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## Planning for the Care of Your Pets at Your Death – California Revises Its Pet Trust Statute

[Veronica K. Cerruti](#)

Pets are often treated as members of our family. They are wholly dependent on us for their care, but when a pet owner dies, he or she may have neglected to provide for this important family member. All too often, orphaned pets are sent to animal shelters or even abandoned when an owner dies, simply because the relatives have no instructions on their care or placement. There are several options when planning for the care and disposition of pets, including the lifetime enrollment of the pets in shelter placement programs, an outright bequest of the animal to a friend or relative or placement of the pet at an animal sanctuary.

An additional planning technique that is becoming increasingly popular is the establishment of a pet trust. In your estate planning documents (a will or revocable trust), you direct that upon your death, a certain sum of money be held by a trustee in trust for the benefit of your pet. The nominated caregiver takes physical possession of the pet, and the trustee provides funds to the caregiver as needed to cover the costs of the pet's food, supplies and medical expenses. On July 22, 2008, Governor Arnold Schwarzenegger approved S.B. 685, which replaces California's current pet trust statute with a modern statute with enforceable provisions. Here are the highlights:

- A pet trust is considered to be a lawful trust for a noncharitable purpose.
- "Animal" is broadly defined under the statute to include any domestic or pet animal.
- The trust terms are to be liberally construed to carry out the intent of the person establishing the trust (i.e.,

### NEWSLETTER EDITORS

**[Donald W. Meaders](#)**

Partner

[dmeaders@manatt.com](mailto:dmeaders@manatt.com)

310.312.4345

**[Donald J. Fitzgerald](#)**

Partner

[dfitzgerald@manatt.com](mailto:dfitzgerald@manatt.com)

415.291.7420

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the “settlor”), and extrinsic evidence is admissible to determine the settlor’s intent.

- The trust terminates when no animal living on the date of the settlor’s death remains alive (unless otherwise specified in the trust document).
- The principal and/or income of the trust may only be used for the benefit of the animal.
- When the trust terminates, the balance of the trust property passes in the following order: (i) according to the terms of the trust instrument, (ii) under the trust’s residuary clause, or (iii) to the settlor’s heirs.
- The trust may be enforced by: (i) a person named in the trust document, (ii) the court, or (iii) any person interested in the welfare of the animal or any nonprofit charitable organization that has as its principal activity the care of animals (an “Animal Nonprofit Organization”). These same individuals or entities may, upon reasonable request, inspect the animal, the premises where the animal is kept, or the books and records of the trust.
- If no trustee is designated, the court may appoint a trustee.
- Unless waived in the trust document, accountings for the trust property must be made to the remainder beneficiaries (or those who would take upon the animal’s death) or to an Animal Nonprofit Organization that has requested an accounting in writing.
- The requirement to account and report, and other requirements of trusts under the Probate Code, do not apply if the value of the trust does not exceed \$40,000.

The tax consequences of this type of trust are beyond the scope of this newsletter. To determine if establishing a pet trust may be appropriate in your own estate planning documents, please consult with your advisor.

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**[Veronica K. Cerruti](#)** Ms. Cerruti’s practice focuses on estate and tax planning, with an emphasis on family wealth transfers for large estates, sophisticated estate,

gift and generation-skipping transfer tax savings techniques, and complex probate and trust administrations. Her practice includes: preparation of wills, trusts and ancillary documents; business succession planning; generation-skipping and dynasty trust tax planning; estate and trust administration; prenuptial and postnuptial agreements; irrevocable insurance trusts; court proceedings relating to the administration, modification or termination of irrevocable trusts; and trust accounting.

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