

Estate Planning

Babirak, Vangellow & Carr, P.C.

Telephone: 202-467-0920
Email: mbabirak@bvcpc.com
Web Address: www.bvcpc.com

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In Pets We Trust

Current Trends in Pet Trusts

At the end of August 2007, wealthy hotelier, Leona Helmsly, left her dog a \$12 million trust. While this may sound extravagant, it is not unusual to establish a trust for a pet. Approximately 20% of Americans make provisions in their estate plans for their pets. Currently 39 states, including Virginia, and the District of Columbia have statutes that outline trusts for furry and feathery companions.

A Place for Your Pooch

Pet trusts ensure that adequate funds will be able to care for the remainder of your pet's life. Unfortunately, it is more likely that a pet without a trust will end up in a shelter rather than with a friend or family member

Choose a Caretaker

First, you must designate a caretaker for the pet. Pets legally are tangible personal property, which means they are treated the same as disposing of jewelry or a car. Furthermore, pets are not human so you may not leave money directly to a pet. An outright bequest to the caregiver may not be the best means to take care of your pet because there is no guarantee your designated caregiver will be able to care

for your animal. The most reliable means to guarantee your pet will be adequately provided for is a trust.

Setting Up a Pet Trust

There are a number of considerations in setting up a pet trust, but the following list provides the basics:

- 1) Choose a trustee.
 - 2) Designate a primary and successor caregiver.
 - 3) Include written instructions of how to care for your pet such as diet and exercise.
 - 4) Prepare a list of your pet's health problems and vet visits.
 - 5) Require the trustee to periodically assess the caretaker's performance.
 - 6) Provide adequate funds and state how often to disburse funds for your pet.
 - 7) Fund the trust.
 - 8) And, include the final disposition of your pet.
- Remember, careful estate planning for your pet provides peace of mind after your passing.

Consider a Second-to-Die Irrevocable Life Insurance Trust

Most people are familiar with an Irrevocable Life Insurance Trust (ILIT), which holds a life insurance policy or policies, payable on the death

of the insured spouse. Since the life insurance policy and death benefits are owned by the ILIT, not the insured, the decedent's estate does not have to pay estate taxes on this amount. Thus, more can be distributed to the trust's designated beneficiaries, such as the surviving spouse, children or others.

A Second-to-Die Irrevocable Life Insurance Trust is a trust that holds a life insurance policy that matures on the death of the second spouse. The primary purpose of this trust is to use the proceeds of the life insurance upon the second spouse's death to pay for estate taxes on the second to die spouse's estate. (Frequently, no or little estate tax is due on the first to die.)

Since the estate does not have to pay the estate tax or has to pay less estate tax, there is more of the estate assets left for the children or other beneficiaries. If it turns out that the death benefits received from the policy are greater than the taxes due, the excess can be distributed in the same manner as the assets in the decedent's revocable trust.

Pros of a Second-to-Die ILIT

First, this type of policy is more economical because the life insurance policy costs significantly less than a policy

on the life of one spouse.

Next, this type of trust is beneficial for couples who have provided sufficiently for the surviving spouse with non-life insurance assets so that the proceeds from the life insurance are not necessary during a surviving spouse's life. Finally, if the death benefits of the policy are sufficient, the proceeds from the Second-to Die ILIT should cover any estate taxes owed on your estate upon the death of the surviving spouse.

Cons of a Second-to-Die ILIT

As with any irrevocable trust, a Second-to-Die is no exception: irrevocable means that the trust may not be changed by the insured should the circumstances change.

Next a couple must be certain that the other assets will be sufficient to support the surviving spouse.

Third of all, anytime a gift is made to an ILIT to pay the policy premiums, a notice, known as a "Crummey" Notice, must be sent to the beneficiaries informing them of their right to withdraw such gift. Compliance with the Crummey notice allows the person making a gift to the trust to avoid gift tax liability for that gift. For those who qualify, a Second-to-Die ILIT is a great estate planning tool to cover estate taxes at a minimal cost.

Applicable Exclusion Amount Update for Estate Tax in 2008

Estate Tax

Upon your death, you may owe estate tax upon your taxable estate. The amount of each person's taxable estate is reduced by the applicable exclusion amount. In 2007 and 2008, the applicable exclusion amount is \$2 million. This means that your estate may pass estate tax free for the first \$2 million of your taxable estate. In 2009, the applicable exclusion amount increases to \$3.5 million for estate tax purposes.

What Happens in 2010?

Currently, the future of the exclusion is unclear. While some speculate that the applicable exclusion amount for estate tax purposes may increase to \$5 million in 2010, the current Democratic composition of Congress may make this conjecture less likely. No one knows for sure what will happen in 2010, but keep your fingers crossed because the higher the applicable exclusion amount, the more your estate can pass estate tax free to your beneficiaries upon your death.

Practical Estate Planning Tips that Shouldn't Wait for 2008

With the New Year just around the corner, this is a great time to make sure that your estate plans are in order. The following is a list of things to consider in 2008.

1) Make Sure Your Current Will or Revocable Trust Expresses Your Wishes

You may want to consider obtaining a new Will or Trust if you have had any significant life changes such as births, deaths, marriage, divorce, or property acquisition

2) Check Your Beneficiary Designations on Insurance and Retirement Accounts

Remember that the person you list as a beneficiary on a retirement or insurance account is the one who will benefit. Should you have a significant life change, you may want to designate a new beneficiary. Stating your intention in a Will or Revocable Trust of who shall receive your retirement or insurance benefits **will not** change the identity of the beneficiary who is actually designated on the account. That designation controls the disposition of benefits, not the will or revocable trust.

3) Plan for Your Incapacity

Make sure you have a Durable Power of Attorney for financial affairs and a Durable Power of Attorney for medical affairs. (You may wish to also

have an Advanced Medical Directive in the case of a terminal illness.) These documents help plan for your incapacity.

They designate who will make medical decisions, who will handle your business affairs, and your wishes concerning medical treatment. Make sure your primary care physician and your designated agent have a copy of the Durable Power of Attorney for medical affairs and the Durable Power of Attorney for financial affairs respectively.

4) Contact Your Fiduciaries

Make sure your executor, trustee, and agent are willing to serve in this capacity. Inform them of your wishes and important information. Tell them where they may retrieve important documents and your attorney's contact information.

5) Review Insurance

Check to make sure you have appropriate coverage for home, auto, disability, and life insurance. If you have young children, make sure that you have adequate coverage through college.

6) Don't Give Too Much

At this time, the annual gift tax exclusion is \$12k. This means that you may give \$12k a year to any beneficiary without owing gift tax. The annual gift tax exclusion allows individuals to give \$12k or less to an unlimited number of beneficiaries without incurring federal gift tax. Giving more than the statutory amount may result in owing gift tax and requiring the filing of a gift tax return.

If you are married, both spouses may utilize their own annual exclusion, thereby doubling gifts without requiring the filing of a gift tax return. Keep in mind that each person currently has a lifetime credit of \$1 million to give gifts, so giving beyond \$12k in any given year does not automatically result in owing gift tax.

There is no limit for medical and education gifts but there are certain restrictions. You should consult your CPA or us if you wish to consider such gifts. ■