



# Pet Trusts

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# Introduction

Ellen Fawl is an attorney whose practice focuses on Family Law, Probate, Guardianships, and Conservatorships. Prior to her current practice area, Ellen practiced Financial Elder Abuse Litigation and Trust and Probate Litigation. Ellen has spent twenty years volunteering her time with various animal rescue groups. She was the founder and long-time director of Purebreds Plus Cat Rescue and served on the board of directors of several other 501(c)(3) animal rescues. For several years Ellen fostered Amazons and Cockatoos for Mickaboo.





# Introduction

Alyssa Eriko Chow is an attorney whose law firm assists individuals and families with their estate planning, trust/estate administration, and probate-related needs. Alyssa holds her B.A. in Communications and Political Science from UC San Diego, and her J.D. from the UOP McGeorge School of Law. While in San Diego, Alyssa was a frequent supporter of a local bird sanctuary and saw firsthand the importance of properly preparing for the continued care of our feathered friends in the event of incapacity or death. Alyssa is also passionate about issues surrounding aging and has volunteered for and maintained a relationship with ACC Senior Services over the years. Alyssa regularly provides live webinars to help people understand the basics of estate planning.



# Estate Planning Basics

## Types of Estate Planning:

- Beneficiary Designations
- Taking Title to Property
- Legal Documents
  - Revocable Living Trust
  - Last Will and Testament
  - Durable Power of Attorney for Finances
  - Advance Health Care Directive



# Estate Planning Basics

Who is Estate Planning appropriate for?

At a minimum, every adult should at least have a Durable Power of Attorney for Finances and an Advance Health Care Directive.

A Living Trust is appropriate for people whose beneficiaries are minors, have special needs, or are not good with money. It is also appropriate for estates worth over \$166,250 and/or which have real estate.



# Estate Planning Basics

## Comparison of a Will and a Living Trust:

### Similarities:

- Allows you to name someone who will be in charge of managing your affairs
- Allows you to identify who your beneficiaries will be upon your death

### Differences:

- Probate court action
- Public vs. Private
- When they become effective
- Amount of time needed to administer
- Cost



# Estate Planning Basics

- Feel free to explore more of the basics of estate planning and understand which type of estate plan is best for you by viewing the following Webinar given by Alyssa Chow, Esq. :
- [Wills and Living Trusts with Attorney Alyssa Chow – YouTube](#)
- Or visit Chowtrustlaw.com and follow the link to the Wills and Trusts Webinar.





# Pet Trust History

- **In re Estate of Russell – California Supreme Court 1968**

Chester Quinn was a close friend and companion of and Ms. Russell and had lived in one of the units on her property for 25 years.

Roxy Russell was her dog  
– a nine year old Airedale.





# Pet Trust History – cont'd

- “I leave everything I own Real and Personal to Chester H. Quinn & Roxy Russell.”
- “As a dog cannot be the beneficiary under a will, the attempted gift to Roxy Russell is void.”
- That nasty niece got all of the money.



# Although Animals are Considered Personal Property, There are – Thankfully – Certain Limits.

## MARY MURPHY'S DOG – San Francisco

- Mary Murphy was discovered dead in her apartment.
- Her dog, Sido, was taken to the SF SPCA.
- Mrs. Murphy's Will directed that her dog be put to death by a veterinarian due to her concern that Sido might fall into the hands of an uncaring animal shelter or some worse fate.

# What Did The Court Decide?

- VOID AS AGAINST PUBLIC POLICY.





# Honorary Trusts

- Prior to current pet trust statutes, pet trusts in California were honorary , so the trustee had discretion (on his honor) as to whether to care for the pet or let the trust funds recycle back into the estate ...
- Or whether to dispose of the pet at their discretion.

# Honorary Trusts – cont'd.

- Phillips v. Estate of Holzmann

Marie Holzman left \$25,000 to her friend, Jo Ellen Phillips, for the care of her two purebred Irish Setters, Riley and Shaun.

Not a happy ending here.

# Honorary Trusts – cont'd.

- The court held that the terms of the will created an honorary trust.
- The trustee was bound by honor, but not by law, to carry out the wishes of the creator of the trust.
- The pet owner could designate specific property for the care of the pet BUT – no enforcement mechanism other than the hope that the decedent's wishes are met.





# California's Current Trust Statutes

- Probate Code section 15212
- Provides that a trust created for the care of an animal is lawful, non-charitable, and fully enforceable.
- Trust terminates when “no animal living on the date of the settlor’s death remains alive.”



# Probate Code Section 15212

There are obligations that trustees of animal trusts must observe.

- The trust principal and income must be used solely for the care of the designated animal and cannot be converted for the trustee's use or for any other purpose.
- When the trust terminates, the trustee must distribute any remaining trust property in the following order: as directed by the trust instrument, to residuary beneficiaries in the settlor's will (if applicable), or to the settlor's heirs.

# Probate Code Section 15212 cont'd.

There are also explicit trust enforcement provisions:

- The court may appoint a trustee if the settlor does not designate one in the trust instrument or if a designated trustee cannot or will not serve.
- Any person named in the trust document or beneficiary of the trust, any person interested in the welfare of the designated animal, or any “nonprofit charitable organization that has as its principal activity the care of animals,” may enforce the settlor’s intended use of the trust principal and income by petitioning the court regarding the trust’s internal affairs.
- The trustee must, upon request, provide accountings to beneficiaries who would inherit if the designated animal was deceased or to nonprofit charitable animal organizations if the trust property exceeds \$40,000.



# How a Pet Trust Functions

A Pet Trust typically functions as a "sub-trust", which branches off from your main trust upon your death and is administered as its own trust according to the Pet Trust instructions.

The Trustee of your main trust will fund the Pet Trust with the designated funds by establishing a separate account for the Pet Trust. The Pet Trustee would then use the funds in that account to care for the pet(s) according to the Pet Trust instructions.

# Considerations When Creating a Pet Trust

- Identifying the pet – is it for a specific pet, or any pet living at the time of your death?
- Pet Trustees
- Pet "Enforcers"
- The amount to be held in the Pet Trust
- What happens to the remaining funds after the pet dies



# Are You Sure Your Family Wants Your Pets?

Question from Purebreds Plus Cat Rescue's Adoption Application

*"What arrangements are in place for your pets if you pass away or are no longer able to care for them?"*

The usual answers:

- My family loves cats, they will take them.
- My husband will care for them.
- My daughter will care for my cats.





# The Reality

- Hi, my name is Bob Smith. My wife/mother just passed away and we need to get rid of her cats.
- Hello, this is Megan from Stockton Animal shelter. We've just had a cat dropped off at our shelter with your microchip. The owner died and the family dropped the cat off.
- Hello, this is Sarah from Sac SPCA, a cat was found wandering and in bad condition. It was picked up and dropped off as a stray. Your group is the back up microchip holder. Can you come get the cat by tonight?

# Reasons Your Family May Not Want, or be Able to Take Your Companion Animals

- Allergies
- Lifestyle isn't conducive.
- They actually hate your pets and never said they wanted them.
- **EXPENSES!**



# What Are You Asking Your Kind-hearted Family Member to Take On?

- On a yearly basis, how much do you think it costs to take care of a healthy bird?
  - Exam, toenail, beak, and feather trims. You do it yourself? Can your family member who is tasked with caring for the bird?
  - Those toys they shred, that food they throw on the floor.
  - How many birds did you say you have, again?
- What about as your bird ages?
  - Amazon with ovarian cancer





# Example

Mary passes away and leaves behind a conure named Kiwi who is 5 years old. Mary sets up a Pet Trust naming her daughter, Sarah, as the Pet Trustee. Sarah does not like Kiwi, and Mary did not name an alternate Pet Trustee. Mary allocated \$5,000 to the Pet Trust with instructions that the money be used for Kiwi for the rest of his life, and upon his death, Sarah receives any money left over. Upon Mary's death, Sarah surrenders Kiwi to the local animal shelter and takes the rest of the money for herself.

How could this have been set up better?

## Example, cont'd.

Mary passes away and leaves behind a conure named Kiwi who is 5 years old. Mary sets up a Pet Trust naming her daughter, Sarah, as the Pet Trustee. If Sarah cannot act as the Trustee, a professional fiduciary is the alternate. Mary allocated \$50,000 to the Pet Trust with instructions that the money be used for Kiwi for the rest of his life. Given Kiwi's life expectancy of around 20-25 years, this is likely a sufficient amount to properly ensure that Kiwi remains happy and healthy for the rest of his lifetime. After Kiwi's death, the money remaining in the Pet Trust (if any) will be distributed to a charity.

# Pets Living In Their Prior Abode

The case of Arden Joan Lange – 2007 San Francisco

- Trust provided that her daughter as trustee could use the trust property “to care for the cats that are in the possession of Ms. Lange at the time of her demise or incapacity.”
- The trust also provided that after the last cat died, the remaining property would be divided between the beneficiaries – who mostly wanted those cats GONE!



# Pets Living In Their Prior Abode – cont'd.

## Matter of Swift – 2019 - San Francisco

- The Trust Instrument provided \$300,000 for the continued care and maintenance of her two beloved cats, Jemima and Oliver Martinez.
- In the Trust Instrument Ms. Swift expresses her desire that her friend/roommate have the right to live in her condo rent-free during the cats' lives and for a two-year period thereafter.

# Pets Living In Their Prior Abode – cont'd.

## Matter of Swift – 2019 - San Francisco – cont'd.

- After last cat passed, then condo to be sold and proceeds (including remainder of \$300,000?) divided equally between Friend and the Trustee (who is another friend.)
- BUT - The Trustor suggests (but does not require) that the Trustee appoint the friend as the caretaker of the cats.
- What could possibly go wrong?



# Pets Living In Their Prior Abode – cont'd.

Beware leaving real property with a "right to reside" to a person with precatory language about your pets being taken care of by the person residing in the property. The person will (likely) be prioritized as a beneficiary over the pets if they are eager to cash out.





# Pets As We Age

Concerns for our animal companions should not be limited to after our death. As we age, changes occur which make it more difficult for us to care for our companions. For many elders, their animal companions are their family. Finding ways to keep the pets in the home is important while still keeping the health and safety of the pets in mind.



# Durable Powers of Attorney – default wording from a trust software program.

*“With respect to any animal that I own when this Power is executed or that is acquired thereafter, I give my attorney in fact the power to take any actions he or she believes necessary or desirable in order to effectively maintain the animal, including the power to house, or to arrange for the housing, support, and maintenance of the animal, and to pay reasonable boarding, kenneling, and veterinary fees, or if the support and maintenance of the animal becomes unreasonably expensive, to dispose of the animal in a humane fashion, preferably by finding another home for the animal.”*

# Durable Powers of Attorney

Be an Advocate for your Animal Companions

## Sample Text

*“With respect to any animal that I own when this Power is executed or that is acquired thereafter, I give my attorney in fact the power to take any actions he or she believes necessary or desirable in order to effectively maintain the animal, including the power to house, or to arrange for the housing, support, and maintenance of the animal, and to pay reasonable boarding, kenneling, and veterinary fees, or if the support and maintenance of the animal becomes unreasonably expensive, to rehome the animal to a trusted family member or by using a reputable 501(c)(3) pet rescue society or no kill shelter. At no time should an animal I own be euthanized merely due to the expense of caring for that animal.”*



# Durable Powers of Attorney

Will generally include the following:

- Nomination of conservator
- Determination of incapacity
- Capacity regained



# Conservatorships Are A Related But Different Area Of Law

- Don't let "Free Britney" frighten you.
- This is a very necessary area of law that, when properly done, can protect you and your pets as you age.



# Post Seminar Questions:

- **Contact Alyssa Eriko Chow**

- (916) 619-6163
- [alyssa@chowtrustlaw.com](mailto:alyssa@chowtrustlaw.com)
- [www.chowtrustlaw.com](http://www.chowtrustlaw.com)
- Alyssa is offering a free estate planning consultation, simply mention "Mickaboo".



- **Contact Ellen Fawl**

- (707) 427-6777
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# Disclaimer

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