

Fluffy's Comfortable Retirement



At first, Fluffy appears to be an ordinary cat. She is white in color with no fancy heritage. But to Mary, Fluffy is much more than ordinary.

Mary is a widow. Mary lives in a senior apartment with her television and Fluffy. She sees her neighbors at meals and social events. Her children and grandchildren have their own busy lives. They don't visit Mary very often. As her grandchildren enter their teenage years, Mary is not sure she really likes them all that much.

Fluffy greets Mary every morning. Fluffy needs Mary to put out food, fill the water bowl, and provide for Fluffy's hygiene. Fluffy signals her appreciation as only a cat can. Fluffy's feline antics bring life to the apartment. In short, Fluffy is Mary's best companion.

Every time one of Mary's neighbors leave on a final trip to the hospital or nursing home, Mary is reminded that she isn't getting a younger. As Mary takes her morning medications, Mary worries about Fluffy. Will Fluffy, like her Egyptian ancestors, be buried with her human companion? What can Mary do for Fluffy?

Most simply, Mary could ask a friend or relative to care for Fluffy and trust that person to take over as Fluffy's faithful caretaker. If Mary knows a healthy person with a caring heart, such a simple arrangement can be best for Fluffy.

Mary can help Fluffy's caretaker by remembering the caretaker in her will. That is, Mary could give a sum of money to the caretaker and ask that Fluffy be cared for. Lawyers call this an honorary trust because (at least historically) the recipient of the gift had no legal duty to care for Fluffy. The advantage of an honorary trust is that it doesn't cost anything to administer and costs very little to set up.

When Mary reads her favorite animal magazine or explores the internet, she discovers that a pet perpetual care industry has come into existence to help – for a price. For an upfront payment of around \$25,000, various organizations will promise to care for Fluffy as long as Fluffy lives. The brochures are compelling and sales people are friendly. Some pet care organizations are non-profit while others admit to their financial motives. In either case, Mary worries about the kind of care Fluffy will receive when Fluffy's longevity becomes an organization's financial liability.

Historically, Mary could not protect Fluffy with a trust because the care of specific animals was deemed not to be a lawful purpose for a trust. A public charity such as the SPCA was legal but a trust for Mary's pets was not legal. Fortunately for Fluffy, Mary lives in present day California where (under California

Probate Code § 15212) Fluffy can be a beneficiary of a trust. Such a trust is most commonly called a pet trust but some people prefer to call it a companion animal trust.

When Mary first heard of pet trusts, she confused them with widely promoted charitable remainder trusts. Charitable remainder trusts provide donors with charitable deductions and income while providing operating funds for public charities. Under federal law, pet trusts can't be charitable trusts because, unlike public charities, pet trusts provide for specific animals such as Fluffy. Gifts to Fluffy's pet trust are not deductible because Fluffy's care is "a lawful noncharitable purpose" rather than a public purpose.

Mary was also confused by websites and magazine articles with a national audience until she learned that we do things a bit differently in California – which really didn't surprise her. In general, trusts are created when there is a declaration of intent by the settlor, transfer of property to a trustee, and a legal purpose. The care of domestic animals in California is now a legal purpose. Thus Fluffy's trust will come into existence when, following Mary's declaration, property is first transferred to the trustee of the pet trust. The moment of creation is important because that is when Fluffy's rights become legally enforceable under California Probate Code § 15212.

So how does Fluffy go to court to enforce her California rights? California law authorizes any person designated in the trust (often called a "trust protector"), any person interested in Fluffy's welfare, and "any nonprofit charitable [animal care] organization" to go to court on Fluffy's behalf. Furthermore, any remainder beneficiary or animal care charity can force the trustee to account for every trust dollar to make certain that the money is segregated, prudently invested, and spent only for Fluffy's benefit (provided the amount in trust exceeds \$40,000). Furthermore, any trust protector or animal care charity can inspect Fluffy and the place where Fluffy lives upon reasonable request. Thus, commentators have noted that California's pets can be better protected than California's foster children.

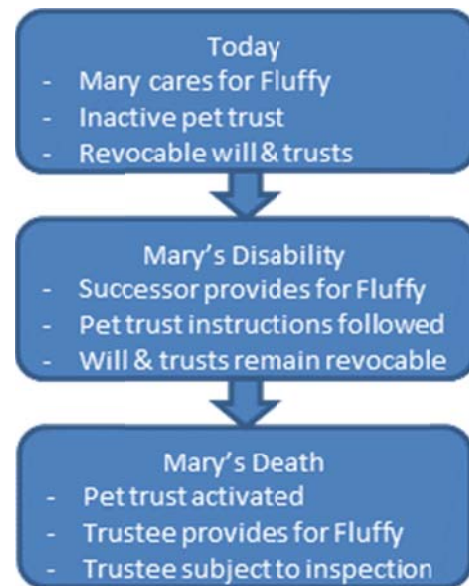
When Mary began thinking about a trust for Fluffy, she was enticed by trust mill marketers. For decades, trust mills have lured seniors with low cost, computer generated trust forms that are often worse than no trust at all. Their ulterior motive is to appear credible and gather personal information for selling high profit products and services such as mortgages, insurance, and annuities. Because California's attorney general and others have worked hard to shut down senior trust mills, some creative operators have apparently moved on to pet trust mills. Again, they offer low cost trust forms with the ulterior motive of separating pet owners from their money through fees, commissions, and remainder interests. The warning signs are low cost standard forms, immediate funding, and affiliation with products and services other than the practice of law.

Mary's plan for Fluffy's future should be holistic rather than piecemeal. Her planning should achieve a harmonious balance between Mary's needs, Fluffy's needs, and Mary's resources. A low income person can't provide the same level of protection as a high income person. Planning for a single mature cat is different than planning for a string of young polo ponies. Mary should leave herself the flexibility to change her plan as her situation and the animals in her life change – as they most certainly will.

From a holistic standpoint, a handshake or hug from Mary's neighbor may make more sense than a pet trust. People often don't consider the cost of trust administration. They don't consider that the trustee will be burdened with formal accounting, investment management, and inspections. If Mary doesn't have at least \$10,000 to \$40,000 per animal, the cost of administering a pet trust might not make much sense.

If Mary has enough money to justify the cost, a pet trust provides the best guarantee that Fluffy will receive all the uninterrupted care that Mary wants. In addition Mary can direct any remaining funds to whomever she wants including friends, relatives, and animal care charities. In other words, a pet trust puts Fluffy's care first because no trust money can be used for any other purpose as long as Fluffy lives.

If Mary wants to minimize her work and retain unfettered flexibility, she probably shouldn't fund Fluffy's trust until Mary's death or incapacity. Rather, Mary might declare Fluffy's trust now, either in her will or living trust, but leave her pet trust inactive by not funding it. As long as the pet trust remains unfunded, it has no legal effect so no one is liable for formal accounting and no one's home is open to inspection by strangers. If Mary has a living trust, she can amend her living trust to include provisions for an inactive pet trust. If Mary becomes unable to care for Fluffy, she can instruct her successor trustee to follow her pet care instructions without activating the pet trust. Thus, Mary can avoid accounting and inspections, freely access her money, and change the terms of her trust whenever she wants for as long as she lives. As a backstop to Mary's living trust, she can coordinate her durable power of attorney and pour-over will with her living trust including its pet trust provisions. For Fluffy, this holistic approach provides uninterrupted care if Mary goes into the hospital and while Mary's estate is being sorted out.



Thus, Fluffy is one lucky cat. She will be comfortably retired in California because her human companion has provided for her continued, uninterrupted care. Fluffy's resources will be safely in trust and open to audit by a designated trust protector, any interested person, and any animal care charity. In addition, Fluffy and her living quarters will be subject to inspection by the trust protector and animal care charities to make certain that Fluffy receives the exact care her human companion wants. After Fluffy passes on, her unused retirement funds will go to Mary's friends, relatives, or charities – perhaps to help other, less fortunate cats.