

Ohio Law Helps You Provide for Fido After You're Gone

Q.: Is there some kind of legal device I can use to make sure my pet is cared for after I'm gone?

A.: Yes. House Bill 416 has been passed by the Ohio legislature and signed into law. Effective January 1, 2007, Ohio Trust Code (O.R.C.) Section 5804.08 allows you to create a trust specifically for the care of your pet.

Q.: Does the law cover all types of pets, or only dogs and cats?

A.: The law covers all animals, including dogs, cats, and even your pet tarantula if you choose to have one. However, the law covers only animals that were living when the person who created the trust (called the settler or grantor) was still alive. Also, the trust is effective for no longer than the duration of the lives of the animals it names.

Q.: Why didn't Ohio law allow for pet trusts before now?

A.: Historically, pet trusts were invalid for two reasons. First, there was no human beneficiary who could be identified in definite and certain terms to enforce the trust. Second, the rule against perpetuities (a legal doctrine that was designed to prevent property ownership from being tied up for unreasonably long periods) requires a human "life-in-being" (the life of a person who can affect the vesting of the property interest) against which to measure the duration of the trust.

Under the 2007 law, a pet trust is valid in its own right and is no longer considered an "honorary" trust. This means that the trustee no longer has the option of whether or not to enforce the pet trust. The trustee must administer the trust and make distributions for the benefit of the pet, or the court will appoint a successor trustee. In the past, trustees have sometimes taken money provided through honorary trusts that was intended to be used for the care of pets, and used it for other purposes, instead.

Q.: How does a pet trust work?

A.: A pet trust must be created for the continued care and maintenance of a

particular animal. The trust must be funded with some amount of money or property, and a trustee must be designated to administer the trust. Although a pet trust offers a level of protection for the pet that exceeds the sort of protection that was available through the use of honorary trusts, there are limitations. For example, the court has the authority to reduce the amount of caretaking funds to an amount it deems is reasonable for the care of the pet.

When creating such a trust, it is wise to name a person who would be willing and able, if necessary, to step forward to bring a legal action against the trust's caretaker-trustee, should the trustee fail to honor the trust. The 2007 law does not change in any way O.R.C. Section 1721.12, which permits cemeteries to hold property in trust for the maintenance of animal gravesites.

Q.: What steps should I take if I want to prepare a trust for my pet?

A.: To create a workable pet trust, you should do the following:

- Select a trustee to administer the trust.
- Select a primary as well as a secondary caregiver.
- Prevent fraud by protecting your pet's identity (for example, by inserting a microchip into your pet's body, to provide proof that the animal named in the trust is actually the beneficiary. In one case, an unscrupulous caregiver replaced a deceased cat with one cat after another for 30 years.
- Put pet care instructions, such as food preferences and exercise routine, in writing.
- Identify any health problems, medication or treatments, and a schedule of veterinary visits.
- Require the trustee to make regular inspections.
- Provide sufficient resources to cover pet care expenses, and specify how funds should be distributed (e.g., annually, quarterly, bi-monthly). Do not invite a court challenge to your trust by over-funding it.
- Provide the funding necessary to administer the estate.
- Specify how any funds remaining after the animal's death should be used.
- State how the animal should be treated after its death (e.g, burial, cremation, etc.).

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Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association. This article was prepared by Cleveland attorney Marc L. Stolarsky.

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