

Why a Will Is Not Enough

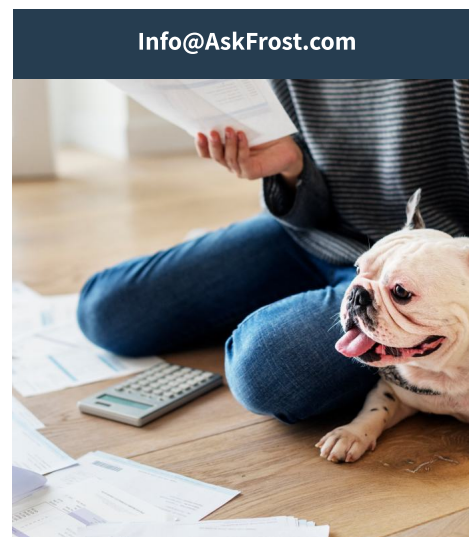
By Jake Polivka, Esq. & Colleen Garrity

Pet owners dread the possibility of something happening to their furry friends, but don't consider the possibility that their pets may outlive them, or at least live beyond the owner's ability to provide adequate care. Unfortunately, overlooking this part of estate planning can lead to consequences no pet owner wants. Research shows that 10% of pets end up in shelters after their owner's death or incapacity, often because family and friends are unable or unwilling to take on the financial and practical responsibilities of caring for the animal. This statistic underscores the importance of incorporating your family's smallest member as part of your estate plan.

A will details a person's wishes upon death. While you can name a caretaker for your pet in your will, that designation is merely a preference; it carries no legal means of enforcement. The named caretaker can change their mind at any point. Wills also restrict beneficiaries to individuals or charities. That means if you leave money in your will for your pet, the caretaker becomes the beneficiary, and they can spend that money however they please. In short, a simple will alone can't give you the security you want for your pet's future—it's going to require some additional careful wording.

Pet Trusts

Pet trusts ensure your pet will receive care long after you pass away or can no longer care for them yourself. All 50 states recognize pet trusts, and while the details vary by state, the basic structure stays fairly consistent. A pet trust typically names a trustee, a caregiver, and a trust protector. The trustee manages the trust's assets and disburses funds according to the trust's instructions, which presumably require that the money be spent on the pet. The caregiver keeps and cares for the animal, and the trust protector periodically visits the pet to confirm they're receiving proper care and keeps track of veterinary records. In almost every state (except Connecticut), a trust protector is not required, but attorneys generally recommend the designation regardless for the extra layer of accountability for those involved.



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Funding Your Pet Trust

Some states cap how much you can put into a pet trust, while others simply allow a "reasonable amount" to cover the animal's living and care expenses. Because some states let courts reduce or redirect trust assets they consider excessive, it's worth reviewing your state's particular pet trust funding rules with your attorney. For example, in Maryland, there is no set cap, but a judge may determine under Estates & Trusts § 14.5-407 that the value of a pet trust "exceeds the amount required for the use intended by the trust." A simple and effective approach to appropriately funding your pet trust is calculating the costs for food and care associated with your pet per year, and adding additional cushion to account for increased medical expenses associated with an advanced age. This number should provide a rough estimate of the funding reasonably required to ensure your pet will have the care they need down the line. Additional funding considerations include ensuring the trust has adequate funds to cover trust administration, specific instructions regarding disbursement to the caregiver, and designating a remainder beneficiary for any funds that go unused.

Terminating a Pet Trust

Termination rules vary by state. Forty-one states end a pet trust upon the death of the last surviving animal it covers. Alaska, Michigan, and Montana cap pet trusts at 21 years; Minnesota and Tennessee allow up to 90 years; and Washington allows up to 150 years. Idaho is unique: rather than offering a dedicated pet trust, it allows a "purpose trust," which does not require a named beneficiary, and carries no specific termination rule.

Instructions for a Pet Trust

You can provide instructions for your pet's care in the trust instrument. The ASPCA recommends identifying your pet in the trust using photos, microchips, or DNA samples. It also recommends adding a requirement for regular inspections of your pet by the trustee, if desired. You should provide detailed instructions regarding your pet's standard of living and care. Furthermore, you should provide instructions for your pet when they pass, i.e. your preference for burial or cremation. Be sure to make an estate plan for yourself, and when you do, don't forget about the pets! If you have any questions about pet trusts, call Frost Law at **(410) 497-5947** or **[fill out our contact form](#)** to schedule a consultation.

Sources

- [Pet Trusts Explained by The American College of Trust and Estate Counsel \(ACTEC\)](#)
- [Pet Trust Primer by The American College of Trust and Estate Counsel \(ACTEC\)](#)
- [Pet Trust Laws by The American College of Trust and Estate Counsel \(ACTEC\)](#)

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