

Rocky's Tale: A German Shepherd's Pet Trust

Including Pet Trust Creation Guidance and Tips

By John L. Arenz

Did you know a pet can be provided for in a trust? Since pets are considered property, technically they cannot be named as beneficiaries; however, provisions may be included for a pet's care. MCL 700.2722 provides that a trust may be created for the care of a designated domestic or pet animal and the trust terminates when no living animal is covered by the trust. A trust protects the pet in the event of the owner's disability or death. Essentially, the owner is no longer able to care for the pet and needs someone to help care for it. Even if caregivers are available, without instructions or funding, the fate of the pet is either left in the caregivers' hands or in no one's hands. This is not the best case for a valued furry (or furless) companion.

There are many concerns when planning for a pet, key duties to be performed when administering a trust for the benefit of a pet, and reasons why it is important to consider naming a corporate trustee in the trust's succession plan. Consider the following story.

Meet Rocky

Evelyn arrived at 9 a.m. sharp, just like we planned. I greeted her warmly and offered her a cup of coffee.

"Yes, I could use something to warm up," she said.

At 20 degrees, it was a cold day in February, and I could tell by the look of Evelyn's cheeks that either the wind had picked up or she had been a little too liberal with her blush that morning.

Evelyn was joined by her companion, Rocky. He looked lovingly at Evelyn while we sat in my office.

"Here's your coffee. Rocky, would you like anything?" I asked.

"No, thank you. Rocky just ate breakfast," Evelyn interjected. "I prepared his favorite dish for him this morning—sausage and green pepper cooked in olive oil."

Rocky was dressed in a tan coat and well-kept. He remained quiet and confident. I redirected my attention to Evelyn. Her cheeks were beginning to return to a normal color. I was wrong about the blush.

"What is on your mind this morning, Evelyn?" I asked.

"I want to protect Rocky," she replied. "You know all that he has done for my family, right?" she inquired.

I recalled the fire that occurred in Evelyn's home a year ago. "Rocky saved your lives," I acknowledged.

"Yes," Evelyn responded, "that night when my daughter, her husband, and two young children were visiting me," she recounted. "If it weren't for Rocky, we all would have perished. He sensed the fire and alerted us before it was too late."

Rocky was a German Shepherd. He roused Evelyn's family by his barking. Evelyn's home was severely damaged, but fortunately, her family was safe.

"How do you want to protect Rocky?" I inquired.

Evelyn paused for a moment. "I'm not getting any younger," she said. "I'm worried that if I were to die, no one would be around to take care of my Rocky."



FAST FACTS

MCL 700.2722 provides that a trust may be created for the care of a designated domestic or pet animal, and that a trust terminates when no living animal is covered by the trust.

A trust protects a pet in the event of the owner's disability or death.

Challenges arise for individuals who are inexperienced with trust administration, unaware of the governing law, and do not understand the fundamentals of investing.



Evelyn's husband died four years ago from congestive heart failure. Her family found Rocky to help keep her company.

"At 78 years old I seem to be doing well, but I do not know what the future holds, and if something happens to me I need to be sure Rocky is cared for. He is only four years old," she stated.

The company I work for just assumed the role of corporate trustee for Evelyn's family trust. "Did you ask your attorney about protecting Rocky?" I asked.

"Yes," she responded, "but my attorney told me not to worry about it. My trust is in place to help my daughter and my grandchildren."

"Did you know your trust can protect Rocky, too?" Evelyn looked at me, puzzled. I explained to her that Michigan law affords this protection. "You love Rocky just like any other member of your human family," I said. "Michigan law considers Rocky your property, so you need to ask your attorney how to modify your trust to include provisions for his care in the event you are unable to care for him due to your disability or death." MCL 700.2722 provides that a trust may be created specifically for the care of a designated domestic or pet animal.

"Should I add him to my will?" Evelyn posed.

"You could bequest money to a person through your will, with instructions to use that money for Rocky's benefit," I replied. "But, there is no guarantee that the individual receiving an outright gift will actually use that money for Rocky. It's safer to use a trust," I advised.

"Your attorney should be aware of the many issues presented when considering planning for Rocky," I said. I then explained to Evelyn that Rocky must be adequately identified through pictures, microchip identifications, DNA samples, or a combination

of the three. "Rocky's standard of living is high," I added. Evelyn smiled. Rocky was not only like a child to her, but also established himself as her protector. "We need to consider his nutritional needs, as well as any other health-related needs," I explained. I added that the trust should address Rocky's need for routine veterinary checkups.

"What about Rocky's tension with riding in the back seat?" Evelyn asked.

"What do you mean?" I replied.

"He needs to sit in the front seat of the vehicle. If he is in the back seat, my poor Rocky whines uncontrollably."

It seems no one is without a quirk here or there, even a courageous, loyal German Shepherd like Rocky. After regaining my composure, I responded, "Every detail you can provide about Rocky, the better. You should mention any personality traits, special medicines, and location of important records."

I also advised Evelyn that if she has a preferred caregiver for Rocky, it is important to get that person or group of people on board as soon as possible so they may coordinate the care for Rocky with the trustee of her trust. "Another significant issue is finding the caregiver to provide support for Rocky. A corporate trustee cannot care for Rocky personally, but a corporate trustee's job is to make sure Rocky is living the life you want him to live. A corporate trustee will maintain constant contact with your designated caregiver and make sure the money in Rocky's trust continues to grow by making prudent investment decisions."

"My daughter and her family love Rocky, but they live in a condominium that would not allow him," Evelyn said. "What should I do? I do not know anyone else that could actually care for Rocky."

Ideally, the trustee and caregiver will be the same person, but that is often not the case. Sometimes it makes more sense to hire a family member or friend to be the pet's caregiver, but hire a professional to manage the trust and its assets for the pet's benefit.



I told Evelyn that we could explore professional caregivers together until we found the right fit for her. “There are professionals in the area that can help. Let’s make some appointments and together we will find a solution for you.”

Fortunately for Evelyn, she had an adequate amount of money to pledge for Rocky while also being able to provide for her daughter and grandchildren. By modifying her trust, she would be able to designate funds specifically for Rocky’s care. These funds would be held separately from funds designated for the benefit of her family. The designated money would also be paid directly to service providers when bills come due and not distributed in a lump sum in advance.

When Evelyn decided the amount of money to designate for Rocky’s benefit, she did so exercising some caution. I advised her that MCL 700.2722(f) permits a court to reduce the amount of money or property transferred to Rocky’s trust if it finds the amount substantially exceeds what is necessary to care for him. Indeed, in the case of Leona Helmsley, who bequeathed \$12 million to her Maltese dog named Trouble, the court reduced that amount to \$2 million.¹ From a financial perspective, Evelyn’s case was far different from that of Leona Helmsley’s.

While she was alive, Evelyn would remain the primary beneficiary of her trust. Upon her death or disability, however, the corporate trustee’s obligation would extend to both Rocky and the other beneficiaries of Evelyn’s family trust. The corporate trustee’s duties would include acting impartially among beneficiaries; remaining loyal; and avoiding conflicts of interest, among others.

“I love my daughter,” Evelyn began, “but I would not want to appoint her as my trustee. I think she would respect my decision to protect Rocky in this way, but could have a conflict keeping intact all the money I designated for Rocky’s benefit. The temptation to use it for her needs would be too great.”

After our conversation, Evelyn met with her attorney and made the changes to her trust. So far, there has not been a need for the bank to step in to protect Rocky in the event of Evelyn’s incapacitation or death. If one of those events occurred, then Rocky would thank Evelyn for providing for him if he could. Perhaps he already has, in his own way.

Guidance and Tips

When drafting a trust for a pet, there are several important issues to consider:

- **Identification**—The pet must be adequately identified through pictures, microchip identifications, DNA samples, or a combination of the three. However, a more general description of “any animal I own at death” may suffice.
- **Living and health care requirements**—What is the pet’s standard of living? To start, consider nutrition and other health-related needs. How much money is needed to maintain the pet, pay for the caregiver, and pay the trustee? Is there a system in place to ensure the pet is getting regular veterinary exams?

- **Alternative beneficiary**—Who is the alternative beneficiary in the event the pet does not survive to receive the complete benefit of its trust?
- **Trustee and caregiver**—The owner must decide on naming a trustee and a caregiver. Ideally, the trustee and caregiver will be the same person, but that is often not the case. Sometimes it makes more sense to hire a family member or friend to be the pet’s caregiver, but hire a professional to manage the trust and its assets for the pet’s benefit. Challenges arise for individuals who are inexperienced with trust administration, unaware of the governing law, and do not understand the fundamentals of investing.

Conclusion

A pet trust should be included in any estate plan when the grantor is concerned about the long-term care and well-being of his or her pets. A corporate trustee offers expertise in administration, investment management, accounting, financial planning, and carrying out all the duties imposed on trustees under the law. Moreover, the corporate trustee holds and manages the trust’s property for the pet’s benefit. Additional trustee duties include acting as a prudent investor, regularly accounting and keeping interested persons informed, acting impartially among beneficiaries, defending the trust, remaining loyal, and avoiding conflicts of interest. Money should be handled in a way to prolong its use for the pet, and the trustee should be in constant communication with other agents servicing the pet as well as other beneficiaries of the trust, if applicable.

The more the trustee knows about the grantor’s relationship with the pet, the better. Communication is key, especially between the trustee and the caregiver if those roles are filled by different individuals. Appointing an attentive and detail-oriented trustee is just as important as hiring a caregiver who will guarantee the pet’s safety and comfort. ■

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ENDNOTE

1. Buckley, *Cosseted life and secret end of a millionaire maltese*, The New York Times, June 9, 2011, available at <http://www.nytimes.com/2011/06/10/nyregion/leona-helmsleys-millionaire-dog-trouble-is-dead.html?_r=0> (accessed November 2, 2013).