

The Equine Esquire

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Pet Trusts**—Ensuring the Care of Your Equine Upon Your Incapacity or Death**

For many horse owners, their equines are a part of the family. We care for them as we would children; and like children, their needs will continue even if we are no longer able to care for them, either because we are too incapacitated, or after our deaths. Have you thought of what will happen to your horse if something happens to you?

Legally, horses are considered personal property. However, unlike a car or boat, horses can live into their 30's and related expenses easily mount. Additionally, gifting your horse in your will does not guarantee that the beneficiary wants your horse, or will have the financial means to provide the necessary care. Further, a will must be "probated," which means a lengthy, expensive court-supervised process which can take from several months to several years, depending on the probate estate. The immediate problem becomes who will pay for the cost of boarding, farrier services, and veterinary care? Where does the money come from?

The best approach to satisfying a horse owner's desire to care for their horse(s) is to create a trust. The idea of establishing a trust for the care of pets is not novel, but legal limitations in the past prevented them from being an effective and reliable method to plan for future pet care. On January 1, 2009, a pet trust statute, Probate Code section 15212, took effect making it clear that pet trusts are now enforceable in California. That is a welcome relief for pet owners who care about taking care of their pets after their incapacity or death. Unlike a simple directive in a will, a pet trust provides a host of additional protections and advantages. They are:

- valid during the horse owner's life and after his/her death;
- can help preempt problems with substantial and involved estates, being particularly useful if the horse owner expects a contest to his/her estate;
- identify property to be invested (the corpus) to produce income to be used to care for the horses and control the disbursement of funds;
- allow for an investment trustee. A trust protector (separate from the pet guardian or trustee) can be appointed to invest funds with a view toward growth of the principal and future use on behalf of the pet, heirs, and charitable recipients;
- allows care provisions upon incapacity of the horse owner; and
- after the last equine (beneficiary) has died, the trust instrument provides for dissolution of the trust and distribution of the remaining corpus.

When drafting a pet trust there are several items to consider and specify:

- Horse owner – This is the person who establishes and funds the trust, and is referred to as the settlor.
- Trustee – The trustee should be someone who cares about your horse and who will devote the time necessary to handling the trust's finances and periodically monitoring your horse's care. Make sure ahead of time that this person has agreed to serve as trustee.
- Covered Horses – These are the horse(s) specified in the trust instrument and for whose benefit (care) the trust has been established. The trust ends when the last surviving animal dies.
- Pet Guardian – This is the person who will have custody of your horse and will be responsible for day-to-day care. Don't assume the person you want to name is willing to take on this responsibility. Always ask and name an alternate as well.
- Funding – Do the best you can to estimate how much the guardian will need to take care of your horse. The appropriate amount varies widely depending on age and condition. Trust funding can come from an insurance policy, retirement account, sale of a home, annuity, pay on death bank accounts, to name a few.
- Caretaking instructions – Owners should include specific instructions for the horse's care within the trust document such as notes about its temperament, health issues, exercise needs, diet, as well as end of life provisions. The farrier and veterinarian contact information should also be included.
- Remainder beneficiaries – If you leave more money than is necessary, you can designate where the rest to go such as to family members or a charity, for example.
- Detailed description of the horse(s) – Identifying the horse(s) in detail is critically important to ensure the specified care is being administered to the horse for which the trust was established. Color photographs, a copy of registration papers, and a microchip number are all extremely helpful forms of identification.
- Keeping horses together – If the owner wishes to keep multiple horses together, this should be specified in the trust.
- Providing for all present and future horses – All horses owned by the Settlor, including those the Settlor does not yet have at the time the trust document was written, should be included. Including the term "all my pets" or "all my horses" accomplishes this.

By creating a pet trust for their horse(s), owners can be assured that their horses will be cared for should they become incapacitated or predecease them. A pet trust is ideal since it can be custom-tailored and give maximum flexibility when an owner is planning for their wishes and desires for the care of their horse. For a consultation on pet trusts and providing for your horse, please contact Patrice directly.

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The above article is not intended to be legal advice. Readers should seek legal counsel to determine how the law applies to their particular circumstances.