

# Elder and Medicaid Law Newsletter



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**A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ JUNE, 2017 EDITION**

## Who will care for your dog or cat when you pass away? Creating a Trust for Your Pet

Who will care for your dog or cat when you pass away? What will happen to your bird should you become incapacitated?

For many people, providing care for their pet after they pass away or if they become incapacitated is a very big concern and, as a result, Florida has a statute that provides for the enforcement of trusts created for the benefit of pets:

### **Trust for care of an animal — Florida Statute 736.0408**

(1) *A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, on the death of the last surviving animal.*

(2) *A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.*

(3) *Property of a trust authorized by this section may be applied only to the intended use of the property, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise as part of the settlor's estate.*

Unlike your children or other relatives or friends that you may leave money to via your last will and testament, an animal cannot be a beneficiary of your will. Instead, pet owners

need to designate someone to take care of their pet after they die and they can leave money to that person for the cost of providing care.

Prior to specific statutes which allow for the creation of an enforceable "pet trust," if an individual left money to a family member or friend in their last will and testament stating in the document that the bequest was solely for the purpose of caring for their pet, the family member or friend would be under no legal obligation to spend the money on their pet.

In fact, they could take the pet to the dog pound and keep the money for themselves if they chose to do so. Any money left in a last will and testament to an individual "for the care of a pet" is merely a request and unenforceable in a court of law.

While many might say, "I trust my brother with my dog and I know he would take care of him" - what happens if your brother's son becomes allergic to your dog?

Or, what happens if your brother moves into an apartment complex that won't allow pets? A pet trust can provide direction regarding any of the unforeseen circumstances that may arise.

Setting up a trust for your pet is much like setting one up for a person. The trust is a legal entity into which you put money and then designate a trustee who is responsible to safeguard and administer the money.

In the case of a pet trust, you designate a caregiver and then the trustee is in charge of making payments to the caregiver for your pet's expenses (special dietary needs, grooming, pet toys, veterinary care, etc.).

Of course, it is always a good idea to name one or more alternate trustees and caregivers in the event something should happen to them.

In addition, a provision of the trust will need to provide for what happens to the money you have set aside for your pet after their death. Many people chose to have the remaining balance go to the caregiver or a charitable organization.

It is important to keep your trust up to date with current information and to ensure nothing has changed in your designated caregiver's situation that might warrant changing designees (are they still willing to take on the commitment, can they still physically handle the responsibility, etc.).

It is also a good idea to give a copy of the trust to your chosen caregiver, any successor(s) and family members who may be involved with the care of your pet.

Creating a trust for your pet is not just for the wealthy or the eccentric. It is a relatively inexpensive and practical way to ensure you have provided for your pet when you can no longer do so because of death or incapacity.

## News You Can Use

### 2017 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	<b>\$2,205.00</b>
Personal Needs Allowance:	<b>\$105.00</b>
Asset Limit (Individual):	<b>\$2,000.00</b>
Asset Limit (Couple):	<b>\$3,000.00</b>
Community Spouse Resource Allowance:	<b>\$120,900.00</b>
Minimum Monthly Maintenance Income Allowance:	<b>\$2,002.50</b>
Maximum Monthly Maintenance Income Allowance:	<b>\$3,022.50</b>
Home Equity Interest Maximum Limit:	<b>\$560,000.00</b>