

Protecting your pets – can you create a pet trust?

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In today's article, we'll take a short break from commercial law, and look at something closer to home: pets. As King Frederick of Prussia said in 1789: "the only, absolute and best friend that a man has, in this selfish world ... is his dog". We're going to look at protecting your pet when you're gone, starting with pet trusts.

The American position

As we all know, the USA has fairly interesting laws. According to the American Bar Association, all 50 United States allow individuals to create "pet trusts" for their furry friends. These trusts hold a sum of money and specify how a pet must be cared for when their owner has passed away. In fact, in 2002, Drew Barrymore placed an entire Beverly Hills home in a trust for the benefit of her golden Labrador cross Flossie!

In the USA, you can create a pet trust by signing a trust deed. This deed specifies the caregiver (and a back-up) for the pet and gives your explicit permission for that pet to be rehomed with that caregiver. It can also contain instructions on how you wish for the caregiver to care for your pet, such as check-ups, particular dog food, and grooming preferences. Pet trust laws vary by state, but they act in a similar way to NZ family trusts.

This means you must specify a settlor (usually you), a trustee (someone you trust), a sum of money or specific property to be held on trust for the benefit of that pet and the intended duration of that trust. A trust set up for a tortoise or a parrot could last longer than most family trusts! The American ASPCA website has a comprehensive "pet planning" section and even recommends that all pet owners establish a pet trust.

The New Zealand position

In New Zealand, you can't actually create a trust for the benefit of a pet. Simply put, trusts need clear beneficiaries – and animals don't count as beneficiaries in NZ. However, you can detail any specific instructions you have regarding your "fur babies" in your Will. So you could give the executors of your estate the power to rehome your pets, or you could even explicitly name the individuals you want to look after your pets after you die. You can then choose whether to go a step further, and leave those individuals some money for the purpose of taking care of your pets.

New Zealand law categorises pets as personal property. This means you can leave Henry, your cheeky ginger tabby, to your brother – in the same way as you might leave him the family silver. This is where it helps to have a broad provision in your Will allowing your executors to rehome Henry. So, if your brother is unable to care for Henry, your executors have the legal power to make alternate arrangements. Without this, you risk uncertainty or even possibly requiring someone to apply to the Court for directions, which can be stressful and expensive.

What you can do to protect your pets

If you are worried about what might happen to your furry companions, it's a great time to talk to a lawyer to update your Will (or to create one if you haven't yet).

If you see a lawyer to update your Will, you might also want to consider trickier topics like relationship property and enduring powers of attorney. Getting good relationship property advice can help you if you separate from your partner, and enduring powers of attorney can help you if you suffer physical or mental health issues and are unable to look after your own affairs. But those are separate topics by themselves.

Ultimately, while you can't create a pet trust in New Zealand, updating your Will means you can trust that your pet will be looked after when you are unable to do so.

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