

New Law a Welcome T&E Tool for Massachusetts Pet Owners

By Christine P. Keane



Gov. Deval L. Patrick recently signed into law “An Act Relative to Trusts for the Care of Animals,” which allows residents to create legally enforceable pet trusts in their estate plans.

With the new legislation, pet owners can create a trust for the care of

their animals that is enforceable under state law, ensuring that their wishes and directions regarding their companion pets will be carried out at the owners’ incapacity or death.

Previously, residents were limited in how they could provide for their pets after the owners became incapacitated or died. The main option available was to give a specific amount of money to an individual with a statement expressing wishes that the individual use the funds to care for the pet. But there was no way to enforce the pet owner’s wishes and ensure that the individual receiving the money would use it for the actual care of the pet.

Under the new law, the trust can take effect

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while the pet owner is living, upon his incapacity or upon his death. The trust terminates upon the death of the pet or, if there is more than one pet provided for under the terms of the trust, upon the death of the last surviving pet.

Unless the trust provides otherwise, the assets in the trust are held for the sole benefit of the pet, except for any reasonable administrative expenses of the trust.

Likely influenced by the multi-million-dollar pet trust established by Leona Helmsley in New York, the amount of property with which a pet trust can be funded is not unlimited. The law allows the court to reduce the amount in the trust if that amount substantially exceeds what is required to care for the pet.

Before the court reduces the amount in the trust, it first has to determine that there will be no substantial adverse impact in the care, maintenance, health or appearance of the animal.

If the court reduces the amount of the trust, the excess assets pass according to the terms of the trust instrument or are returned to the original pet owner, if he is still alive.

The reason for the inclusion of that provision may stem from the \$12 million trust that Helmsley created for her Maltese, Trouble, at her death. While pet lovers may not have been shocked by the affection that Helmsley had for Trouble, the court found the amount excessive and reduced the trust assets to \$2 mil-

lion. Until Trouble’s death a few months ago, the reduced amount still provided him a very lavish lifestyle.

There are several advantages to creating a trust under the new law. First, a pet owner can name a reliable person to be the trustee who is someone other than the caretaker of the animal. The trustee ensures that the pet is well cared for and that the trust assets are properly managed.

Additionally, if the trustee does not fulfill his fiduciary obligations, then a person having custody of the pet, a subsequent beneficiary of the trust or a court-appointed person can go to court to enforce the terms of the trust.

Another advantage of a pet trust is that the burden is removed from a local animal shelter that otherwise might be required to care for the pet, as the incapacity or death of a pet owner often times results in the abandonment or surrender of a pet.

While pet trusts are appropriate for any type of pet, they may be particularly well-suited for those that are more expensive to maintain and require a high level of care, such as horses, which have long life expectancies and are expensive to care for and board. A trust enables the pet owner to dictate the proper care requirements for the animal and to fund an enforceable trust to ensure that proper care is given for the life of the animal. **MLW**

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