Including Pets in Your Estate Plan: Providing for Fido and Fluffy

Friday, June 1, 2012
9 a.m.–Noon

Oregon State Bar Center
Tigard, Oregon

3 General CLE credits
# TABLE OF CONTENTS

Schedule ................................................................................................................................. v

Faculty ................................................................................................................................... v

1. **Pet Trusts and Their Operational Issues** ................................................................. 1–i
   — **Gregory E. Harris**, *Harris & Bowker LLP, Portland, Oregon*

2. **Is Your Pet Prepared?** ............................................................................................... 2–i
   — **Glen Goland**, *Samuels Yoelin Kantor LLP, Portland, Oregon*

3. **Oregon Humane Society Friends Forever™ Program; Pitfalls to Consider in Planning for Pets** ................................................................. 3–i
   — **Gary Kish**, *Director of Development, Oregon Humane Society, Portland, Oregon*
SCHEDULE

Presented by:
- Gregory E. Harris, Harris & Bowker LLP, Portland
- Glen Goland, Samuels Yoelin Kantor LLP, Portland
- Gary Kish, Director of Development, Oregon Humane Society, Portland

8:30 Registration

9:00 Program

Spend an informative and entertaining morning with two practitioners experienced with pet trusts and get the latest on:
- Planning issues for pet care in owners’ estate plans
- Short- and long-term planning considerations for pets—during the owner’s life and after death
- Oregon and Washington pet trust statutes
- Pet trust forms, including language for wills and pet care upon an owner’s incapacity

Noon Adjourn

(One 15-minute break will be taken during the program)

FACULTY

Gregory E. Harris, Harris & Bowker LLP, Portland. Mr. Harris’s practice emphasizes business, tax, and estate planning for closely held businesses and their owners. He is a member of the American Bar Association, the Oregon State Bar Computer Law, Corporate Counsel, Estate Planning, Real Property, and Taxation sections, the Washington State Bar Association, the Multnomah Bar Association, and the Estate Planning Council of Portland. He speaks frequently on issues related to tax law, corporate law, and estate planning for business owners and individuals.

Glen Goland, Samuels Yoelin Kantor LLP, Portland. Mr. Goland practices in the area of estate planning. Before attending Suffolk University Law School, Mr. Goland spent a decade in the financial industry. His experience as a pet owner and dog lover ensures that his clients’ estate plans can include provisions for the care of their animals. Mr. Goland is admitted to practice in Oregon and Massachusetts, and he is a member of the American Bar Association Young Lawyers Division. He has spoken to groups about estate planning and the unique challenges that families face when they adopt children.

Gary Kish, Director of Development, Oregon Humane Society, Portland. For the past 21 years Mr. Kish has been the Director of Development of the Oregon Humane Society, located in Northeast Portland. During that time, he has implemented a diverse array of fundraising programs that now provide two-thirds of OHS’s annual operating budget. During his tenure, the donor base has grown from 2,500 contributors to more than 60,000, while OHS’s annual budget has grown by a factor of 20 to nearly $10 million. In addition to leading a development team of six, Mr. Kish focuses on promoting planned gifts to OHS supporters. In the 1999 and 2001 Oregon Legislative sessions, OHS played a lead role in securing passage of two bills that facilitate including pets in estate plans (exempting pets from probate and validating pet trusts). During his tenure, Mr. Kish has recorded planned gift commitments from nearly 1,000 supporters, thereby helping to ensure OHS’s future financial stability. In a volunteer capacity, Mr. Kish provides fundraising advice to various Oregon conservation not-for-profit organizations and is a founding board member of CRAG Law Center, a public interest law firm that supports community efforts to sustain the Northwest’s natural legacy.
# PET TRUSTS AND THEIR OPERATIONAL ISSUES

**Gregory E. Harris**  
Harris & Bowker LLP  
Portland, Oregon

## Table of Contents

I. Introduction .......................................................... 1–1  
   A. Background ......................................................... 1–1  
   B. What This Means to the Estate Planner ....................... 1–1  

II. The Oregon Pet Trust Statute ...................................... 1–1  
    A. Review of the Statute ........................................... 1–1  

III. Using the Pet Trust and Related Concepts to Serve the Pet-Owner Client ........................................ 1–3  
    A. Goals ............................................................... 1–3  
    B. Lifetime Pet Care Issues on Incapacity ....................... 1–3  
    C. Testamentary Issues ............................................ 1–4  

IV. Conclusion ........................................................... 1–7  

Appendices  
A. ORS 130.185, Oregon Pet Trust Statute ......................... 1–9  
B. Provisions for Pet Trust Language in Settlor’s Revocable Living Trust .................. 1–11
I. INTRODUCTION

A. Background

Our clients love their pets.
- Pets can be a big part of our clients’ lives.
- The average American household spends more on pet food than it does on over-the-counter drugs, television, wine, and candy, according to the Bureau of Labor statistics.
- The American Pet Products Manufacturers Association states that Americans spend over $40 billion on their pets annually.
- The largest pet-owning group by expenditure is the age group 45 to 55. The second most numerous age group is 55 to 64.
- Leona Helmsley left $12 million to her dog; only $5 million to her grandchildren.
- Dusty Springfield’s provisions for her cat included lining the cat’s bed with her nightgown and playing her recordings each night at the cat’s bedtime.
- Doris Duke left a $100,000 pet trust for her dog.
- Natalie Schafer (“Lovee” on Gilligan’s Island) left her entire estate for the benefit of her dog.

Pet owners tend to own pets for a long time. A survey found that:
- 67% of dog owners owned dogs for 20 years or more, and, of that group, 30% owned dogs for 35 years or more;
- 67% of cat owners have owned cats for more than 20 years, and 33% of that group has owned cats for more than 35 years.
- Our clients have a great regard for their pets and are thus willing to expend substantial sums of money for their care and welfare.

B. What This Means to the Estate Planner

If queried about it, clients, upon their incapacity and death, will want to provide for their pets. Anecdotally, attorneys report that, when asked, 90% of their pet-owning clients say they want to provide in some way for their pets.

II. THE OREGON PET TRUST STATUTE

ORS 128.308 was drafted by J. Allen Jensen and enacted by the Oregon State Legislature in 2001—it lasted until December 31, 2005, when the current Oregon Pet Trust Statute, ORS 130.185, based on UTC § 408, was enacted.

A. Review of the Statute

1. Definition of “Pet.” What is meant by “animals” covered in 130.185(1)?
   a. Domestic or pet animals.
   b. Includes a herd or an individual pet.

   **EXAMPLE:** “Any pet I own at the time of my death.”

   **QUERY:** How is the animal owned “. . . at the time of my death . . .” to be determined? Suggest specifying determi-
nation to be made by the attorney-in-fact under the individual’s general durable power of attorney, personal representative under the will, or trustee of the testamentary trust, including the trustee of the pet trust.

2. **Must Be Living During Settlor’s Lifetime.** ORS 130.185(1) requires that the animal or animals subject to the pet trust be alive during the settlor’s lifetime.

3. **Statute Liberally Construed.** ORS 130.185(1) states that is the legislature’s intention that oral or written declarations be liberally construed in favor of finding the creation of a pet trust.
   a. This eases the finding of the creation of a pet trust. The problems will arise on the terms of the operation of such a trust, especially one found to exist based on oral utterances.
   b. The statute also presumes against “merely precatory or honorary” disposition on behalf of an animal.

4. **Enforcer Allowed**
   a. ORS 130.185(2) allows the drafter to name an “enforcer” in the document.
   b. If unnamed in the trust, a court can select an enforcer.
   c. A person “having an interest in the welfare of the animal” may request that the court appoint an enforcer or remove an enforcer.
   d. The purpose of the enforcer is to ensure that the trustee (and, arguably, the caregiver appointed by the trustee) can be held to account.
   e. The statute also allows payment for the enforcer’s services.

5. **Selection of Trustee.** Even if a document is silent as to the existence or selection of a trustee, the court can name a trustee of its own accord. ORS 130.185(2).
   a. While the trust enforcer is statutorily entitled to payment from the trust, the statute is silent on the ability to pay the trustee a fee.
   b. Query whether this, in the absence of compensation language in a pet trust, requires court authority to pay a fee to the trustee.

6. **Termination of a Pet Trust**
   a. Termination of a pet trust should be governed by the trust instrument.
   b. The statute provides that upon trust termination, the remaining assets must be distributed as provided in the trust. ORS 130.185(3).
   c. If the trust document is silent, the statute is to be distributed to the settlor, if living, or the settlor’s “successors in interest”, if the settlor’s not alive at the time of distribution.

7. **No Accounting or Fees Required.** Unless required by the trust instrument, the court, or the trust enforcer, no accounting or filings are required from a pet trust. ORS 130.185 (4).
III. USING THE PET TRUST AND RELATED CONCEPTS TO SERVE THE PET-OWNER CLIENT

A. Goals

As estate planners, our goal is to utilize the tools available to us to best serve our clients given what they want to have happen. In doing so, and in light of the fact that many of our clients are devoted pet owners, the following should apply.

1. We should alert clients to the care options available in the form of a pet trust and planning for their incapacity and death in light of the care and needs of their pets.
2. We want to prepare documents and provide options to carry out our clients’ intents regarding their animals.
3. We want to make sure the techniques selected for the client have the highest likelihood of success, ease of operation and simplicity.

B. Lifetime Pet Care Issues on Incapacity

Our clients rarely just die. Statistics show that we are eight times more likely to become disabled or incapacitated prior to death. In light of this fact, what can be done in the way of planning for pets?

1. Pet care is needed in a matter of hours, not days or months. Therefore, the client should specify the following.
   a. Who will be the first to find out about a client’s disability?
   b. Determination should be made of who will be the first caregiver on notification. Name the caregiver and direct to whom the animal should be given to (custody) and who should be given access to the premises to get the animal.
   c. Who has the premises key?
   d. Consider the use of animal rescue services.
   e. Think about temporary care vs. long-term care.
2. A number of tools are available to accomplish this.
   a. Consider using a special power of attorney for pet custody and care. Include a pet profile with contact information listing the names of persons who should be immediately contacted, as well as providing location of keys, access, animal needs, etc.
   b. See, for example, a good set of forms by Professor Gerry W. Beyer of Texas Tech University School of Law to accomplish this, at http://ssrn.com/abstract=1519123.
   c. Utilization of a specialized durable power of attorney and reference in the financial durable power of attorney for pet care is helpful.
   d. See also ORS 114.215(3). On an owner’s death, an animal with a value of less than $2,500 is not considered an asset of the estate. Any family member, friend, or animal shelter can take custody of the animal immediately.
This approach can be mirrored in dealing with lifetime disability issues, in either a power of attorney for pet care issues or the durable power of attorney.

e. However, for animals worth in excess of $2,500 (such as show animals), provisions should be made during lifetime.

C. Testamentary Issues

What best serves the client in the event of death and the pet’s need for care? A number of options exist.

1. **Money and Pet to Individual.** Give the animal and an outright gift to a named party. This is the most common simple distribution for pets on a death. However, a number of problems exist with this option.
   a. No oversight exists regarding the care of the animal or the expenditure of money given for the animal’s welfare.
   b. What if the caregiver does not survive or becomes disabled? Does a suitable backup exist?

2. **Money and Pet to Agency or Breed Rescue Group.** Give the pet and a sum of money to a no-kill animal agency or breed rescue group, assuming the agency or group will accept custody of the pet and find it a good home. It would be wise for the practitioner or the client to survey the options available now. For example, some agencies have a minimum dollar amount, and some do not.

3. **Use of a Pet Trust.** A pet trust provides an enforceable mechanism to apply money, a trustee, and a caregiver, and an enforcer to supervise both of them, to care for the pet after death.
   a. Three potential players:
      i. The trustee;
      ii. The caregiver; and
      iii. The enforcer.
   b. While the mentioned players can be three different people, it is also possible that the trustee and caregiver could be the same person. However, the trustee’s skills and the caregiver’s skills are different.
      i. The trustee’s job is to oversee the use, investment, and application of funds.
      ii. The caregiver’s job is to look after the animal.
      iii. The enforcer’s job is to oversee both.
   c. By dividing the labor among three separate players, the caregiver’s free reign over the trust’s assets is avoided.
   d. While each separate player may be entitled to receive fees, the benefit of having three separate players may justify the extra expense. In addition, having the trustee and caregiver as separate individuals also avoids the risk of over-expenditure.

**EXAMPLE:** A pet custodian purchases a car with trust assets for the purpose of transporting the animal back and forth to the veterinarian and then purchases a washing machine
to periodically wash the doggie bed. See In re Rogers 412 P.2d 710 (AZ 1966).

**QUERY:** In the case of a horse, is the purchase of a trailer to transport the horse necessary? If so, is the purchase of a truck also necessary to haul the trailer?

These types of questions are best resolved in the drafting of the pet trust.

4. **Standard of Care.** Selection of a caregiver/enforcer compels the next step of the analysis: specifying of the standard of care/living conditions that the settlor expects the animal to enjoy. Issues to consider include the following.
   a. Medical care.
   b. Annual check-up.
   c. Special medical procedures (e.g., animal has hip dysplasia).
   d. Feeding (Fancy Feast or Costco kibble?).
   e. Exercise (daily walks, more frequent exercise, pasturing, or boarding).
   f. Companionship—e.g., can the animal be left alone for six to eight hours at a time? Does the pet require companionship of other animals?
   g. Living conditions (in the house, outside the house).
   h. Provide for the caregiver’s vacations, illnesses, long-term or short-term disability, and death.
   i. Name backup trustees, caregivers, and enforcers. Should the trust document allow the trustee/caregiver/enforcer to name his or her own successors?
   j. The trust could also provide a fail-safe trustee or caregiver, such as a professional organization. This ensures a continuity of the fiduciary, since no one individual is named.
   k. The settlor can specify in the trust document whether the enforcer is to oversee the trustee, the caregiver, or both. Thus the roles of each can be clearly defined by the settlor.

5. **Specific Standards.** Inserting a specific standard of care can be very helpful to the fiduciaries named and for the settlor’s peace of mind: how much a caregiver is to do, what steps to take, and, especially as to end-of-life issues for the pet, how herculean the tasks should be. This could be set as a dollar amount or as a standard to be determined by the trustee and/or caregiver (for example, acting on the advice of the veterinarian, the trustee and/or caregiver could make decisions regarding euthanization).

**QUERY:** In the event the trustee and caregiver disagree, who breaks the tie? The attending veterinarian? These standards can be set in the trust document.

6. **Expenses.** The document could also specify how much leeway is to be given the trustee or caregiver regarding expenses. Do the
trustee and the caregiver both have to agree on expenditures? Does the
caregiver get a stipend in addition to reasonable out-of-pocket expenses?

Make sure the settlor is realistic about funding.

a. $25,000 per pet is a commonly mentioned minimum.

b. Should the trust instrument allow for additions to the pet
trust? From what source?

c. For example, in the case of an inter vivos pet trust, it could
allow for later funding.

i. That is, the personal representative or trustee of the
testamentary trust may be directed to fund it.

ii. In the case of a testamentary pet trust, a specific amount
may be given, and the trustee/personal representative of the residuary
trust may be allowed an additional amount if in his or her discretion it
is necessary.

iii. Beware the impact this may have on marital deduction
planning or credit shelter tax planning.

iv. We should also be aware of the income and estate tax
impact of pet trusts. For an excellent article, see Max’s Taxes: A Tax-Based
Analysis of Pet Trusts, by Professor Gerry W. Beyer, Texas Tech University
School of Law, last revised May 12, 2010. It is available online at http://
ssrn.com/abstract=1409065.

7. **Imposition of Duties**

a. The document can impose specific fiduciary duties on the
trustee, caregiver, and enforcer.

b. The caregiver can be specified by name or by qualifications
and given specialized duties based on the pets.

c. Consider whether a failsafe provision is needed so that
the caregiver, if no adequate individual is found, can be named as a
professional or rescue organization.

8. **Should the Pet Trust Be Inter Vivos or Testamentary?**

a. An inter vivos pet trust is likely going to be nominally
funded, unfunded, and revocable. This allows ease in amending the
trust because a separate trust document will exist.

b. However, there will be extra cost in the fact that this extra
trust document must be drafted.

c. A testamentary approach is easier to implement but may
be a bit more cumbersome to change.

9. **Perpetual Care.** The pet trust can also give the option for
perpetual care. For example, some universities with veterinary training
programs provide that, for the gift of a specific sum of money, the pet
will be paired with a veterinary student and live with him or her. This
could be provided as an option to the trustee in the event adequate local
care cannot be found.
IV. CONCLUSION

A. As with any resource available to us, many issues arise through the operation and use of the pet trust. The key is best addressing our pet-owner clients’ needs.

B. Excellent resources exist on the web: http://www.professorbeyer.com/Articles/Animals.html.
Chapter 1—Pet Trusts and Their Operational Issues

APPENDIX A—ORS 130.185, OREGON PET TRUST STATUTE

130.185 UTC 408. Pet trust. (1) A trust may be created to provide for the care of one or more animals that are alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal, upon the death of the last surviving animal. An oral or written declaration shall be liberally construed in favor of finding the creation of a trust under this section. There is a presumption against merely precatory or honorary disposition on behalf of an animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

(3) Property of a trust authorized by this section may be applied only to its intended use. Upon termination of the trust, property of the trust must be distributed to those persons designated in the trust. In the absence of a designation, the property shall be distributed to the settlor if the settlor is living when the distribution is made, or to the settlor’s successors in interest if the settlor is not living when the distribution is made.

(4) Except as ordered by a circuit court or required by the trust instrument, a trustee for a trust authorized under this section need not pay any fee or make any filing, report, registration, periodic accounting, separate maintenance of funds or appointment by reason of the existence of the fiduciary relationship of the trustee. A person appointed to enforce the trust may request a report under ORS 130.710 (3). [2005 c.348 §28]
APPENDIX B—PROVISIONS FOR PET TRUST LANGUAGE
IN SETTLOR’S REVOCABLE LIVING TRUST

Article 1. Pet Trust

1.1. Creation of Pet Trust. If at my death, I own domestic pet animals [or specify specific animals] (“Pets”), my Trustee shall distribute $__________ to __________, Trustee of this Pet Trust (“Pet Trustee”), to be held and administered as provided in this Article 1. It is my intent that this Pet Trust be governed by the terms of this Article 1 and ORS 130.185 for the benefit of those Pets.

1.2. Appointment of Caretaker. Upon my death, I appoint __________ (“Caretaker”) as caretaker of the Pets. If __________ is unable or unwilling to serve, the Pet Trustee shall appoint the Pets’ caretaker. To the extent practical and appropriate, the Pet Trustee shall select a caretaker who shall personally care for the pets. [Query: Should the Pet Trustee be allowed to appoint him or herself Caretaker or remove the Caretaker?]. On my death, the Caretaker shall take custody and ownership of the Pets.

1.3. Care and Maintenance of Pets. The Caretaker shall be responsible for the Pets’ care and maintenance including[, subject to the care directions provided in Paragraph 1.3.1 of this instrument] any decision to euthanize any of the Pets. The Pet Trustee shall distribute to the caretaker, or, in the Pet Trustee’s discretion, directly to the parties providing services for the benefit of the Pets, such portions of the income and principal of the trust as the Pet Trustee determines is necessary and appropriate for the health including, but not limited to, veterinary and hospital expenses, support, and maintenance of the Pets, to enable the Pets to maintain the standard of living that they maintained during my lifetime.

1.3.1. Specific Instructions Regarding Care of Pets. It is my intent that the following provisions be applied by the Caretaker of the Pets regarding their care: [set forth any special directives, care instructions, or other wishes, including instructions regarding euthanasia].

1.3.2. Annual Veterinary Examinations. The Caretaker shall, within 30 days of my death and thereafter, not less than once during each subsequent 12-month period during the lifetime of the Pets, obtain a veterinary examination of the Pets by a qualified veterinarian licensed to practice in Oregon. The examination shall certify the existence and identity of each Pet, evaluate the Pets’ health and well-being, diagnose any injury or illness, and recommend any necessary and appropriate veterinary treatment including, but not limited to, prescribing medications, dietary changes, immunizations, and exercise. The Caretaker shall obtain a written report of the results of the examination signed by the veterinarian who conducted it and provide a copy of the report to the Pet Trustee within 30 days of the date of the examination.

1.4. Notice. The Pet Trustee shall, within 30 days of the establishment of this Pet Trust, provide written certification of the existence and terms of this Pet Trust to each beneficiary of my trust estate, to the person appointed to enforce the terms of this Pet Trust under Paragraph 1.6 of this instrument, if any, and to the [title] of the [name of animal-care organization]. This certification shall include, without limitation: (a) my name; (b) the name and description of each of the Pets; (c) the names, addresses, and telephone numbers of the Pet Trustee and the Caretaker; (d) a detailed listing of the assets held in the Pet Trust.

1This form is based on Form 13-1 in Administering Trusts in Oregon (Oregon CLE 2007), by Amelia E. Heath and J. Alan Jensen, to whom the author is deeply indebted for their scholarship. Any errors, typographical or otherwise, are solely the current author’s. See also Chapter 13 of that publication.
1.5. **Duties of the Pet Trustee; Records.** The Pet Trustee shall exercise reasonable care and prudence to monitor the Caretaker’s care and treatment of the Pets, including conducting personal inspections of the Pets and their environment not less than annually. The Pet Trustee shall retain all veterinary reports and other documents and records of this Pet Trust at all times during the term of this Pet Trust and shall make all such reports, documents, and records available on request to the person appointed to enforce the terms of this Pet Trust under Paragraph 1.6 of this instrument.

1.6. **Trust Enforcement.** __________ is designated Trust Enforcer of this Pet Trust. The Trust Enforcer has the right, power, and authority to enforce the terms and conditions of this Pet Trust under ORS 130.185(2). If __________ is unable or unwilling to serve, [__________ is named as successor Trust Enforcer] [[he/she] may designate a successor Trust Enforcer]. [Alternate provision: If __________ is unable or unwilling to serve, then [name of animal-care organization] may appoint a successor Trust Enforcer.] [Alternate provision: The Pet Trustee shall enforce the terms and conditions of this Pet Trust and no other person is so designated for purposes of ORS 130.185(2).]

1.7. **Pet Trustee and Trust Enforcer’s Fees and Expenses.** The Trustee and the Trust Enforcer shall each be entitled to reasonable compensation from the assets of the Pet Trust and shall be reimbursed for any expenses incurred by them on behalf of the Pet Trust.

1.8. **Successor Pet Trustee.** If at any time __________ is unable or unwilling to serve as Pet Trustee of this Pet Trust, __________ is hereby appointed as successor Pet Trustee. If __________ is unable or unwilling to serve, the person[s] designated in Paragraph 1.6 of this instrument shall appoint a successor Pet Trustee. This Paragraph 1.8 shall be effective to appoint a successor Pet Trustee solely of this Pet Trust and of no other trust created by this instrument.

1.8.1. **Responsibility of Successor Trustee.** A successor Pet Trustee shall have the same rights, titles, powers, duties, discretions, and immunities and otherwise be in the same position as if the successor Pet Trustee had been originally named as Pet Trustee hereunder. No successor Pet Trustee shall be personally liable for any act or failure to act of any predecessor Pet Trustee or shall have any duty to examine the records of any predecessor Pet Trustee. A successor Pet Trustee may accept the account rendered and the property delivered to the successor Pet Trustee, including the Pets, by or on behalf of the predecessor Pet Trustee as a full and complete discharge of the predecessor Pet Trustee without incurring any liability or responsibility for so doing.

1.8.2. **Death of Last Pet.** On the death of the last surviving Pet, this Pet Trust shall terminate, and the Pet Trustee shall divide and distribute the remaining trust assets as follows: [set forth distribution instructions for remainder].

1.8.3. **Exhaustion of Trust Funds.** At such time as the Pets are the only property remaining in the Pet Trust, this Pet Trust shall terminate and the Pet Trustee shall distribute the Pets as follows:

1.8.3.1. **To Caretaker.** First, to the Caretaker, if the Caretaker is able and willing to provide and care for the Pets with the Caretaker’s personal funds;

1.8.3.2. **To Pet Trustee.** Second, to the Pet Trustee, if the Pet Trustee is able and willing to provide and care for the [pet/pets] with the Pet Trustee’s personal funds;

1.8.3.3. **To Person Selected by Pet Trustee or Trust Enforcer.** Third, to any person or persons selected by the Pet Trustee or Trust Enforcer able and willing to provide and care for the Pets with such person’s personal funds. In the case of a conflict, the selection of the [Pet Trustee/Trust Enforcer] shall control.
1.8.3.4. **To No-Kill Shelter.** Fourth, to [name of no-kill animal shelter]. The Pet Trustee shall convey to the shelter my wishes that the Pets find a loving home for the remainder of their lives.

1.9. **Miscellaneous Provisions.**

1.9.1. **Trustee’s Primary Interest.** In the management, investment and distribution of this Pet Trust, my Pet Trustee shall consider as my Trustee’s primary interest and responsibility my Pets, and my Pet Trustee shall consider contingent or remainder beneficiaries as my Trustee’s secondary interest and responsibility.

1.9.2. **Spendthrift Protection.** No human or entity that is a direct or indirect beneficiary of this Pet Trust shall have any power to sell, assign, transfer, encumber, or in any other manner anticipate or dispose of any interest in this Pet Trust or the income produced thereby prior to its actual distribution by my Pet Trustee to the beneficiary or to another for the benefit of the beneficiary in the manner authorized by this instrument. No direct or indirect beneficiary of this Pet Trust shall have any assignable interest in this Pet Trust or in the income therefrom. Neither the principal nor the income shall be liable for the debts of any direct or indirect beneficiary of this Pet Trust.

1.9.3. **Applicable Law.** The laws of the State of Oregon, and in particular ORS 128.308, shall govern with respect to the validity and interpretation of this instrument. All references in this instrument to statutes and laws include any amendment.

1.9.4. **Construction.** Wherever in this instrument the context so requires, the plural shall include the singular and vice versa. If any provision of this Article 1 is held by a court of competent jurisdiction to be void or unenforceable, the balance shall nevertheless be carried into effect.
# IS YOUR PET PREPARED?

**Glen Goland**  
Samuels Yoelin Kantor LLP  
Portland, Oregon

## Table of Contents

Planning for Pets: Curing Our Own Separation Anxiety ........................................ 2–1  
I. Oregon’s History on Animal Rights ................................................................. 2–2  
II. Short-Term Planning. ....................................................................................... 2–3  
III. Long-Term Planning. ....................................................................................... 2–4  
Conclusion .............................................................................................................. 2–9  

Appendixes

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Pet Profile</td>
<td>2–11</td>
</tr>
<tr>
<td>B. Presentation Slides</td>
<td>2–15</td>
</tr>
</tbody>
</table>
PLANNING FOR PETS: CURING OUR OWN SEPARATION ANXIETY

My wife and I rescued a six-year-old border collie/blue heeler mix in April of 2010. His name is Kingsley. The first time we left him alone in our apartment, he barked over 200 times in 10 minutes. We called the shelter and told them we might have to bring the dog back because he barked so much that we could not leave him alone. We searched the internet for solutions to his separation anxiety, and we tried everything from scented plug-ins and herbal powders to various food and toy combination strategies, all to no avail. It was not until we hired the right trainer that we were able to calm Kingsley down and the barking went away entirely.

He now spends hours alone in our apartment and never barks.

He is the perfect companion on a five-mile run. He has hiked to the top of the Palmer Ice Glacier and along the rim of the Grand Canyon. He has caught a sunrise in the mountains of North Lake Tahoe, floated the Deschutes River on an inflatable mattress, and swum in the Pacific regularly. There are over 75 million dogs in the United States, and we would not trade him for any of them.

I tell this story for two reasons. First, because planning for Kingsley and Kyle (our equally great cat) is what led me to write this article. Second, because I think that there is a type of “separation anxiety” that attorneys can address in the estate planning process when we properly answer the question, “What will become of our animals when we die?” (And while we are at it: who will take our pets in and/or feed them when we are injured, temporarily disabled, hospitalized, or otherwise unavailable?)

According to the American Society for the Prevention of Cruelty to Animals, the average annual cost of basic food, supplies, medical care and training for a dog or cat is $700 to $875.1 The cost of day care, food, training, teeth cleaning, and regular veterinary check-ups can make animal costs considerably higher than this projection; it depends on the pet. If an animal spends time at day care facilities or kennels, has substantial medical issues, or requires ongoing training, costs could easily exceed $5,000 per year. As pet owners, we need to think about who will pay this bill when we are gone. We need to think about whether our animals will have the same vet, diet, and routine that they have now. Most importantly, we need to ask who will provide them with shelter, food, and care. Will the caretaker be an individual or a shelter? Which one?

This last question is critical: in the United States, close to 500,000 pets end up in shelters every year when their owners die or become disabled.2 In these shelters, five out of ten dogs and seven out of ten cats

---

2 http://2ndchance4pets.org.
are euthanized because there is no one to adopt them. Why does this happen? Most people do not have wills, and most wills do not provide for pets. The Humane Society of the U.S., estimates that about 400,000 pets a year need to find new homes because their owners die. If we plan ahead for these events, we can ease our own separation anxiety and help our pets live the way we want that we want them to when we are gone.

These materials discuss various pet planning guidelines and outline some of the ways we can provide for our animals’ well being. They focus on laws specific to domestic pets in the state of Oregon (with some notes on Washington thrown in as well). I will begin by commenting on Oregon’s long history on the forefront of the animal rights movement. I will then talk about planning for pets’ care during periods of short-term disability, hospitalization, or other emergency. In part III, we will discuss long-term planning for pets. Greg’s materials analyze pet trusts and the common issues that come up when using these unique legal arrangements. We will point out important distinctions in the Oregon and Washington rules along the way.

I. OREGON’S HISTORY ON ANIMAL RIGHTS

Oregon has a strong judicial and legislative history of recognizing animal rights. In 1914, an Oregon state court ruled that when an animal was hurt or killed, its owner should receive more than just the market value of the animal. This “special value” law recognized that Kingsley is worth more to our family than the $80 adoption fee we paid at the shelter.

More recently, ORS 130.185 became law in 2005, allowing Oregon residents to create legally binding pet trusts. Forty-six states now recognize some form of pet trust. Additionally, ORS 114.215(3) provides for a unique procedure to care for animals immediately following the death of their owner—even if the owner has left behind no will or other planning documents. This statute allows friends and/or family members to take immediate possession of an animal and be reimbursed for any reasonable expenses incurred in caring for the animal during the probate of the owner’s estate.

3 Supra, note 1.
4 In 2011, an EZ Law Wills and Estate Planning survey showed that only 44% of those polled had a will. See http://www.dailyfinance.com/2011/08/26/what-america-thinks-about-estate-planning/.
6 http://online.wsj.com/article/SB10001424052702304223804576444052807332840.html.
7 McCallister v. Sappingfield, 72 Or. 422 (Or. 1914).
9 ORS 114.215(3).
The Oregon State Bar is one of the few in the country that has an entire section devoted to animal law.\textsuperscript{10} Oregon’s Lewis & Clark Law School was the first college in the country to publish an animal law review,\textsuperscript{11} and its students were the first to organize a chapter of the Animal Legal Defense Fund.\textsuperscript{12} Oregon is one of 43 states that classify animal cruelty as a felony,\textsuperscript{13} and 2010 saw Oregon become the third state in the country to ban sow stalls and gestation crates—small containers that have been criticized for severely limiting the movements of pregnant pigs.\textsuperscript{14}

The Washington Legislature provided for the creation of pet trusts in 2001 when they passed Wash. Rev. Code 11.118.005–.110. This statute begins with the following statement that sums up the law perfectly: “The purpose of this chapter is to recognize and validate certain trusts that are established for the benefit of animals. Under the common law such trusts were unenforceable at law. The legislature intends that such trusts be recognized as valid, and that such trusts be enforceable in accordance with their terms.”\textsuperscript{15} Greg will discuss these trusts further in his materials.

II. SHORT-TERM PLANNING

The first step in planning for pets is to address the question, “Are the animals prepared for in the event of an emergency?” Do you have a card in your wallet to inform emergency responders about pets that may require attention? Do you have stickers on bedroom windows indicating the number of pets (and children!) in your house? If you are disabled or otherwise unable to care for your pets, do you have someone who will go to your home and feed the cat or walk the dog? Does that person have a key? Does he or she know where the dog food is?

The short-term caretaker may be identified by an informal agreement like the one we have with our neighbor. He has a key to our place. He knows the animals well, and we have shown him where their food is kept. We have listed him as an emergency contact (and authorized him to pick up our pets) at the day care locations, kennels, and veterinarians that the animals go to. We have shown him where the pets’ veterinary, immunization, and licensing documents are stored. He knows where the dog likes to be walked and how much food to give each animal. We have spoken with him about this arrangement and received his consent.

Some of our clients have taken a more formalized approach to caring for their pets by executing powers of attorney that authorize an agent to care for their animals in periods of disability and/or

\begin{itemize}
  \item \textsuperscript{11}Id.
  \item \textsuperscript{12}Id.
  \item \textsuperscript{13}Id.
  \item \textsuperscript{14}Id.
  \item \textsuperscript{15}Wash. Rev. Code 11.118.005–.110.
\end{itemize}
hospitalization. This is accomplished by adding a clause to the power of attorney document that specifically authorizes an agent to care for the pet(s). The decision on whether to make a formal or an informal agreement with the caretaker depends on a number of owner-specific issues: the proximity of friends and family, the amount of time and/or work the animals require and the expenses involved in caring for the animals, to name a few.

The following is a sample power of attorney clause:

**Care of Pets.** To provide for the reasonable care and maintenance of my pets, including the power to direct that a pet be humanely euthanized if his or her quality of life has become greatly diminished as a result of a disease or injury and, in the opinion of a licensed veterinarian, there is no reasonable chance of recovery.

Here is another:

**Care of Pets.** My agent shall be authorized to exercise the powers granted hereunder to provide for the reasonable care and maintenance of my pets. My agent shall be authorized to exercise the powers granted hereunder to direct that my pet be humanely euthanized should his or her quality of life become greatly diminished as a result of chronic disease, such as cancer.

One more document that pet owners should be creating for both their short-term and long-term planning: instructions for the day-to-day care of the animals. This list should include vet contact info, where the pets’ important documents are kept, where the food is, where the dog likes to be walked, and where the extra cat litter is—among other things. The more direction we leave for someone who may be watching the animals for the rest of their lives, the smoother the transition will be for the animals (and their new caretakers). A sample pet profile is attached as Appendix A.

The U.S. Census Bureau estimates that 22% of the nation’s dogs and 25% of our cats live in single-person households. Creating a detailed set of instructions is particularly important for these pet owners, as it is less likely there will be another individual who is familiar with the pets’ day-to-day routines. A detailed instruction letter is also crucial if your pet has special dietary needs, medical concerns, or training issues.

**III. LONG-TERM PLANNING**

There are several ways that attorneys can utilize estate-planning documents to provide for animals upon the death of a pet owner.

One popular method is to make a bequest of the animal and a sum of money in the owner’s will. Treating a pet and an accompanying

---

monetary bequest as specific pre-residuary gifts is likely to make most attorneys feel most comfortable drafting and/or administering. The following is a sample will clause:

If my spouse does not survive me, I give to _________ all pets that I own at my death, entrusting to this person my pets’ care and custody and the responsibility of making for them a suitable home or placing them in suitable homes, but with no liability to any persons for decisions made in good faith regarding my pets. If my spouse does not survive me, I also give to _________ all supplies and other paraphernalia relating to such pets, for example, any pet food or pet medicines, pet carrying cases, cages, and any books, tapes, photographs, recordings, or other memorabilia that I own and that my Personal Representative shall determine to be appropriately used in connection with my pets and to have no significant economic value to anyone other than the owners of such pets. If my spouse does not survive me, and if _________ accepts this gift of all pets, I also give the sum of $__________ to _________ to help defray the costs of caring for such pets, but without any restriction that this pecuniary gift be so used. If my spouse does not survive me, and if _________ does not accept this gift of all pets, I give all pets that I own at my death to _________, together with all supplies and other paraphernalia relating to such pets as defined above. If _________ accepts this gift of all pets, I also give the sum of $__________ to _________ to help defray the costs of caring for such pets, but without any restriction that this pecuniary gift be so used.

Another popular technique is to leave a bequest to the local humane society. Some humane societies will guarantee the placement of your pet in a home if you leave assets to the humane society in your will. The Oregon Humane Society (the “OHS”) in Portland will make such a guarantee if you leave a gift of any amount to the OHS under their Forever Friends program.17 The OHS asks donors to consider its $20.18 average daily cost of caring for the animals in its care when making these gifts.

The following is a sample will clause provided by the Oregon Humane Society. This clause may be used as a stand-alone bequest or as a fall-back provision if named caretakers are unavailable:

A. I give, devise, and bequeath my pets to the Oregon Humane Society (the “Society”), 1067 NE Columbia Blvd., Portland, OR 97211.

B. I give, devise, and bequeath the sum of $__________ to the Society, to be used for the care and maintenance of

my pets while they are in the custody of the Society and for the permanent placement of my pets. The Society is authorized to pay all expenses that it deems reasonable in its sole and absolute discretion in connection with such care, maintenance, and placement.

C. I request that the Society arrange for the permanent placement of my pets with a member of my family or a family friend. If the Society is unable to do so, I request that it arrange for such placement in a suitable home through the Society’s pet adoption program. I understand, however, that adoption may be precluded if a pet is seriously ill or injured, has a vicious temperament, or for any other reason would be a danger to an adopter or the public.

D. In any event, I request that my pets be cared for and treated as household pets and receive all reasonable care; provided, however, that, in the event of serious illness or injury, I do not desire that extraordinary means be used to prolong their lives; and provided further that the Society may euthanize any pet determined by the Society in its sole and absolute discretion to be seriously ill or injured, to have a vicious temperament, or to be a danger to an adopter or the public for any other reason.

E. If I am not survived by any pet, the gift to the Society of $__________ provided in paragraph B above shall be used by the Society for the support of its general operations.

There are two potential problems to be considered with this method of planning: the pet owner has no way of knowing that the assets will be used to cover pet-related expenses, and there may be negative tax consequences to leaving the caretaker a sum of money outright. Similar problems can exist when an owner gives cash to a pet caregiver shortly before death. The first issue is one of trust between the pet owner and the individual he or she has chosen to look after the animal. In some cases, potential abuse of this trust is an issue that needs to be planned for.

Pet owners should discuss the potential estate tax implications involved when leaving assets to a caretaker with an attorney. The potential for negative tax consequences has been reduced over the last few years by increases in estate tax exemptions ($1 million in Oregon, $2 million in Washington, and $5 million federal). The owner may consider providing additional compensation to the caretaker to cover any tax liability imposed due to the financial bequest. If a pet owner makes no
provisions for his or her animal, the pet will become part of the owner’s residuary estate.  

One more tax note: if a pet owner leaves a bequest outright to a charity like the humane society, this bequest will likely qualify for the charitable estate tax deduction. If the charity is a remainder beneficiary of a pet trust, however, the bequest will probably not qualify for the charitable deduction ("I leave $5,000 to X to watch my cat, leftover money to the charity," for example).

The final way that attorneys regularly address pet planning issues is through the use of a pet trust. A pet trust determines custody of the animal, provides instruction to the caretaker, and pays for the animal’s expenses. Pet trusts can be stand-alone documents, or they can be incorporated into the pet owner’s will or trust.

The first question an owner must answer when considering a pet trust is, “who will look after the animal on a day-to-day basis?” A well-drafted pet trust will include a primary caretaker and several back-ups. The caretaker(s) should (ideally) be familiar with the pets and should receive a copy of the pet instruction letter discussed in the previous section.

The next individual an owner will name in a pet trust is the trustee. The trustee may be an individual or a professional trust company. The trustee is in charge of tracking trust expenses, preparing trust tax returns, and managing the trust bank accounts. The trustee may be required to prepare an annual accounting and trust tax returns (and pay tax on the trust income in some cases). Pet owners should consider these activities (and their associated cost) when selecting a trustee for their pet trust. The trustee may be the same person as the caretaker; however, we often recommend selecting different parties to serve in these roles.

The last person an owner may name in his or her pet trust is the trust protector. This independent person has no role in the day-to-day operation of the trust. He or she is in charge of monitoring the overall performance of the trust to ensure the pet is being cared for properly. This trust protector checks in on the actions of the caretaker and the trustee. The trust protector holds the other parties accountable when questions arise about the administration of the trust.

A word of warning: Not all pet trusts are created equal. There is a lot more to a well-written pet trust than merely listing the people to serve in the roles outlined above. These documents should also allocate funds, account for expenses of trust administration, and occasionally outline investment strategies, among other things. The trust should clearly outline which expenses may be paid from the trust property and direct exactly how these fees are to be paid. A pet trust should also

---

18 Estate Planning for Pet Owners, Joseph R. Pozzuolo, Jeffrey S. Pozzuolo, and Florence L. Simons; April 6, 2011.

19 Rev. Rul. 78-105; see also Planning for Pet Owners, Joseph R. Pozzuolo, Jeffrey S. Pozzuolo, and Florence L. Simons; April 6, 2011.

20 Id.
provide for back-ups in the event that the named individuals cannot serve.

The most famous pet trust of them all is the one that belonged to the late Leona Helmsley. This trust provided $12 million to care for her dog, named Trouble. The trust was established to pay for Trouble’s expenses, and any remaining assets were to pass to a charitable foundation at Trouble’s death. Helmsley’s executors petitioned the New York Court to reduce the amount of assets going to the trust at her death, in an effort to minimize the taxes due on her estate. They were successful in their petition, and the judge ordered the pet trust funded with “only” $2 million. The remaining assets flowed to the charitable foundation in a $10 million transfer that qualified for the charitable deduction.

The New York judge in the Helmsley case relied on the language of New York’s pet trust statute. In New York, and in any state that has adopted the Uniform Trust Code’s pet trust language, courts may “determine the value of the trust property that exceeds the amount required for the intended use.” The courts may then reduce the funding of the pet trust accordingly and direct the excess assets into a resulting trust for the benefit of the settlor’s successor in interest. The pet trust statutes in Oregon and Washington do not contain language allowing courts to reduce the amount of assets directed to these trusts. Had Leona Helmsley relocated to the Pacific Northwest, Trouble may have been living large off of $12 million. ORS 130.185 specifically states, “Property of a trust authorized by this section may be applied only to its intended use.” Similarly, RCW 11.118.030 provides, “Except as expressly provided otherwise in the trust instrument or in RCW 11.118.070, and except as may be necessary to pay the trustee reasonable compensation and to reimburse the trustee for reasonable costs incurred on behalf of the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to any use other than for the trust’s purpose or for the benefit of the designated animal or animals.” The subtle differences in these statutes highlights the importance of putting together your pet’s long-term plan with an advisor that understands the delicate issues involved.

Regardless of whether pet owners take a formal or an informal approach to short-term planning, it is most important that they have a plan and they write it down. ORS 130.185 instructs Oregon courts by providing for “the liberal construction of oral or written instruments as enforceable pet trusts and not unenforceable honorary trusts.” For the


22 Id.

23 Uniform Trust Code §408(c).

24 Uniform Trust Code §408.

25 ORS 130.185(3).

26 RCW 11.118.030 (emphasis added).

27 ORS 130.185(1).
purposes of this section, the point is that the more evidence a friend or family member can show a court about the incapacitated or deceased owner’s intent, the more likely it is that he or she will be reimbursed for expenses and allowed to care for the pet in the manner the owner wanted. Pet owners should come up with a plan and write it down.

CONCLUSION

Sixty-three percent of American households have at least one pet.28 Many pet owners consider their pets to be part of the family. Unfortunately, hundreds of thousands of these family members are not considered when their owners prepare their estate plans. The results are often tragic.

Proper planning for a pet’s needs involves analyzing the many expenses, headaches, and joys associated with pet ownership. It requires pet owners to be proactive in creating instructions for care and in seeking legal advice tailored to the owner’s needs. It requires the owner to give careful consideration to the people he or she asks to care for the pet during periods of disability and at the owner’s death. If done properly, this sort of planning can provide for the well-being of the pet and can ensure the pet owner that his or her animals will be properly cared for no matter what happens. If done improperly, planning for pets may leave the beneficiaries, trustees, and family members scratching their collective heads and asking, “What did the pet owner want us to do?”

To plan properly, the pet owner should seek the counsel of an experienced attorney, carefully consider the needs of each pet, invest the time to develop a plan, and then write it down.

---

APPENDIX A—PET PROFILE

PET PROFILE

Information

Help your pet’s caretaker provide the best possible care by giving as many details as possible below. Please provide a current photograph of your pet(s).

Your name_________________________________________________________________________
Address____________________________________________________________________________
Home phone___________________________________ Work phone__________________________

Your pet’s caretaker’s name___________________________________________________________
Address____________________________________________________________________________
Home phone___________________________________ Work phone__________________________

Estate executor’s name________________________________________________________________
Address____________________________________________________________________________
Home phone___________________________________ Work phone__________________________

Have you provided for the care of your pet(s) in any estate planning documents? _________________

Your veterinarian’s name______________________________________________________________
Address____________________________________________________________________________
Phone___________________________________

Where are your pet(s) records kept? (vaccination, licensing, medical, etc) _______________________
__________________________________________________________________________________
__________________________________________________________________________________

Identification

First pet’s name_____________________________________________________________________
Type of animal_______________________________________________________________________
Sex:  M/F  Has your pet been spayed or neutered? ____________________________________________________________________________
Month/year of pet’s birth ________/_________  Pet’s normal weight:__________________________
Please give a description of your pet, including information on breed:__________________________
__________________________________________________________________________________
What kind of food does this animal eat? How much food per day?
__________________________________________________________________________________
__________________________________________________________________________________

Please indicate if your pet has the following identification:
Microchip ID__________ ID Number______________________________________________________
License_______________ Number_________________________________________________________
Tattoo________________ Number or mark___________________________________________________
Chapter 2—Is Your Pet Prepared?

**Second pet’s name**

Type of animal

Sex: M/F  Has your pet been spayed or neutered?

Month/year of pet’s birth /       Pet’s normal weight:

Please give a description of your pet, including information on breed:

What kind of food does this animal eat? How much food per day?

Please indicate if your pet has the following identification:

- Microchip ID    ID Number
- License   Number
- Tattoo   Number or mark

**Third pet’s name**

Type of animal

Sex: M/F  Has your pet been spayed or neutered?

Month/year of pet’s birth /       Pet’s normal weight:

Please give a description of your pet, including information on breed:

What kind of food does this animal eat? How much food per day?

Please indicate if your pet has the following identification:

- Microchip ID    ID Number
- License   Number
- Tattoo   Number or mark

**Fourth pet’s name**

Type of animal

Sex: M/F  Has your pet been spayed or neutered?

Month/year of pet’s birth /       Pet’s normal weight:

Please give a description of your pet, including information on breed:

What kind of food does this animal eat? How much food per day?

Please indicate if your pet has the following identification:

- Microchip ID    ID Number
- License   Number
- Tattoo   Number or mark
Behavioral Information

Pet Name: _______________

Does your pet have any preferences, dislikes, fears or habits? ________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Please note any verbal and nonverbal commands your pet responds to as well as any body language it uses to communicate:
Come___  Sit___  Stay___  Down___  Other:_________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

If you and your pet have your own obedience language, please describe:
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Please list your pet’s daily routine – walking, eating, sleeping, playing, eliminating:
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Have you taken your pet to a professional trainer or obedience course? If so, where?
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Is your pet allowed outside? ______________________________________________________________

Where does your pet sleep? ______________________________________________________________

What access does your pet have to your home and furniture?_______________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Does your pet like children? _____________________________________________________________

If your pet has any favorite games, toys or possessions, please note what and where they are:________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Does your pet go to day care facilities or kennels? Which ones?
__________________________________________________________________________________
Health Information

Pet Name: ____________________

Please provide a health history of your pet: ______________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Recurring health problems, if any: ____________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Current medications, if any: ________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Type of flea/heartworm preventative, if any: ____________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Special diet needs: _________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Allergies to foods, medications, fleas, flea control products, etc.: ________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Special care instructions: __________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
Including Pets in Your Estate Plan

Greg Harris
Glen Goland

Oregon’s Animal Rights History
Short-Term Planning
Long-Term Planning
Pet Trusts
Animal Rights in Oregon

- McCallister v. Sappingfield
- ORS § 167.322 animal abuse
- ORS § 130.185 pet trusts
- ORS § 114.215(3) emergency care

Animal Rights in Oregon (2009)

- House Bill 2470 puppy mills
- S.B. 391 large exotic animals
- S.B. 280 spectator sports
- S.B. 398 horse dumping
Planning for our pets
“What will become of our animals when we die?”

(And while we are at it: who will take our pets in and/or feed them when we are injured, temporarily disabled, hospitalized or otherwise unavailable?)

$700 - 875/year
Short-Term Planning
Informal Agreement

dog food here!

Formal Agreement

Power of Attorney

blah blah blah blah

blah blah blah blah

Power of Attorney

blah blah blah

Power of Attorney

blah blah blah
Chapter 2—Is Your Pet Prepared?

Power of Attorney

- blah blah blah blah
- blah blah blah blah
- blah blah blah blah
- blah blah blah blah
- blah blah blah blah

Instructions

- Vet
- Food
- Trainer
- Toys
- Exercise

Pets in Single Person Households

- 22% of pets are dogs
- 78% of pets are cats
- 25% of pets are small
- 75% of pets are large

Long-Term Planning

Method 1: Leave Someone $ in Your Will

Last Will
blah blah blah blah
blah blah blah blah
blah blah blah blah
       blah
   blah blah blah blah
Method 1: Leave Someone $ in Your Will

Method 2: Leave Humane Society $ in Your Will
Method 3: Utilize a Pet Trust

ORS § 130.185

“the liberal construction of oral or written instruments as enforceable pet trusts and not unenforceable honorary trusts.”
Words of Warning

Not all documents are created equal
Rules vary by state
OREGON HUMANE SOCIETY FRIENDS FOREVER™ PROGRAM; PITFALLS TO CONSIDER IN PLANNING FOR PETS

GARY KISH
Director of Development, Oregon Humane Society
Portland, Oregon

Table of Contents

I. Oregon Humane Society Friends Forever™ Program ........................................... 3–1
II. Planning for Pets—Pitfalls to Consider ................................................................. 3–1
III. Audience Questions ............................................................................................. 3–1
I. OREGON HUMANE SOCIETY FRIENDS FOREVER™ PROGRAM

A. Who OHS is.
B. Program established in 1994 in response to requests from pet owners and observing deficient pet trusts.
C. Friends Forever ensures the welfare of surviving pets by bequeathing them to OHS in order for them to be placed into new homes.
D. Predicated on a gift from the estate (conserves assets that may be needed during lifetime).
E. Open to all—no minimum gift amount.
F. Pet owner chooses planned-gift strategy, from simple (beneficiary designation) to trusts for the benefit of their pets.
G. Form language available within the Friends Forever packet.

II. PLANNING FOR PETS—PITFALLS TO CONSIDER

A. Access to the pets. The PR may be geographically distant or otherwise not available.
B. Personal representative/trustee slow to respond or implement the plan.
C. Estate plans not updated. The day to implement arrives; successor personal representatives/trustees have to be found or recruited. No one has immediate authority to act on behalf of the pets.
D. A plan for the pets is created in document that takes effect upon death. However, prior to death, the testator/trustor becomes incapacitated. The decision-maker takes actions different than the pet owner’s intent as stipulated in the estate document.

III. AUDIENCE QUESTIONS