

Estate Planning for Breeders

By Lisa M. Curry, Esq.

Deciding what will become of your dogs should you be incapacitated or die is a difficult decision. The more dogs you have, the more troubling it is. A loved one may be willing to take one or a few dogs, but ten? Twenty? Breeders with a full kennel have a greater burden than the average pet owner when it comes to planning their dogs' future. There are two primary legal mechanisms to provide for your dogs: non-trust arrangements and trusts.

Non-Trust Arrangements

The simplest method of providing for your dogs is to designate —*in writing*— a caretaker to take custody of them if need arises, before or after your death. Name several backups in case your first choice is unable or unwilling to serve when the time comes. Provide a written “letter of instruction” with specific directions as to which dogs are to be placed with which caretaker, and the exact care each dog should receive. Identify the dogs as specifically as possible, and don't forget to add the words “and any other dogs I own at the time I die or am incapacitated.”

If you cannot identify an appropriate caregiver, designate someone with good judgment to select one. Provide a copy of the letter of instruction to each person affected, and place a copy with your important papers. If you have a power of attorney, make sure that person has a copy of the letter and has the authority to make expenditures on behalf of your dogs while you are incapacitated and before a will is probated. You may want to incorporate your letter of instruction into your will. Although perhaps not fully enforceable, this may influence how your executor disposes of your dogs and your money.

The problem with merely designating a caretaker and leaving a letter of instruction is the lack of legal assurance your wishes will be followed. Leaving your estate to your dogs directly is not an option: Courts of any state will reject such a provision. The alternative to this quandry is to create a trust.

Creating a Trust

A trust is an arrangement whereby you place assets in the care of a *trustee*, who has a fiduciary duty to use those assets according to your wishes on behalf of the beneficiary (or beneficiaries) that you designate. You designate a *caregiver* for your dogs and, as described below, either the dogs or the caregiver may be your beneficiary. Include directions (similar to the letter of instruction) in the trust document describing exactly what care the caregiver should provide for your dogs on a daily basis, right down to their breeding and showing careers, housing, food, medical needs, veterinarians, and which toys they prefer. Designating different people as caregiver and trustee ensures there are checks and balances in place (although a caregiver may be a co-trustee as well). Even though you have a trust, you can leave the dogs as property to someone in your will. Naming the caregiver as at least one of the future owners may help avoid future ownership disputes.

Types of Trusts

Pet trusts. A pet trust is a specific arrangement, legally recognized in half the states, in which your dogs are the beneficiaries. As noted above, the trust document should specifically identify the beneficiary dogs, using DNA, microchip numbers, call name, AKC name and number, photos, and so on.

Common law trusts. In other states, a pet trust is not legally enforceable. Residents can designate only human beneficiaries, not dogs. But even in one of these states, you can establish a “common law trust.” To make certain the common law trust is effective, (a) ensure the caregiver receives funds on a frequent basis (not all at once or only once a year), and (b) ensure funds are disbursed conditionally, i.e., in order to continue receiving funds, the caregiver must frequently check in with the trustee and demonstrate that proper care is being given to the dogs. This provision helps ensure that the “checks and balances” will work properly. A common law trust set up this way is generally legally enforceable.

Trust Considerations

Choosing a trustee. For both types of trust, you must designate a trustee—someone you know and can rely on, or an attorney, or a bank, or one of the various organizations that are willing to serve as trustee for pet trusts—and also identify backups. You can also appoint co-trustees. A caretaker should be appointed co-trustee only if there is at least one independent trustee. Whoever you choose as trustees, talk to them now to ensure they agree to serve.

Choosing a caregiver. As with trustees, contact potential caregivers *now* about your plans. For a professional breeder, the caretaker almost certainly must be a “dog person,” willing to take your dogs into their home or kennel and continue your breeding and showing program. If your loved ones cannot do this, consider reputable fellow breeders. If a caretaker is not available for dogs that will not be shown, consider naming a reputable animal sanctuary or rescue agency to select appropriate adoptive homes.

How long can a trust last? A trust that provides for breeding of offspring of your dogs and perpetuating the kennel name *ad infinitum*, to be financially supported by the trust, would probably be disfavored by the courts (though preferred by many breeders). State laws differ as to whether your trust can benefit only those of your dogs that are alive when your trust takes effect, or only those you own when the trust is created, or whether the trust can endure for 21 years after your death (regardless of how many dogs are alive at that time). Consult an attorney in your state to ensure your trust meets your state’s criteria.

Co-ownership and estate planning. If you co-own dogs, talk with the co-owners about your estate plans. Consider establishing a trust that you *and the co-owner(s)* fund to benefit your co-owned dogs. This helps protect your assets: Not only may you be able to share legal fees, but if you establish a trust without regard for a co-owner’s rights, that co-owner may challenge the trust in court. Even if your trust prevails, legal fees from such a fight may deplete the trust.

When your dogs die. Your trust should include instructions for disbursing any assets that remain when your dogs die or the trust ends. Do not leave these assets to the caretaker: That gives a disincentive to provide a long and lavish life for your dogs. Rather, ensure your caretaker receives adequate money *only* while the dogs are alive and well cared for. When the dogs die or the trust ends, leave the residual money to a loved one or charity.

Drafting your trust. This column is only an overview and does not constitute legal advice. Yet, hopefully it provides some insights into the kinds of issues to consider when planning for your dogs' future. You should consult an attorney in your state who is knowledgeable about estate planning to establish your dogs' trust.

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