

Who Will Care for Your Pets When You're Gone?

So you've secured a safe home for your companion animals in the event of your death. But what about the cost of the animals' food, shelter and veterinary care? Wouldn't it be nice to offer monetary support for the care of your pets? While some states have already made provisions for animal trust funds (see "Gaining Ground," below), some tender hearts in Congress are pushing to make these provisions federal law.

In the summer of 2001, Rep. Earl Blumenauer (D-Oregon) introduced a bill, which he named the Morgan Bill after his pet collie, that would allow a person to create a trust fund for the benefit of his or her companion animal(s). The fund would serve the animals until their deaths, and any leftover money in the trust would be given to a pre-determined qualified charity. This bill, which is the first attempt by Congress to establish a charitable pet trust fund, has gone to the Ways and Means Committee but has not yet been acted upon.

The Morgan Bill would benefit more than just the animal beneficiaries. Under current law, certain tax advantages are extended to a taxpayer planning to leave a charitable gift in a trust fund. The taxpayer must first name a beneficiary who would receive payments for a specified period of time or for his or her lifetime, as well as a charity that would receive the remaining funds when the beneficiary dies. Presently, the beneficiary can only be a living person. If the proposed Morgan Bill is passed, a taxpayer could name his pet as the income beneficiary and receive similar tax breaks.

Outlining the Morgan Bill

Here are some of the highlights of the Morgan Bill: The amount set aside for your pet must be paid at least annually and is for the exclusive use of your pet for as long as the animal lives. This is important because some state-enacted pet trust laws do not allow a trust fund to exist beyond 21 years. The federal bill would permit a trust to exist for the duration of a pet's life. This is great news for guardians of companion animals like birds and horses whose life spans typically exceed 21 years.

Also, the bill requires that no payments (including taxes) be made to any person or organization other than the charity named in the trust. Only organizations described under section 170(c) of the Internal Revenue Code qualify to receive remaining trust funds. These include corporations, trusts, community chests, funds or foundations created or organized in the United States and operated exclusively for religious, charitable, scientific, literary or educational purposes.

What's more, the remaining interest transferred to the organization must have a value of at least 10 percent of the fair market value of all assets initially placed in the trust. And the trust has to pay taxes on income generated by the funds held in trust whether it is paid out for the benefit of a pet or if some of it is held for future payments.

Finally, the proposed bill includes a definition for "pets" under federal law and provides several examples. The definition reads: "For purposes of a charitable remainder pet trust, a pet is any domesticated companion animal (including a domesticated companion cat, dog, rabbit, guinea pig, hamster, gerbil, ferret, mouse, rat, bird, fish, reptile or horse) which is living, and is owned and cared for by the taxpayer establishing the trust, at the time of the creation of the trust."

What About Fido IV?

This definition raises several issues: Does the proposed bill allow a person to include pets born after the creation of the trust, such as kittens and puppies who might be the descendants of current companions? Will the trust include any companion animal in existence at the time of the taxpayer's death or must a new trust document be drafted with each new companion animal living in the taxpayer's household? Is a trained animal who has lived his entire life around humans

considered “domesticated” even though his species is normally considered wild, for example, circus elephants and monkeys?

Though many animal welfare groups support the Morgan Bill, there are some concerns. Taking the time to reflect on possible solutions to some of these questions before the bill is passed is important. You can voice your opinion by contacting your congressional representative. To verify the names of your legislators and/or to lobby online, go to www.asPCA.org and click on “Lobby For Animal Welfare.” And be sure to speak with your legal advisor before creating any kind of pet trust of your own.

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Word Play

The state of Rhode Island, though lacking a pet trust law, is the first state to acknowledge the right of individuals to consider themselves “guardians” of their companion animals. A new law permits the term “guardian” to be used interchangeably with “owner” and gives both the same rights and responsibilities. Boulder, Colorado, and West Hollywood and Berkeley, California, have adopted similar language in their municipal ordinances.

Gaining Ground

Since our last article on pet trust funds [“Pet Trust Primer,” Spring 2001], another state was added to the list of those that passed legislation allowing the creation of pet trusts. This past July, New Jersey joined the ranks of AZ, CA, CO, HI, IA, MI, MS, MT, NM, NY, NV, NC, OR, TN, UT and WI as a proponent of pet trusts.

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