

How much is that doggy in the window?

Animal Trusts and How They Can Protect Your Pets

by Jillian Mastroianni

The truth is that the doggy in the window, you know, the one with the waggley tail,¹ is more expensive than you think. In fact, one Congressman² was so concerned about the financial cost of pet care that he introduced the Humanity and Pets Partnered Through the Years (HAPPY) Act to Congress in July 2009. The Happy Act sought to amend the Internal Revenue Code to allow a tax deduction of up to \$3,500 per year for pet care expenses,³ but didn't gain sufficient support to become law. Despite the unhappy fate of the HAPPY Act, Americans spent \$55.72 billion on pets in 2013.⁴ Regardless of whether that doggy in the window was a purebred or a rescue at the shelter (or whether a pet is a “doggy” or not), owners need to be prepared for the expected costs of pet ownership—food, vaccinations, day care (for some), and, for those on the cutting edge of the pet care community, pet hospice.⁵

But, it's the unexpected costs of pet ownership that hit a pet owner's bank account, and hit it hard. As I sat at the emergency veterinary clinic on a recent Saturday evening, I studied the treatment options, which were neatly defined and itemized on an 8 x 11 printout. “Okay,” I said, “Let's go down to here,” pointing to all the tests and procedures up to and including x-rays, “and if we find anything abnormal, I'll make another decision.” I committed to \$800. The veterinarian returned with the x-ray results and discussed her concerns. I discussed mine, and then, as if making a decisive poker move, declared, “I'm all in,” that is, \$1600 all in. I had set aside almost that exact amount for some minor improvements to my house. I cancelled the handyman and handed over my credit card.

The treatment was for Oliver, a gangly brown beast of a dog that I rescued two years ago after he was left tied to a fence outside a Tennessee animal shelter. As I sat there, I thought about how I, the one who most loves that brown beast, had very consciously considered the financial ramifications of his treatment options.

As an estate planning attorney, I'm programmed to think—“What would have happened if I weren't here?” What would have happened if someone else had to make that decision about Oliver's fate? Would someone else have opted, instead, to move forward with those home improvements?

Fortunately, the law offers a tool to prepare for that particular reality—an Animal Trust. Tennessee law⁶ now provides that an individual (the “settlor”) may create an Animal Trust to take effect during the settlor's lifetime and/or a testamentary trust to take effect on the settlor's death. An Animal Trust may only be created to benefit animals that are alive during the settlor's lifetime, which may include animals in gestation but not yet born.⁷ The terms of the Trust may be enforced by a Trust Advisor or Trust Protector named in the trust instrument, or, if no such person is named, by an individual appointed by the court having jurisdiction over such Trust.⁸

An Animal Trust may be as detailed as the pet owner desires, or it may leave decisions to the discretion of a named caregiver. For example, the settlor may wish to provide instructions regarding veterinary care and end-of-life decisions, or attach as an Exhibit to the Trust a particular pet's medications, dietary concerns, daily habits, pet insurance, and contact information for the pet's regular care providers, including a veterinarian or dog walker.⁹

In creating an Animal Trust, the pet owner must decide how much money is sufficient to adequately provide for the pet's care over its lifetime or ninety years,¹⁰ whichever is the lesser. If you happen to be raising koi in your backyard pond, the trust won't be enforceable long enough to provide for the sturdiest among them, who can live more than 200 years.¹¹

Additionally, Tennessee Code Annotated Section 35-15-408(c) provides that to the extent the court determines that the value of the trust property exceeds the amount required for the intended use, it must pass as otherwise provided in the trust document, or if there is no such provision, to the settlor's successors in interest. Although Leona Helmsley left \$12 million in trust for her dog Trouble, the court decreased this amount to \$2 million,¹² and the remaining \$10 million passed to a trust for the benefit of various charities.

It's important to remember that pets are considered property under the law, and therefore must be provided for in a trust document rather than as the recipient of an outright bequest. A gift of property (money) to property (a pet) is void under the law.¹³ Although the Nonhuman Rights Group has been working tirelessly to bestow “legal personhood” on Tommy the chimpanzee, it has yet to find a judge who agrees “that chimpanzees are autonomous, self-aware, highly intelligent, emotionally complex be-

ings, who fit the definition of a ‘person’.”¹⁴ With the possible exception of Tommy the chimpanzee, animals are property, not people, and a simple way for individuals to provide for them is by including an Animal Trust in their estate plan.

An example of a simple testamentary Animal Trust is provided below:

TRUST FOR CARE OF ANIMALS

1.1. I hereby establish the **SMITH ANIMALS’ TRUST** pursuant to the terms of **Tennessee Code Annotated Section 35-15-408** to be used for the care, maintenance and support of any and all animals which I may own as of the date of my death. Such Trust shall be administered as provided below. I nominate and appoint **AMOS ABLE**, pursuant to the terms of **Tennessee Code Annotated Section 35-15-408(b)**, as the Trust Protector to enforce this Trust.

1.2. I nominate and appoint **JOHN JONES** to serve as Trustee of the **SMITH ANIMALS’ TRUST**. Should **JOHN JONES** be unable or unwilling to serve, or cease to serve, then the Trustee of the **SMITH ANIMALS’ TRUST** shall be such person or entity as may be chosen by my Executor (or the person who had served as my Executor if my estate is then closed). No bond shall be required of such Trustee, unless made a condition of the appointment.

1.3. I hereby devise the sum of **one hundred fifty thousand (\$150,000.00) dollars** to be held in the **SMITH ANIMALS’ TRUST** to be used for the care, maintenance and support of any animals which I may own as of the date of my death. The Trustee shall have the ultimate authority as to what is appropriate to be spent for such purposes.

1.4. I nominate my friend **KATE CARPENTER** to serve as caretaker of all of the animals that I may own at the time of my death. If for any reason she is unable or unwilling to serve as caretaker, then I nominate **JESSICA JONES** to serve as caretaker. If neither of these persons is able or willing to serve as caretaker, then such successor caretaker or caretakers as may be appointed in writing by the then serving Trustee, from time to time, shall serve.

1.5. So long as the caretaker has continued to properly care, in the Trustee’s discretion, or in the absence, or failure to act, of the Trustee, in the Trust Protector’s discretion, for my animals, then the caretaker shall be paid **three thousand dollars (\$3,000.00)** per year as reimbursement for the time required.

1.6. Should the Trustee, in the Trustee’s discretion, determine that the assets in the Trust clearly exceed what might reasonably be required to care for the surviving animals during their lifetime, the Trustee may distribute some portion of the principal or undistributed income in the Trust as provided in **Section 1.6** and **Section 1.7**, free of this Trust.

1.7. Upon distribution as a result of the termination of the **SMITH ANIMALS’ TRUST**, or pursuant to a partial distribution as provided in **Section 1.6** above, an amount equal to **one-third (1/3)** of such distribution shall pass to **WEIMARANER RESCUE OF THE SOUTH**.

1.8. Upon distribution as a result of the termination of the **SMITH ANIMALS’ TRUST**, or pursuant to a partial distribution as provided in **Section 1.6** above, an amount equal to **two-thirds (2/3)** of such distribution shall pass as follows as provided in **Article IV** of this my Last Will and Testament.

¹ Page, Patty, Lyrics Mode, http://www.lyricsmode.com/lyrics/p/patti_page/how_much_is_that_doggie_in_the_wndow.html (last visited Sept. 30, 2014).

² United States Representative, Thaddeus McCotter (R.Mich.) introduced the HAPPY Act in 2009, but resigned abruptly in July 2011, resulting in a costly special election for the state of Michigan. White, Joseph, Michigan Not Happy About Special House Election (July 11, 2012, 10:30 AM), <http://blogs.wsj.com/washwire/2012/07/11/michigan-not-happy-about-special-house-election/>.

³ Open Congress, H.R.3501: Humanity and Pets Partnered Through the Years Act, <http://www.opencongress.org/bill/111-h3501/show> (last visited Sept. 30, 2014).

⁴ American Pet Products Association, U.S. Pet Industry Expenditures, http://americanpetproducts.org/press_industrytrends.asp (last visited Sept. 30, 2014).

⁵ A recent addition to the pet care community is pet hospice, marketed as a means of giving pets a “less anxious, more comfortable passing.” Richtel, Matt, *All Dogs Go to Heaven. These Days, Some Go to Hospice*, N.Y. Times, Dec. 1 2013, at A1.

⁶ TCA §35-15-408.

⁷ [Westlaw.com](http://www.westlaw.com), TCA § 35-15-408, Section Comment (2014).

⁸ TCA § 35-15-408(b).

⁹ See [Estate Planning for Pet Owners: Who Will Care When You’re Not There](#) by Robert E. Kass and Elizabeth A. Carrie for a more detailed analysis of the type of information an individual might consider including in an Animal Trust.

¹⁰ TCA § 35-15-408(a) provides that an Animal Trust may not be enforced for more than ninety years.

¹¹ Nelson, Bryan, *10 animals that live the longest*, [MNN.com](http://www.mnn.com), May 10, 2011; <http://www.mnn.com/earthmatters/animals/stories/10-animals-that-live-the-longest>.

¹² James, Susan, *Leonoa Helmsely's Little Rich Dog Trouble Dies in Luxury*, ABCNews.com, June 10, 2011; <http://abcnews.go.com/US/leona-helmsleys-dog-trouble-richest-world-dies-12/story?id=13810168>.

¹³ Carrozza, Ann, *Planning for Fido and Fluffy*, WealthManagement.com, July 16, 2014.

¹⁴ Sullivan, Brian, *Insant Evolution*, ABA Journal, Feb. 2014, at 71; Mountain, Michael, *Appeals Court Sets Date for First Chimpanzee Lawsuit*, Sept. 12, 2014, <http://www.nonhumanrightsproject.org/2014/09/12/appeals-court-sets-date-for-first-chimpanzee-lawsuit>.



Jillian is an associate at Dodson Parker Behm & Capparella, PLLC where she focuses her practice on estate planning, real estate law, and business entities