

THE HOW AND WHY OF NON-CHARITABLE PURPOSE TRUSTS

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I. TYPES OF TRUSTS

- A. Private
- B. Charitable
- C. Non-Charitable Purpose

II. PRIVATE TRUST

- A. Examples
 - 1. Revocable Living Trust
 - 2. Irrevocable Life Insurance Trust
 - 3. Dynasty Trust
 - 4. Intentionally Defective Grantor Trust
- B. Elements
 - 1. Grantor (settlor, trustor)
 - 2. Trustee
 - 3. Beneficiary
 - 4. Trust Corpus (principal)
 - 5. Trust protector

III. CHARITABLE TRUST

A. Purposes

1. Relief of poverty
2. Advancement of education or religion
3. Promotion of health, governmental or municipal purposes
4. Promotion of other purposes that are beneficial to the community [501(c)(3)]
5. Must benefit the public or a significant segment of the public

B. Elements

1. Grantor
2. Trustee
3. No identifiable beneficiary – state attorney general enforces proper use of trust funds

IV. NON-CHARITABLE PURPOSE TRUST

A. Intended to meet a particular non-charitable purpose instead of specific beneficiaries

B. Examples

1. Trust for maintenance of graves or monuments
2. Trust for saying of masses and other religious services
3. Trust for animals
4. Gun trusts

- C. Also known as “Honorary Trusts”
- D. Legal issues.
 - 1. Non-charitable purpose trusts have no beneficiary – who is going to monitor the trust to make sure the trust funds are being used properly?
 - 2. Generally violates the rule against perpetuities because the trust never vested in a particular person
- E. Current law
 - 1. Uniform Probate Code allows for Honorary Trust
 - 2. Michigan statutes (MCL §700.2722) specifically allows Honorary Trust and trust for pets
 - a. Pet trusts can continue until no living animal is covered by the trust (cat, dog, turtle)
 - b. Any other Honorary Trust can continue only for 21 years, whether or not the terms of the trust contemplate a longer duration
 - c. Except as expressly provided in the terms of the trust, no portion of the principal or income may be converted to the use of the trustee or for a use other than the trust’s purpose
 - d. No annual filing, reporting or accountings required unless ordered by a court or required by the terms of the trust

- e. Court can order the trust assets transferred to another trustee if necessary to insure that the intended use is met
- f. Trust is not subject to the rule against perpetuities

V. PET TRUST

A. Statute

- 1. Allowed by Michigan statute (MCL §700.2722) for the care of a designated domestic or pet animal.
- 2. Trust terminates when no living animal is covered by the trust
- 3. Statute provides that the trust shall be liberally construed to carry out the general intent of the transferor

B. Why? – Trust can answer these questions:

- 1. Who will take care of the pet?
- 2. Where will funds come from to pay for the care of the pet?
- 3. What care will be provided to the pet?

C. Typical Provisions

- 1. Naming trustee and successor
- 2. Naming caregiver for the pet
- 3. Have adequate duration of trust – how long will the pet live (a dog versus a parrot.)

4. Have adequate funding
 - a. Leona Helmsley
 - b. Provide for disposition of remaining trust assets upon death of pet
5. Provide for pets to be kept together if appropriate
6. Have a trust protector to supervise actions of the trustee/caregiver
7. Don't incentivize the death of the pet – remaining assets should not pass to the trustee or caregiver
8. Provide instructions for standard of living and care of the pet, including end of life decisions
9. Carry wallet card to notify emergency personnel that there is a pet at home and also include name of a contact person. Have a similar notice visible in your home
10. Provide for compensation to trustee and caregiver
11. Identify animal specifically in order to prevent fraud by caregiver
11. See sample provisions of a pet trust attached

VI GUN TRUST

- A. Separate trust which becomes the owner of the firearms
- B. Facilitates passing of firearms to heirs
- C. Can avoid paperwork required for additional transfers

- D. Can own general firearms or NFA firearms
- E. NFA firearms
 - 1. Certain guns are regulated by the National Firearms Act (NFA)
 - 2. Possession (direct or constructive) of a NFA firearm can be subject to prosecution if not properly registered
 - 3. NFA firearms include the following:
 - a. Short barrel shotgun
 - b. Short barrel rifle
 - c. Machine gun
 - d. Any other weapon – such as a pen gun, umbrella gun, or camera gun
 - e. Any silencer
 - f. A destructive device – hand grenade, bomb, large caliber weapons
- F. Trust provisions
 - 1. State the purpose of the trust, i.e. to own NFA firearms for my benefit in compliance with applicable local, state and federal law
 - 2. Trust name – must identify the trust as a gun trust and indicate the name of the grantor of the trust
 - 3. Provide for trustee and qualifications of the trustee. The trustee must meet all local, state and federal rules applicable to gun ownership

4. Should be a stand-alone trust, not a part of another trust
5. Provide for continued ownership of the firearms for the benefit of grantor's family.
6. Trust needs to be drafted carefully as laws and regulations regarding firearms are continually changing.

Sample Pet Trust Provisions

E.4. Pet Trust

My dog, Fido (“Pet”), has provided me with great enjoyment and unconditional love. For that reason, I, MARLON PERKINS, as Grantor, establish this Pet Trust (“Pet Trust”) to provide for him after my death or disability. The Trustee shall hold and administer the Pet Trust as follows:

a. **Transfer of Pet at My Death or Disability.** At my death or disability, Trustee shall deliver Fido to Grantor’s son, SVEN PERKINS, or if SVEN is not then living, to my son, FRANKLIN PERKINS (“Caregiver”). If Caregiver is not able to keep Fido, Trustee shall find a loving home for Fido. If no loving home is found for Fido, Trustee shall attempt to place Fido in an appropriate breed rescue program or, if none is available, Trustee shall have Fido euthanized by Fido’s veterinarian.

b. **Distributions.** My Trustee shall distribute to the Caregiver such sums from the Pet Trust as my Trustee shall determine are necessary for Fido’s health, support and maintenance. Such distributions would be for food, treats, toys, regular veterinary care, dental care, Veterinary Pet Insurance (VPI), grooming, reasonable recreation, license as required by the City or State, and other essentials. The Trustee shall require the Caregiver to provide receipts for expenses relating to Fido to be reimbursed from the Pet Trust. Alternatively, the Trustee may make payment directly to third parties (upon receipt of bills from the third party) for services or expenses related to the care of Fido.

c. **Extraordinary Veterinary Care.** Distributions for extraordinary veterinary treatment shall be in my Trustee’s discretion, as guided by the provisions of Section E.4.d. of this Pet Trust, as guided by Fido’s Caregiver. If the treatment would qualify under the guidelines of Section E.4.d. of this Pet Trust, my Trustee shall make such distribution

regardless of the cost if the Caregiver and Trustee feel that such treatment is in Fido's best interest.

The current veterinarian for Fido is the Happy Valley Ranch Animal Hospital.

d. **Distribution Guidelines.** Having dealt with extraordinary health issues with Fido, the following guidelines are provided to guide my Trustee in making distribution for the health care of Fido.

i. **Diagnosis.**

If Fido has symptoms that require diagnosis, the veterinarian shall be called and consulted on the potential seriousness of the situation. If the veterinarian suggests that Fido should be looked at immediately, that advice should be followed. Animals often do not show signs of illness until they are in the advanced stages, so minutes can make a difference.

ii. **Routine Treatment.**

All treatments that are fairly routine and not highly uncomfortable for Fido will be performed.

iii. **Short Term Discomfort.**

If a treatment is likely to cause significant short term discomfort, an analysis of the benefits should be made, as should a determination of whether those benefits outweigh the discomfort and other drawbacks. If a treatment is given, all reasonable pain relief measures should be followed.

iv. **Long Term Discomfort.**

If a treatment or Fido's follow-up care after such treatment is likely to cause long term discomfort for Fido, it should not be done. I believe strongly in quality of life for Fido. Nothing should be done that would reduce Fido's joy and comfort on an ongoing basis. A specific example of a treatment that would be excluded due to quality of life impacts is organ transplantation.

v. **Experimental Treatment.**

If a treatment is experimental, but not likely to cause Fido grave harm or pain, and is not extremely expensive, then it should be done.

vi. **Exceptionally Expensive Treatment.**

If a treatment is exceptionally expensive, then my Trustee, following the above guidelines, shall decide whether to make such a distribution.

vii. **Euthanasia.**

In the event that Fido is in ongoing pain or discomfort, and no reasonable treatment is available to alleviate the discomfort and provide a quality life, then I ask that Fido be given a wonderful last day, then euthanized, surrounded by his family and preferably in the comfort of his home.

e. **Standard of Care.** Fido is an indoor pet that is used to regular interaction with members of the family. He is used to regular veterinary care, regular walks, professional grooming every four (4) weeks, and play time for games such as fetch. Caregiver shall not keep Fido as an outside pet. Because Fido is unaccustomed to commercial kennels, Trustee may distribute additional funds to provide for temporary in-home pet sitter

service while Caregiver is on vacation or otherwise out of town. My intent is that Caregiver, who is familiar with my lifestyle, will provide Fido with a loving home where he will enjoy the same human care and interaction as he had in my home. Current details regarding the care of Fido is attached as Exhibit A to this Trust.

It is further my expectation and requirement that SVEN PERKINS take full responsibility for Fido's daily care and well-being until Fido's death. If SVEN PERKINS does not take full responsibility, then his right to receive remaining assets of this Pet Trust upon Fido's death shall promptly terminate as provided in Section E.4.h. of this Pet Trust. Trustee shall, from time to time, observe Fido and his living conditions to ensure Caregiver is providing care consistent with the terms set forth in this Pet Trust. This Pet Trust shall pay all expenses for Trustee, Big National Bank, to periodically travel to personally observe Fido and the care that he is receiving, to ensure Caregiver is providing care consistent with the terms set forth in this Pet Trust. Trustee shall bring any concerns about Fido's care to Caregiver, but if Caregiver consistently fails to meet the standard of care set forth in this Pet Trust, Trustee may remove Caregiver and substitute the named successor or, if there is no named successor Caregiver, Trustee may select one who, in Trustee's opinion, is well-suited to meet Fido's needs.

f. **Final Disposition.** After Fido has died, Trustee shall pay for his burial, and Caregiver shall arrange for the burial nearby where SVEN PERKINS resides.

g. **Right to Enforce the Trust.** If Trustee fails to carry out the terms of this Pet Trust, Caregiver shall have the right and authority to enforce the terms of the Trust.

h. **Distribution of Remaining Assets in Trust.** After Fido has died and his final disposition has occurred, Trustee shall distribute all remaining assets of this Pet Trust to the Trust created in the Trust

Agreement for SVEN PERKINS, if surviving. If SVEN PERKINS is not surviving, the remaining Pet Trust assets shall be distributed to his living issue, by right of representation. If SVEN PERKINS has no living issue, then the assets shall be distributed to FRANKLIN PERKINS or to his living issue by right of representation if he is not surviving at the time of distribution.

Notwithstanding the above provisions of this Section E.4.h., if SVEN PERKINS has not taken full responsibility for Fido's care and well-being, then he and his issue shall be deemed to no longer be surviving and any remaining assets in this Pet Trust shall pass to FRANKLIN PERKINS, or his issue if he is not surviving.