



NEW YORK
CITY BAR

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**REPORT ON PROPOSED LEGISLATION BY
THE COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS
RECOMMENDING AMENDMENT OF
ESTATES, POWERS AND TRUSTS LAW §7-8.1 (PET TRUSTS)**

This report is respectfully submitted by the Committee on Legal Issues Pertaining to Animals of the Association of the Bar of the City of New York. Based on its review of Estates, Powers and Trusts Law (EPTL) §7-8.1 governing pet trusts, the Committee recommends that the statute be amended to eliminate the 21-year limit for the duration of such trusts. (The Committee's proposed bill is attached.)

In 1996, the New York legislature enacted EPTL §7-6.1, to allow for the creation of trusts for pets. That statute was later renumbered so it is now EPTL §7-8.1.

The statute has been useful for the many pet owners who want to provide in their wills and trusts for the continuing care of their animals. However, some people have pets that live longer than 21 years. Many people have horses, often living to 30 years, or birds that live much longer than 21 years. For example, some species of parrots can live to 90 years.

Moreover, while the 21-year limitation is satisfactory for most pet owners creating a testamentary trust for dogs or cats under a will, it creates a problem for pet owners who wish to create an *inter vivos* trust. An *inter vivos* trust is created during the life of the pet owner and takes effect during the pet owner's life. Such a trust is beneficial as it provides for the care of the pet during the incapacity of the pet owner, and continues such care after the death of the pet owner. A person could create an *inter vivos* pet trust in New York to last for 21 years for the care of all of the animals that the pet owner presently has or acquires during that 21 years. But an *inter vivos* pet trust with a 21-year duration might not even protect dogs and cats. For example, if the pet owner died after the *inter vivos* trust had been in existence for 15 years, there would only be 6 years left to care for the animals and that period of time might not cover the remaining lives of the pet owner's younger dogs and cats.

New York was one of the early states to enact a pet trust statute. Now 38 states and the District of Columbia have enacted pet trust statutes. Many of these 39 jurisdictions have used the language of the Uniform Trust Code section 408 or the Uniform Probate Code section 2-907, as amended. Neither of these sections has a 21-year duration limit. We have attached a list of the 38 jurisdictions that have enacted pet trust statutes. This list shows the jurisdictions that have used the language of the Uniform Trust Code or the Uniform Probate Code.

Most of the 39 pet trust statutes allow the trusts to continue for the life of the animal. Only a few states have statutes limiting the duration to 21-years. These statutes were enacted

before it became common to use the language in the Uniform Codes. The Uniform Codes exempt such trusts from the rule against perpetuities, which normally limits pet trusts to 21 years.

It is the Committee's recommendation that New York follow the Uniform Codes related to pet trusts and exempt such trusts from the 21-year limitation presently in the New York statute. This requires a simple amendment in subparagraph (a) of the statute. Other than removing the 21-year limitation, the language of EPTL §7-8.1 would remain the same, except that we recommend a minor change in subparagraph (b) to read "all covered animals" instead of "a covered animal".

Finally, we recommend that the statute be titled "Trusts for Pets" instead of "Honorary Trusts for Pets", as honorary means unenforceable, and pet trusts are presently enforceable under subparagraph (a) of the statute.

November 2008

Pet Trust Statutes¹

1. Alabama [based on UTC § 408]
2. Alaska [based on UPC § 2-907]
3. Arizona [based on UPC § 2-907]
4. Arkansas [based on UTC § 408]
5. California [allowed, but unenforceable]
6. Colorado [based on UPC § 2-907]
7. District of Columbia [based on UTC § 408]
8. Florida old; new, effective July 1, 2007 [based on UTC § 408]
9. Hawaii [based on UPC § 2-907]
10. Idaho
11. Illinois [based on UPC § 2-907]
12. Indiana
13. Iowa
14. Kansas [based on UTC § 408]
15. Maine [based on UTC § 408]
16. Michigan [based on UPC § 2-907]
17. Missouri [based on UTC § 408]
18. Montana [based on UPC § 2-907]
19. Nebraska [based on UTC § 408]
20. Nevada
21. New Hampshire [based on UTC § 408]
22. New Jersey
23. New Mexico [based on UTC § 408]
24. New York
25. North Carolina [based on UPC § 2-907]
26. North Dakota [based on UTC § 408; effective August 1, 2007]
27. Ohio [based on UTC § 408]
28. Oregon [based on UTC § 408]
29. Pennsylvania [based on UTC § 408]
30. Rhode Island
31. South Carolina [based on UTC § 408]
32. South Dakota [based on UPC § 2-907]
33. Tennessee [based on UTC § 408]
34. Texas
35. Utah [based on UPC § 2-907]
36. Virginia [based on UTC § 408]
37. Washington
38. Wisconsin [allowed, but unenforceable]
39. Wyoming [based on UTC § 408]

¹ List provided by Professor Gerry W. Beyer, Governor Preston E. Smith Regents Professor of Law, Texas Tech University School of Law, 1802 Hartford Street, Lubbock TX 79409-0004.

STATE OF NEW YORK

2009-2010 Regular Sessions

IN ASSEMBLY

_____, 2009

Introduced by M. of A. _____ -

AN ACT to amend the estates, powers and trusts law, in relation to eliminating the 21-year limit for the duration of pet trusts.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraphs (a) and (b) of section 7-8.1 of the estates, powers and trusts law [formerly section 7-6.1], as added by chapter 159 of the laws of 1996, is amended to read as follows:

§7-8.1 [~~Honorary trusts~~] Trusts for pets

(a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when no living animal is covered by the trust[~~, or at the end of twenty-one years, whichever occurs earlier~~].

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of [~~a~~]all covered [~~animal~~]animals.