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An Overview of Pet Trusts in New Jersey

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Many people utilize the services of an estate planner when providing for the orderly distribution of their assets to their loved ones. For people who love their pets, the estate planning process can also include the creation of a trust fund created specifically to address the care of a beloved pet. All 50 states allow for trust funds to be created for pets – New Jersey has done so since 2001.

Issues to be considered when creating a Pet Trust include:

- Who will be the pet's caregiver?
- How much money should be set aside?
- Who should oversee the money?
- Who should be able to enforce the pets' rights under the trust?
- When the pet dies, to whom will any remaining trust assets be distributed?

Here are some important facts related to Pet Trusts:

- To protect the interests of pets (who are unable to avail themselves of any legal protection), New Jersey law gives enforcement powers to: (1) the person who created the trust, referred to as the "Grantor" (if still alive), (2) a person appointed under the terms of the trust, and (3) someone appointed by a court of law.
- Typically, the people named in a Pet Trust are either Trustees (persons who are charged with overseeing the funds) or Trust Protectors (persons who are charged with overseeing the Trustees).
- If the pet's caregiver, the remainder beneficiary of the trust, and the Trustee(s) are all the same or related persons, an additional person such as a Trust Protector can (and many times should) be given the power to enforce the trust's provisions in a court of law.

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- If no trustee has been named or if the designated Trustee is unwilling or unable to serve, then any person having an interest in the welfare of the pet can file a petition in court to appoint a Trustee.
- In some cases, it may be a good idea for the Trustee to be a different person than the pet caregiver.
- The Pet Trust will terminate when there are no pets to be provided for by the trust. Upon the trust's termination, the remaining trust funds pass to the remainder beneficiaries, as provided for in the trust agreement. If no provisions are made, the funds pass to the Grantor's estate.
- If the Pet Trust has been funded with an amount that exceeds what is reasonably required for the lifetime care of the pet, the remainder beneficiary has the right to go to court to ask that the amount of the property transferred to the trust be reduced. (The amount of the claimed excess funding would need to be sufficient enough to warrant the cost of litigation.)

There are significant tax aspects to consider when creating a Pet Trust – income taxes and estate taxes:

- The Pet Trust is subject to income taxes on the income (e.g., interest and dividends) earned by the trust fund. Typically, if the Grantor is alive, the tax burden can be on the Grantor; otherwise the income taxes must be paid by the trust itself.
- If the Grantor's estate is subject to Federal and New Jersey estate taxes, it could actually cost the estate as much in taxes as the amount which would ultimately be left for the trust since estate taxes have to be paid (e.g., \$20,000 set aside for the pet trust taxed at 50% results in \$10,000 in taxes and leaves \$10,000 for the trust).
- Currently, there is no tax deduction related to a Pet Trust. Attempts in Congress to enact laws for Charitable Pet Trusts (which would give an estate a charitable deduction on its estate tax return) have been unsuccessful.
- Additionally, there is the likelihood of a New Jersey Inheritance Tax on any amount passing to a Pet Trust. Under New Jersey law, Pet Trusts may be considered as Class D beneficiaries, subject to Inheritance Tax at rates of 15% or 16%.
- One way to avoid the New Jersey Inheritance and Estate Tax is to create a Pet Trust during your lifetime instead of through your Will at death.

For additional details on establishing a Pet Trust, or to schedule an in-person consultation, please contact the co-authors of this Alert, **Jo Ann Gambale** and **Brian R. Selvin**.