



HOW CAN MY CARE LIVE ON? -- ANSWERS TO YOUR QUESTIONS ABOUT THE NEW ILLINOIS PET TRUST LAW

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Most of us treat our horses as family members and accept responsibility for their care and comfort should we become incapable of caring for them ourselves. Over the past decade, the law has made admirable steps forward to respect our desire to create enforceable long-term care trusts for our pets. The new Illinois Pet Trust Statute, which became effective January 1, 2005, adds Illinois to the list of 24 other states to recognize and enforce pet trusts. A pet trust is a legal mechanism through which we can establish trust accounts for our horse's ongoing care and maintenance after we are no longer able to do so. This article answers frequently asked questions about this long-awaited Illinois law.

Why Do We Need a Pet Trust Law?

The only way to ensure our horse's well-being after our death prior to the enactment of this new pet trust law, was to make a conditional gift of funds in our will to a friend or family member with instructions to disperse the funds for our horse's care and maintenance. However, these gifts were difficult to enforce because there was no trustee to ensure the funds were used for this purpose. Additionally, while a legal trust was an available to allocate funds for our horses care, the trust could only be established for a period of 21 years after our death. The new law was enacted in part to deal with situations where domestic or companion animals, such as our beloved equines, may likely outlive the owner.

Do I Need A Pet Trust for My Horse?

For those of us with only one horse and dogs, cat, or other animal, and family members willing and able to care for their needs, establishing a pet trust may not be necessary. However, if you have multiple horses or other pets, and your family or friends are not willing or able to care for your "herd," a pet trust could ease your concerns for each animal's care.

How Do I Fund My Pet Trust and How Much Should I Allocate?

A pet trust can be funded by your existing assets such as cash in your checking account, the sale of your real estate, or even the value of your life insurance policy. The amount allocated for a pet trust must be sufficient to pay for the administrative costs to establish and maintain the trust (i.e. legal fees, accountant's fees, trustee's fees), as well as an amount used to fund the trust. The latter allocation should be calculated as an amount needed to care for your horse, considering not only your horse's life expectancy, his standard of living, and the need for any potentially expensive medical treatment, but also for the final disposition of your horse when he dies such as cremation or a proper burial.

You should be careful not to transfer an unreasonably large amount of money or other property to the trust because under the new law, the court may reduce the amount if it determines it is substantially more than that required to care for your horse. An unreasonably large allocation may also encourage heirs and remainder beneficiaries of your will to challenge the trust. Therefore, carefully allocate trust funds to the actual needs of your horse and specifically detail those needs in the trust document itself.

What Terms Should I Include In My Horse's Trust?

As mentioned above, the terms of your pet trust should be very specific to ensure your intended care and maintenance is respected. Your will shall instruct the ownership of your horse to transfer to the trust and specify a trustee and a successor trustee; however, the trustee should be someone other than the individual who will actually take care of your horse. This caretaker can be an individual or a corporation, such as a specified training and boarding facility, but most owners select a friend or relative or other individual who you trust, who knows your horse, and who is able and willing to care for them in the manner you intend. You may also name second and third alternative caretakers in case your first choice becomes disabled or dies and is no longer able to care for your horse.

The trust should specifically describe your horse by his markings, breed brand, racing tattoo, microchip, or other permanent form of identification. You should provide detailed instructions of how your horse should be cared for such as feeding, boarding, training, and routine medical and farrier care. Additionally, maintenance specific to your horse such as chiropractic adjustments, natural horsemanship training, and other reasonable care particular to your horse should be detailed in your trust document. Any documents describing or otherwise detailing these special needs should be made available to the caregiver by the trustee. Your trust should name one or more veterinarians authorized to care for your horse and how the trustee will reimburse the caretaker for the horse's expenses. The trust should also dictate how often the trustee should physically visit the caretaker and the horse to ensure that your instructions are followed. As multiple animals may be named in your pet trust, the trust must name an individual or organization as the remainder beneficiary to receive the funds, if any, remaining in the trust account after the death of the last named pet in the trust.

Finally, if you have multiple horses, for example for breeding or showing, your pet trust can specify that certain horses owned by you at your death be entrusted to a particular caretaker to continue these programs after your death. Your trust document may designate a particular breeder to care for your stallion or broodmare and specifically authorize the ongoing use of these horses in his breeding program. You may also designate a willing and able trainer to continue your competition horse in his training program. Each of the designated caretakers will receive trust funds for the maintenance of the horse or horses in their care, and the trustee will oversee the trust administration to make sure that all of the your wishes are respected.

If you are interested in reading the entire Illinois Pet Trust Law, the statute can be found at [www.professorbeyer.com/Articles/Animal Statutes/Illinois.htm](http://www.professorbeyer.com/Articles/Animal%20Statutes/Illinois.htm). As pet trust laws are specific, complicated, and vary from state to state, please consult a knowledgeable equine attorney in your area for purposes of drafting your will and pet trust provisions. As of the date this article was written, the following states have enacted their own pet trust legislation: Alaska, Arizona, California, Colorado, District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Tennessee, Utah, Washington, Wisconsin, and Wyoming.

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