

Client Advisory | *January 2011*

## New Statute Allows for Creation of Massachusetts Trusts for the Care of Pets and Other Animals

On January 7, 2011, Governor Patrick signed into law “An Act Relative to Trusts for the Care of Animals.” This act provides for the first time that an individual may establish an enforceable trust under Massachusetts law for the benefit of one or more specific animals. It enables pet owners to provide for pets that survive them through special estate planning. The new law will come into effect 90 days after its enactment.



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Prior to the enactment of the law, pet owners were limited in how they could provide for their pets after the owners had died. The act now provides that a trust for the care of one or more animals alive during the settlor’s life is valid following the settlor’s death. During the trust term, the trustee may use the income and principal for the benefit of the animals covered by the trust. This should include, among other things, paying for the costs of providing the animals with food, shelter and veterinary care.

The trust will terminate upon the death of the last survivor of the animals named as beneficiaries or at an earlier time specified in the trust instrument. The act expressly excepts trusts for animals from application of the “rule against perpetuities.” This is a rule which dictates the longest period of time for which property may be held in trust under Massachusetts law. The rule operates with reference to the duration of the lives of specified individuals, usually potential beneficiaries of the trust. Through this special exception, it is possible to create trusts for the benefit of animals with very long lives (such as certain kinds of tortoises or birds), without worry that the trust may violate the rule against perpetuities or that it may have to terminate while the animals are still living.

Upon termination, the remaining property will be paid to other beneficiaries named in the trust, such as family, friends or charities. If no remainder beneficiaries

are named, the property instead will be paid in the following order: (1) to the settlor, if living; (2) as part of the residue of the settlor’s estate, if the trust was created as a specific gift under the settlor’s will; or (3) to the settlor’s heirs at law.

The amount of property with which a trust for animals may be funded is not unlimited. The act gives the court the power to reduce the amount of property held in the trust if that amount “substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health or appearance of the animal or animals” benefiting from the trust. Presumably, the appropriate amount of property with which to fund the trust will depend upon the type of animal benefiting from the trust. An animal with a long life expectancy or high cost of upkeep (such as a horse) should merit a larger trust than an animal with a short life or low cost (such as a gerbil). Any property removed from the trust by the court will pass to the trust’s remainder beneficiaries.

A trust for the care of animals was traditionally considered to be an “honorary trust.” Such a trust would be valid if the trustee was willing to accept it, but would lack a beneficiary to enforce it. The new act squarely addresses this problem by granting a long list of individuals the power to enforce the trust. These “enforcers” include an individual designated for that purpose in the trust instrument, a person

having custody of an animal that benefits from the trust, a remainder beneficiary or an individual appointed by the court upon application by an individual or a charity. The appointment of enforcers will help to protect the animals benefiting from the trust and ensure that the settlor's wishes

are respected. A court may order the transfer of property to another trustee if necessary to carry out the trust's purpose.

This new act creates opportunities that did not previously exist in Massachusetts to provide for pets in estate plans. Through the creation of a

trust, a pet owner can help ensure that funds will be available to support the pet after the owner has died and that the property will be used for that purpose. Should you wish to discuss the law and its effect on your estate planning, please contact your attorney at Edwards Angell Palmer & Dodge LLP.

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