] A person who is bequeathed an animal under a will does not have to accept such bequest, but if he does, he becomes the new owner of that animal and has all the rights of ownership, including the right to take the animal to a veterinarian to be euthanized. As these risks exist, it is wise for a pet owner to bequeath the animal to the pet trust, as the trustee has a fiduciary duty to safeguard property in the trust. Animals are property under the law, and so can be part of a trust, along with other forms of property.

Pet Burial

Mrs. Helmsley's will provides that when Trouble dies, her remains are to be buried next to Mrs. Helmsley's remains in the Helmsley Mausoleum at Woodlawn Cemetery. However, animal remains cannot be buried in human cemeteries. Although rare, some pet owners want to have their remains buried with their pet's remains. They can do this by purchasing plots at

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FRANCES CARLISLE *is a trusts and estates attorney practicing in New York City.*

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a pet cemetery, such as the Hartsdale pet cemetery, where there are even elaborate mausoleums. While this is not a plan that most people want, and wouldn't have worked for Mrs. Helmsley, who wanted to be buried next to her husband, Harry, it is an option for certain people who want to be buried with a beloved pet.

Types of Trusts

A pet trust can be an inter vivos trust, created during the life of the pet owner. Or it can be a testamentary trust under a will, effective after death.

An inter vivos trust has the advantage of being immediately available for the care of an animal if the pet owner becomes incapacitated. The inter vivos trust has the disadvantages of being more expensive to create, and in some cases, of not being adequately funded (or not funded at all) at the time of death of the pet owner. If the pet owner wants an inter vivos trust, it is wise to have back-up funding of the pet trust in the will, to avoid the risk of having an unfunded, and thus useless, trust at the time of death. Mrs. Helmsley's pet trust was an inter vivos trust, but was funded from her will.

A testamentary pet trust is funded under the will. The disadvantage of a testamentary trust is that it will not be in effect during periods of disability, so pet owners should execute a power of attorney appointing an attorney-in-fact to handle their financial matters, (including a specific provision authorizing the payment of the costs of care of the pet owner's animals) to be used if the pet owner becomes incapacitated. There should also be a plan for the care of the pet during the period from death to the admission of the will to probate.

1. All states and the District of Columbia have pet trust statutes, except for the following: Connecticut, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Oklahoma, Vermont, West Virginia (Some of these states have bills authorizing pet trusts pending in their legislatures).

2. New York Estates, Powers and Trusts Law §7-8.1.

3. Uniform Probate Code §2-907; Uniform Trust Code §408.

4. H.R. 1796, Federal Charitable Remainder Pet Trust bill, was introduced in Congress in 2001, but never enacted.

5. It is reported that the dog is doing well with a caretaker who was a family friend. See also: "Remember the Family Pet in Estate Planning" by Frances Carlisle, NYLJ, July 16, 2004, "Drafting Trusts for Animals," by Frances Carlisle and Paul Franken, NYLJ, Nov. 13, 1997.