



## AMERICAN HUMANE

*Protecting Children & Animals Since 1877*

### Laws on Pet Trusts

#### Uniform Trust Act (UTA) of 2000

##### **SECTION 408. TRUST FOR CARE OF ANIMAL.**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

#### Alabama Section 19-3B-408

##### **Trust for care of animal.**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

(Act 2006-216, p. 314, §1.)

#### Alaska (Sec 13.12.907)

##### **Sec. 13.12.907. Honorary trusts; trusts for pets.**

(a) Subject to (c) of this section, a trust may be performed by the trustee for 21 years but not longer, whether or not the terms of the trust contemplate a longer duration, if

- (1) the trust is for a specific lawful, noncharitable purpose or for a lawful, noncharitable purpose to be selected by the trustee; and
  - (2) there is not a definite or definitely ascertainable beneficiary designated.
- (b) Except as otherwise provided by this subsection and (c) of this section, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when a living animal is not covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.
- (c) In addition to the provisions of (a) or (b) of this section, a trust covered by either of those subsections is subject to the following provisions:
- (1) except as expressly provided otherwise in the trust instrument, a portion of the principal or income may not be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal;
  - (2) upon termination, the trustee shall transfer the unexpended trust property in the following order:
    - (A) as directed in the trust instrument;
    - (B) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and
    - (C) if a taker is not produced by the application of (A) or (B) of this paragraph, to the transferor's heirs under AS 13.12.711 ;
  - (3) for the purposes of AS 13.12.707 , the residuary clause is treated as creating a future interest under the terms of a trust;
  - (4) 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 the court by an individual;
  - (5) except as ordered by the court or required by the trust instrument, a filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is not required by reason of the existence of the fiduciary relationship of the trustee;
  - (6) a court may reduce the amount of the property transferred, if it determines that amount substantially exceeds the amount required for the intended use; the amount of the reduction, if any, passes as unexpended trust property under (2) of this subsection;
  - (7) if a trustee is not designated or a designated trustee is not willing or able to serve, a court shall name a trustee; a court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if a successor trustee is not designated in the trust instrument or if a designated successor trustee does not agree to serve or is unable to serve; a court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

#### **Arizona (Sec 14-2907)**

##### **14-2907. Honorary trusts; trusts for pets; conditions**

A. If a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for not longer than twenty-one years whether or not the terms of the trust contemplate a longer duration.

B. A trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. In addition to the provisions of subsection A or B, a trust created under this section is subject to the following:

1. 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 trust's purposes or for the benefit of a covered animal.

2. On termination, the trustee shall transfer the unexpended trust property in the following order:

(a) As directed in the trust instrument.

(b) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will.

(c) If no taker is produced by the application of subdivision (a) or (b) of this paragraph, to the transferor's heirs under section 14-2711.

3. For the purposes of section 14-2707, the residuary clause is treated as creating a future interest under the terms of a trust.

4. The intended use of the principal or income can be enforced by a person who is designated for that purpose in the trust instrument or, if none, by a person appointed by a court on application to it by any person.

5. Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee.

6. A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under paragraph 2 of this subsection.

7. If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if this is necessary to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make other orders and determinations that it determines advisable to carry out the intent of the transferor and this section.

## Arkansas

### **28-73-408. Trust for care of animal.**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by a court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent a court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.  
History. Acts 2005, No. 1031, § 1.

## California

### **CA Prob. Sec 15212**

15212. (a) Subject to the requirements of this section, a trust for the care of an animal is a trust for a lawful noncharitable purpose. Unless expressly provided in the trust, the trust terminates when no animal living on the date of the settlor's death remains alive. The governing instrument of the animal trust shall be liberally construed to bring the trust within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the settlor.

Extrinsic evidence is admissible in determining the settlor's intent.

(b) A trust for the care of an animal is subject to the following requirements:

(1) Except as expressly provided otherwise in the trust instrument, the principal or income shall not be converted to the use of the trustee or to any use other than for the benefit of the animal.

(2) Upon termination of the trust, the trustee shall distribute the unexpended trust property in the following order:

(A) As directed in the trust instrument.

(B) If the trust was created in a nonresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.

(C) If the application of subparagraph (A) or (B) does not result in distribution of unexpended trust property, to the settlor's heirs under Section 21114.

(3) For the purposes of Section 21110, the residuary clause described in subparagraph (B) of paragraph (2) shall be treated as creating a future interest under the terms of a trust.

(c) The intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument or, if none is designated, by a person appointed by a court. In addition to a person identified in subdivision (a) of Section 17200, any person interested in the welfare of the animal or any nonprofit charitable organization that has as its principal activity the care of animals may petition the court regarding the trust as provided in Chapter 3 (commencing with Section 17200) of Part 5.

(d) If a trustee is not designated or no designated or successor trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the trust property to a court-appointed trustee, if it is required to ensure that the intended use is carried out and if a successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make all other orders and determinations as it shall deem advisable to carry out the intent of the settlor and the purpose of this section.

(e) The accountings required by Section 16062 shall be provided to the beneficiaries who would be entitled to distribution if the animal were then deceased and to any nonprofit charitable corporation that has as its principal activity the care of animals and that has requested these accountings in writing. However, if the value of the assets in the trust

does not exceed forty thousand dollars (\$40,000), no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee, unless ordered by the court or required by the trust instrument.

(f) Any beneficiary, any person designated by the trust instrument or the court to enforce the trust, or any nonprofit charitable corporation that has as its principal activity the care of animals may, upon reasonable request, inspect the animal, the premises where the animal is maintained, or the books and records of the trust.

(g) A trust governed by this section is not subject to termination pursuant to subdivision (b) of Section 15408.

(h) Section 15211 does not apply to a trust governed by this section.

(i) For purposes of this section, "animal" means a domestic or pet animal for the benefit of which a trust has been established.

### **Colorado (Sec 15-11-901)**

#### **15-11-901. Honorary trusts; trusts for pets.**

(1) Honorary trust. Subject to subsection (3) of this section, and except as provided under sections 38-30-110, 38-30-111, and 38-30-112, C.R.S., if (i) a trust is for a specific, lawful, noncharitable purpose or for lawful, noncharitable purposes to be selected by the trustee and (ii) there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for twenty-one years but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Trust for pets. Subject to this subsection (2) and subsection (3) of this section, a trust for the care of designated domestic or pet animals and the animals' offspring in gestation is valid. For purposes of this subsection (2), the determination of the "animals' offspring in gestation" is made at the time the designated domestic or pet animals become present beneficiaries of the trust. Unless the trust instrument provides for an earlier termination, the trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection (2), to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent. Any trust under this subsection (2) shall be an exception to any statutory or common law rule against perpetuities.

(3) Additional provisions applicable to honorary trusts and trusts for pets. In addition to the provisions of subsection (1) or (2) of this section, a trust covered by either of those subsections is subject to the following provisions:

(a) 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, other than reasonable trustee fees and expenses of administration, or to any use other than for the trust's purposes or for the benefit of a covered animal or animals.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(I) As directed in the trust instrument;

(II) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(III) If no taker is produced by the application of subparagraph (I) or (II) of this paragraph (b), to the transferor's heirs under part 5 of this article.

(c) (Reserved)

(d) The intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument, by the person having custody of an animal for which care is provided by the trust instrument, by a remainder beneficiary, or, if none, by an individual appointed by a court upon application to it by an individual.

(e) All trusts created under this section shall be registered and all trustees shall be subject to the laws of this state applying to trusts and trustees.

(f) (Reserved)

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

### Connecticut

#### **Public Act No. 09-169**

#### **AN ACT CONCERNING THE CREATION OF A TRUST FOR THE CARE OF AN ANIMAL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective October 1, 2009) (a) A testamentary or inter vivos trust may be created to provide for the care of an animal or animals alive during the settlor's or testator's lifetime. The trust shall terminate upon the death of the last surviving animal. A trust created pursuant to this section shall designate a trust protector in the trust instrument whose sole duty shall be to act on behalf of the animal or animals provided for in the trust instrument. A trust protector shall be replaced in the same manner as a trustee under section 45a-474 of the general statutes.

(b) Except as otherwise provided in this section, the provisions of the laws of this state that govern the creation and administration of trusts shall apply to a trust created to provide for the care of an animal or animals pursuant to this section.

(c) (1) The Superior Court, or a probate court described in subdivision (2) of this subsection, shall have jurisdiction over any trust created pursuant to this section.

(2) A probate court shall have jurisdiction over any trust created pursuant to this section if the trustee of the trust is otherwise subject to the jurisdiction of such probate court, or the trust is an inter vivos trust and the trust is or could be subject to the jurisdiction of such probate court for an accounting pursuant to section 45a-175 of the general statutes.

(d) The trustee of a trust created pursuant to this section shall annually render an account for the trust, signed under penalty of false statement, to the trust protector.

(e) Any individual identified as a trust protector pursuant to this section may file a petition in the Superior Court or a probate court having jurisdiction pursuant to subsection (c) of this section to enforce the provisions of the trust, remove or replace any trustee of the trust, or require a trustee to render an account as required under subsection

(d) of this section. The court may award costs and attorney's fees to the trust protector, from the trust property, if the trust protector prevails on a petition filed under this subsection and the court finds that the filing of the petition was necessary to fulfill the trust protector's duty to act on behalf of the animal or animals provided for in the trust instrument.

(f) If the trust protector determines that the trustee has used trust property for personal use or has otherwise committed fraud with respect to the trust, the trust protector may request the Attorney General to file a petition in the Superior Court or a probate court having jurisdiction pursuant to subsection (c) of this section to enforce the provisions of the trust, remove or replace any trustee of the trust or seek restitution from the trustee with respect to such trust property. The Attorney General may file such petition if the Attorney General determines that the circumstances warrant such filing.

(g) Trust property may be applied only to its intended use, subject to proper trust expenses including trustee fees, except to the extent the Superior Court or a probate court having jurisdiction pursuant to subsection (c) of this section, upon application by the trustee or trust protector, determines that the value of the trust property exceeds the amount required for its intended use. Trust property not required for its intended use, including trust property remaining upon termination of the trust, shall be distributed in the following order of priority:

- (1) As directed by the terms of the trust instrument;
- (2) To the remainder beneficiaries identified in the trust instrument, under the same terms provided in the trust for the remainder interest;
- (3) To the settlor, if then living;
- (4) Pursuant to the residuary clause of the settlor's or testator's will; or
- (5) To the settlor's or testator's heirs in accordance with the laws of this state governing descent and distribution.

Approved June 29, 2009

## Delaware

TITLE 12 Decedents' Estates and Fiduciary Relations

CHAPTER 35. TRUSTS

Subchapter IV. Trusts for Cemeteries and Other Noncharitable Purposes

### **§ 3555. Trust for care of an animal.**

(a) A trust for the care of 1 or more specific animals living at the trustor's death is valid. The trust terminates upon the death of all animals living at the trustor's death and covered by the terms of the trust.

(b) A trust authorized by subsection (a) of this section shall not be invalid because it lacks an identifiable person as beneficiary.

(c) A trust authorized by subsection (a) of this section may be enforced by a person appointed in the terms of the trust or, if there is no such person or if the last such person no longer is willing and able to serve, by a person appointed by the Court of Chancery. A person who has an interest in the welfare of the animal or animals other than a general public interest may petition the Court of Chancery for an order that appoints a person to enforce the terms of the trust or to remove that person.

(d) Property of a trust authorized by this section may be applied only to its intended use. Upon the termination of the trust, any property of the trust remaining shall be distributed

in accordance with the terms of the trust or, in the absence of such terms, as provided in § 3592 of this title.

(e) In the case of a trust created in accordance with subsection (a) of this section, a trustor or other owner of an animal for whose benefit the trust was created may transfer ownership of the animal to the trustee at or subsequent to the creation of the trust. Subject to any contrary provision in the trust or other instrument by which ownership of the animal is given or bequeathed, if the person to whom ownership of the animal is given or bequeathed disclaims or releases such ownership, ownership of the animal shall pass to the trustee upon such disclaimer or release.

(f) The trustee of a trust created in accordance with subsection (a) of this section shall provide care for the benefit of the animal in accordance with the terms of the trust or, in the absence of any such terms, shall provide care that is reasonable under the circumstances. The trustee may employ agents or contractors to provide any such care and pay for such care from the assets of the trust.

(g) For purposes of this section, the term "animal" shall include any nonhuman member of the animal kingdom but shall exclude plants and inanimate objects.

### Florida

#### **736.0408 Trust for care of an animal.--**

(1) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, on the death of the last surviving animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(3) Property of a trust authorized by this section may be applied only to the intended use of the property, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise as part of the settlor's estate.

History.--s. 4, ch. 2006-217.

### Hawaii

#### [PART 5. TRUSTS FOR ANIMALS]

**[§560:7-501] Trusts for domestic or pet animals.** (a) A trust for the care of one or more designated domestic or pet animals shall be valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the precatory or honorary nature of its disposition, and to carry out the general intent of the transferor. Extrinsic evidence shall be admissible in determining the transferor's intent.

(b) A trust for the care of one or more designated domestic or pet animals shall be subject to the following provisions:

(1) Except as expressly provided otherwise in the instrument creating the trust, and notwithstanding section 554A-3, no portion of the principal or income of the trust may be

converted to the use of the trustee or to a use contrary to the trust's purposes or for the benefit of a covered animal;

(2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(A) As directed in the trust instrument;

(B) If there is no such direction in the trust instrument and if the trust was created in a non-residuary clause in the transferor's will, then under the residuary clause in the transferor's will; and

(C) If no taker is produced by the application of subparagraph (A) or (B), then to the transferor's heirs, determined according to section 560:2-711;

(3) 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 having jurisdiction over the matter and parties, upon petition by an individual;

(4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee shall be required by reason of the existence of the fiduciary relationship of the trustee;

(5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health, or appearance of the designated domestic or pet animal. The amount of the reduction, if any, shall pass as unexpended trust property under paragraph (2);

(6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out and if a successor is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section; and

(7) The trust is exempt from the operation of chapter 525, the Uniform Statutory Rule Against Perpetuities Act. [L 2005, c 160, §1]

## **Idaho**

**15-7-601.Purpose trusts.** (1) A trust may be created for any purpose, charitable or noncharitable, under the terms of a trust agreement or will. A noncharitable trust so created is a purpose trust and shall exist to serve a purpose.

(2) A purpose trust does not need a beneficiary.

(3) A purpose trust shall be enforceable on the terms set forth in the trust agreement by the person named to enforce the trust; provided however, that the failure to name a person to enforce the trust shall not void the trust or otherwise cause it to be unenforceable.

(4) A person named to enforce a purpose trust may resign or be removed or replaced in accordance with the trust.

(5) If the person named to enforce the trust resigns, or is removed, or is unwilling or unable to act, and if no successor is named in accordance with the trust, the trustee shall forthwith apply to the court having jurisdiction of the purpose trust for directions or for a person to be appointed by the court to enforce the trust. The court having jurisdiction of

the purpose trust shall be empowered to make an order appointing a person to enforce the trust on such terms as it sees fit and to designate how successors will be named.

(6) During any period of time when no person is named or acting to enforce a purpose trust, the court having jurisdiction of the purpose trust shall have the right to exercise all powers necessary to enforce the trust in order to serve the purpose for which it was created.

(7) Any interested person, as defined in section 15-1-201(24), Idaho Code, may bring an action under law or equity to enforce a purpose trust.

(8) Charitable trusts are not governed by this section.

(9) A purpose trust created prior to July 1, 2005, shall be valid and enforceable from the date of the trust's creation.

## Illinois

(760 ILCS 5/15.2)

### **Sec. 15.2. Trusts for domestic or pet animals.**

(a) A trust for the care of one or more designated domestic or pet animals is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this Section, to presume against a merely precatory or honorary nature of its disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(b) A trust for the care of one or more designated domestic or pet animals is subject to the following provisions:

(1) Except as expressly provided otherwise in the instrument creating the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(A) as directed in the trust instrument;

(B) if there is no such direction in the trust instrument and if the trust was created in a non-residuary clause in the transferor's will, then under the residuary clause in the transferor's will; or

(C) if no taker is produced by the application of subparagraph (A) or (B), then to the transferor's heirs, determined according to Section 2-1 of the Probate Act of 1975.

(3) 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 having jurisdiction of the matter and parties, upon petition to it by an individual.

(4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under paragraph (2).

(6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a

successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this Section.

(7) The trust is exempt from the operation of the common law rule against perpetuities.

(Source: P.A. 93-668, eff. 1-1-05.)

## **Indiana**

### **IC 30-4-2-18 Trust for care of animal**

Sec. 18. (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime.

(b) A trust authorized by this section terminates as follows:

(1) If the trust is created to provide for the care of one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the animal.

(2) If the trust is created to provide for the care of more than one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the last surviving animal.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) A person having an interest in the welfare of an animal for whose care a trust is established may request the court to:

(1) appoint a person to enforce the trust; or

(2) remove a person appointed to enforce the trust.

(e) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(f) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

As added by P.L.238-2005, SEC.26.

## **Iowa**

### **633A.2105 Honorary trusts - trusts for pets.**

1. A trust for a lawful noncharitable purpose for which there is no definite or definitely ascertainable beneficiary is valid but may be performed by the trustee for only twenty-one years, whether or not the terms of the trust contemplate a longer duration.

2. A trust for the care of an animal living at the settlor's death is valid. The trust terminates when no living animal is covered by its terms.

3. A portion of the property of a trust authorized by this section shall not be converted to any use other than its intended use unless the terms of the trust so provide or the court determines that the value of the trust property substantially exceeds the amount required.

4. The intended use of a trust authorized by this section may be enforced by a person designated for that purpose in the terms of the trust or, if none, by a person appointed by the court.

## Kansas

Chapter 58a.--KANSAS UNIFORM TRUST CODE

Article 4.--CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

**58a-408. Trust for care of animal.** (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use may be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

History: L. 2002, ch. 133, § 29; Jan. 1, 2003.

## Maine

### **§408. Trust for care of animal**

1. To provide care for animal; termination. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

[ 2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Enforcement. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

[ 2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

3. Intended use of property. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise, to the settlor's successors in interest.

[ 2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

## Maryland

CHAPTER 132 (House Bill 149)

### **AN ACT concerning Estates and Trusts – Trust for Care of Animal**

BY adding to Article – Estates and Trusts Section 14–112

(2001 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Estates and Trusts 11–102.

(a) In this section, “usufructuary” means a person having a usufruct or right to enjoy a thing in which the person has no property interest.

Ch. 132 MARTIN O’MALLEY, Governor

(b) Subject to §§ 4–409 of this article and 11–103 of this subtitle, the common–law rule against perpetuities as now recognized in the State is preserved, but the rule does not apply to the following:

(1) A legacy or inter vivos conveyance having a value of \$5,000 or less, or of any burial lot of any value, in trust or otherwise, for the purpose of providing for the perpetual care or keeping in good order and condition, or making repairs to, any lot, vault, mausoleum, or other place of sepulture belonging to any individual or several individuals in any cemetery or graveyard, the lots in which are intended for the burial of members of the family, family connections, relatives, or friends of the owners, or their successors in ownership;

(2) A legacy or inter vivos conveyance intended to transfer assets from any corporation incorporated for charitable objects, to any other charitable corporation on a contingency or future event;

(3) A trust created by an employer as part of a pension, stock bonus, disability, death benefit, profit–sharing, retirement, welfare, or other plan for the exclusive benefit of some or all of the employees of the employer or their beneficiaries, to which contributions are made by the employer or employees, or both the employer and employees, for the purpose of making distributions to or for the benefit of employees or their beneficiaries out of the income or principal or both the income and principal of the trust, or for any other purposes set out in the plan;

(4) A trust for charitable purposes, which shall include all purposes as are within the spirit or letter of the statute of 43 Elizabeth Ch. 4 (1601), commonly known as the statute of charitable uses;

(5) A trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee, or other person to whom the power is properly granted or delegated, has the power under the governing instrument, applicable statute, or common law to sell, lease, or mortgage property for any period of time beyond the period that is required for an interest created under the governing instrument to vest, so as to be good under the rule against perpetuities;

(6) An option of a tenant to renew a lease;

(7) An option of a tenant to purchase all or part of the premises leased by the tenant;

(8) An option of a usufructuary to extend the scope of an easement or profit;

(9) The right of a county, a municipality, a person from whom land is acquired, or the successor–in–interest of a person from whom land is acquired, to acquire land from the State in accordance with § 8–309 of the Transportation Article;

(10) A right or privilege, including an option, warrant, pre–emptive right, right of first refusal, right of first option, right of first negotiation, call right, exchange right, or conversion right, to acquire an interest in a domestic or foreign joint venture, partnership, limited liability partnership, limited partnership, limited liability limited partnership, corporation, cooperative, limited liability company, business trust, or similar enterprise, whether the interest is characterized as a joint venture interest, partnership interest, limited partnership interest, membership interest, security, stock, or otherwise; [or]

(11) A nondonative property interest as described in § 11–102.1 of this subtitle; OR  
(12) A TRUST CREATED UNDER § 14–112 OF THIS ARTICLE TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR.

(A) A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR.

(B) A TRUST AUTHORIZED BY THIS SECTION TERMINATES:

(1) IF CREATED TO PROVIDE FOR THE CARE OF ONE ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR, ON THE DEATH OF THE ANIMAL;  
OR

(2) IF CREATED TO PROVIDE FOR THE CARE OF MORE THAN ONE ANIMAL ALIVE DURING THE LIFETIME OF THE SETTLOR, ON THE DEATH OF THE LAST SURVIVING ANIMAL.

(C) (1) A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON APPOINTED UNDER THE TERMS OF THE TRUST OR, IF NO PERSON IS APPOINTED, BY A PERSON APPOINTED BY THE COURT.

(2) A PERSON HAVING AN INTEREST IN THE WELFARE OF AN ANIMAL THE CARE FOR WHICH A TRUST IS ESTABLISHED MAY REQUEST THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST OR TO REMOVE A PERSON APPOINTED.

(D) (1) EXCEPT TO THE EXTENT THAT THE COURT MAY DETERMINE THAT THE VALUE OF A TRUST AUTHORIZED BY THIS SECTION EXCEEDS THE AMOUNT REQUIRED FOR THE USE INTENDED BY THE TRUST, THE PROPERTY OF THE TRUST MAY BE APPLIED ONLY TO THE INTENDED USE OF THE TRUST.

(2) EXCEPT AS OTHERWISE PROVIDED UNDER THE TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE OF THE TRUST SHALL BE DISTRIBUTED:

(I) TO THE SETTLOR, IF LIVING; OR

(II) IF THE SETTLOR IS DECEASED, TO THE SUCCESSORS IN INTEREST OF THE SETTLOR.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to a trust created before the effective date of this Act.

SECTION 2. 3. AND BE IT FURTHER ENACTED, that this Act shall take effect October 1, 2009. Approved by the Governor, April 14, 2009.

### Michigan

#### **700.2722.amended Honorary trusts; trusts for pets.**

(1) Except as provided by another statute and subject to subsection (3), if a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee, and if there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this subsection and subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by

the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the terms of the trust, no portion of the principal or income may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) As directed in the terms of the trust.

(ii) To the settlor, if then living.

(iii) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will.

(iv) If no taker is produced by the application of subparagraph (i), (ii), or (iii), to the transferor's heirs under section 2720.

(c) For the purposes of sections 2714 to 2716, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the terms of the trust or, if none, by an individual appointed by a court upon petition to it by an individual. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or remove a person appointed.

(e) Except as ordered by the court or required by the terms of the trust, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) The court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subdivision (b).

(g) If a trustee is not designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the terms of the trust or if no designated successor trustee agrees to serve or is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

(h) The trust is not subject to the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2009, Act 46, Eff. Apr. 1, 2010

### Missouri

**Trust for care of animal. 456.4-408.** 1. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

(L. 2004 H.B. 1511) Effective 1-01-05

### Montana

**72-2-1017. Honorary trusts -- trusts for pets.** (1) Subject to subsection (3), a trust may be performed by the trustee for 21 years but no longer, whether or not the terms of the trust contemplate a longer duration if:

(a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee; and

(b) there is no definite or definitely ascertainable beneficiary designated.

(2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) 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 trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection (3)(b)(i) or (3)(b)(ii), to the transferor's heirs under 72-2-721.

(c) For the purposes of 72-2-717, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) 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.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (3)(b).

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

### Nebraska

**30-3834 (UTC 408) Trust for care of animal.** (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

### Nevada

#### **NRS 163.0075 Validity of trust providing for care of one or more animals.**

1. A trust created for the care of one or more animals that are alive at the time of the settlor's death is valid. Such a trust terminates upon the death of all animals covered by the terms of the trust. A settlor's expression of intent must be liberally construed in favor of the creation of such a trust.

2. Except as otherwise provided in this subsection, property of a trust described in subsection 1 may not be used in a manner inconsistent with its intended use. Except as otherwise directed by the terms of the trust, if a court determines that the value of a trust described in subsection 1 exceeds the amount required to care for the animal beneficiary, the excess amount must be distributed to the person who would have taken the trust property if the trust had terminated on the date of the distribution.

3. The intended use of a trust described in subsection 1 may be enforced by the trustee or, if a trustee was not designated, by a person appointed by the court to act as the trustee. A person having a demonstrated interest in the welfare of the animal beneficiary may petition the court for an order to appoint himself as trustee or to remove the trustee. The court shall give preference for appointment to a person who demonstrates such an interest.

(Added to NRS by 2001, 958)

### New Hampshire

### **564-B:4-408 Trust for Care of Animal. –**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Source. 2004, 130:1, eff. Oct. 1, 2004.

### **New Jersey**

#### **3B:11-38. Trust funds for pets recognized as valid**

1. a. A trust for the care of a domesticated animal is valid. The intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument, a person appointed by the court, or a trustee. The trust shall terminate when no living animal is covered by the trust, or at the end of 21 years, whichever occurs earlier.

b. Except as expressly provided otherwise in the trust instrument, no portion of the trust's principal or income may be converted to the use of the trustee or to any use other than for the benefit of the animal designated in the trust.

c. Upon termination of the trust, the trustee shall transfer the unexpended trust property as directed in the trust instrument. If no directions for such transfer exist, the property shall pass to the estate of the creator of the trust.

d. The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of any reduction shall be transferred as directed in the trust instrument or, if no such directions are contained in the trust instrument, to the estate of the creator of the trust.

e. If no trustee is designated or if no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the creator of the trust and the purpose of this act.

L.2001,c.144.

### **New Mexico**

#### **45-2-907. Honorary trusts; trusts for pets.**

A. Subject to Subsection C of this section, if (i) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and (ii) there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for twenty-one years but no longer, whether or not the terms of the trust contemplate a longer duration.

B. Subject to this subsection and Subsection C of this section, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. In addition to the provisions of Subsection A or B of this section, a trust covered by either of those subsections is subject to the following provisions:

- (1) 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 trust's purposes or for the benefit of a covered animal;
- (2) upon termination, the trustee shall transfer the unexpended trust property in the following order:
  - (a) as directed in the trust instrument;
  - (b) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and
  - (c) if no taker is produced by the application of Subparagraph (a) or (b), to the transferor's heirs under the provisions of Section 45-2-711 NMSA 1978;
- (3) for the purposes of Section 45-2-707 NMSA 1978, the residuary clause is treated as creating a future interest under the terms of a trust;
- (4) the intended use of the principal or income can 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;
- (5) except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee;
- (6) a court may reduce the amount of the property transferred, if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under the provisions of Paragraph (2) of Subsection C of this section; and
- (7) if no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

### New York

#### **Est. Pow. & Trst. § 7-8.1 Honorary 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 covered animal.

(c) Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such directions in the trust instrument, the property shall pass to the estate of the grantor.

(d) A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property pursuant to paragraph (c) of this section.

(e) If no trustee is designated or no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

### North Carolina

#### **§ 36C-4-408. Trust for care of animal.**

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(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 the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust instrument.

(2) If the trust was created in a preresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.

(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the settlor, if then living, otherwise to the settlor's heirs determined as of the date of the settlor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the trust upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the settlor. Extrinsic evidence is admissible in determining the settlor's intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the settlor and the purpose of this section. (1995, c. 225, s. 1; 2005-192, s. 2; 2006-259, s. 13(b).)

### North Dakota

#### **59-12-08. (408) Trust for care of animal.**

1. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

### Ohio

#### **5804.08 Trust to provide for care of animal.**

- (A) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
- (B) A person appointed in the terms of a trust or, if no person is so appointed, a person appointed by the court may enforce a trust authorized by this section. A person having an interest in the welfare of an animal that is provided care by a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed.
- (C) The property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor if then living or to the settlor's successors in interest.

Effective Date: 01-01-2007

### Oregon

**130.185 UTC 408. Pet trust.** (1) A trust may be created to provide for the care of one or more animals that are alive during the settlor's lifetime. The trust terminates upon the

death of the animal or, if the trust was created to provide for the care of more than one animal, upon the death of the last surviving animal. An oral or written declaration shall be liberally construed in favor of finding the creation of a trust under this section. There is a presumption against merely precatory or honorary disposition on behalf of an animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

(3) Property of a trust authorized by this section may be applied only to its intended use. Upon termination of the trust, property of the trust must be distributed to those persons designated in the trust. In the absence of a designation, the property shall be distributed to the settlor if the settlor is living when the distribution is made, or to the settlor's successors in interest if the settlor is not living when the distribution is made.

(4) Except as ordered by a circuit court or required by the trust instrument, a trustee for a trust authorized under this section need not pay any fee or make any filing, report, registration, periodic accounting, separate maintenance of funds or appointment by reason of the existence of the fiduciary relationship of the trustee. A person appointed to enforce the trust may request a report under ORS 130.710 (3). [2005 c.348 §28]

### Pennsylvania

#### **§ 7738. Trust for care of animal - UTC 408**

(a) Creation and termination.--A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) Enforcement.--A trust authorized by this section may be enforced by a person appointed in the trust instrument or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Limitation.--Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the trust instrument, property not required for the intended use must be distributed to the settlor if then living, otherwise to the settlor's successors in interest.

CREDIT(S) 2006, July 7, P.L. 625, No. 98, § 9, effective in 120 days [Nov. 6, 2006].

### Rhode island

**§ 4-23-1 Trust for care of animals.** – (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal, or if the trust was created to provided for the care of more than one animal alive during the settlor's lifetime upon the death of the last surviving animal.

(b) Except as provided in this section, the provisions of the general laws which govern the creation and administration of express trusts applies to the trust for the care of an animal.

(c) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove the appointed person. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents.

(d) Property of a trust appointed by this person may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use, including the trust property remaining upon its termination, shall be distributed in the following order of priority:

- (1) As directed by the terms of the trust;
- (2) To the settlor, if then living;
- (3) Pursuant to the residuary clause of the settlor's will;
- (4) To the settlor's heirs in accordance with the Rhode Island general laws on descent and distribution.

(e) A governing instrument shall be liberally construed in order to presume against the merely precatory or honorary nature of the disposition and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(f) If a trustee is not designated or designated trustee is not willing or able to serve, the probate court shall name a trustee; a court may order the transfer of the property to another trustee, if the court makes a factual finding that it is necessary to assure the intended use is carried out and if a successor trustee is not designated in the trust instrument or if a designated trustee does not agree to serve or is unable to serve.

### South Carolina

#### **SECTION 62-7-408. Trust for care of animal.**

(a) A trust may be created to provide for the care of an animal or animals alive or in gestation during the settlor's lifetime, whether or not alive at the time the trust is created. The trust terminates upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person concerned for the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

### South Dakota

**55-1-21. Trust for care of designated animal.** Subject to the provisions of § 55-1-22, a trust for the care of a designated animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary

nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

Source: SL 2006, ch 247, § 2.

### Tennessee (Sec 35-15-408)

#### **35-15-408. Trust for care of animal. —**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor's lifetime, upon the death of the last surviving animal. The trust may not be enforced for more than ninety (90) years.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

[Acts 2004, ch. 537, § 30; 2007, ch. 24, § 13.]

### Texas

Property Code. Title 9. Trusts. Subtitle B. Texas Trust Code: Creation, Operation, and Termination of Trusts. Chapter 112. Creation, Validity, Modification, and Termination of Trusts.

**Sec. 112.037. TRUST FOR CARE OF ANIMAL.** (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust is created to provide for the care of more than one animal alive during the settlor's lifetime, on the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of an animal that is the subject of a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed to enforce the trust.

(c) Except as provided by Subsections (d) and (e), property of a trust authorized by this section may be applied only to the property's intended use under the trust.

(d) Property of a trust authorized by this section may be applied to a use other than the property's intended use under the trust to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.

(e) Except as otherwise provided by the terms of the trust, property not required for the trust's intended use must be distributed to:

(1) if the settlor is living at the time the trust property is distributed, the settlor; or

(2) if the settlor is not living at the time the trust property is distributed:

(A) if the settlor has a will, beneficiaries under the settlor's will; or

(B) in the absence of an effective provision in a will, the settlor's heirs.

(f) For purposes of Section 112.036, the lives in being used to determine the maximum duration of a trust authorized by this section are:

- (1) the individual beneficiaries of the trust;
- (2) the individuals named in the instrument creating the trust; and
- (3) if the settlor or settlors are living at the time the trust becomes irrevocable, the settlor or settlors of the trust or, if the settlor or settlors are not living at the time the trust becomes irrevocable, the individuals who would inherit the settlor or settlors' property under the law of this state had the settlor or settlors died intestate at the time the trust becomes irrevocable.

Added by Acts 2005, 79th Leg., Ch. 148, Sec. 6, eff. January 1, 2006.

### **Utah (Sec 75-2-1001)**

#### **75-2-1001. Honorary trusts -- Trusts for pets.**

(1) Subject to Subsection (3), if a trust is for a specific lawful noncharitable purpose or for a lawful noncharitable purpose to be selected by the trustee and there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years but no longer whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this Subsection (2) and Subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of Subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) 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 trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

- (i) as directed in the trust instrument;
- (ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and
- (iii) if no taker is produced by the application of Subsection (3)(b)(i) or (ii), to the transferor's heirs under Section 75-2-711.

(c) For the purposes of Section 75-2-707, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income can 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.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A court may reduce the amount of the property transferred, if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under Subsection (3)(b).

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section.

Amended by Chapter 131, 2003 General Session

### Vermont

No. 20. An act relating to the administration of trusts.

(S.86) Approved: May 14, 2009

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. Title 14A is added to read:

TITLE 14A. TRUST

#### **§ 408. TRUST FOR CARE OF ANIMAL**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court. A person having an interest in the welfare of the animal may request the probate court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

### Virginia

#### **§ 55-544.08. Trust for care of animal.**

A. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal. Funds from the trust may be applied to any outstanding expenses of the trust and for burial or other postdeath expenditures for animal beneficiaries as provided for in the instrument creating the trust.

B. The instrument creating the trust shall be liberally construed to bring the transfer within the scope of trusts governed by this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person

having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

D. Except as ordered by a court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or surety bond shall be required by reason of the existence of the fiduciary relationship of the trustee.

E. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living. If the settlor is deceased, such property shall be distributed pursuant to the residuary clause of the settlor's will if the trust for the animal was created in a preresiduary clause in the will or pursuant to the residuary provisions of the inter vivos trust if the trust for the animal was created in a preresiduary clause in the trust instrument; otherwise, such property shall be distributed to the settlor's successors in interest. (2005, c. 935; 2006, c. 666.)

## Washington

### **WA ST 11.118.005 - WA ST 11.118.110**

#### 11.118.005 Purpose — Intent.

The purpose of this chapter is to recognize and validate certain trusts that are established for the benefit of animals. Under the common law such trusts were unenforceable at law. The legislature intends that such trusts be recognized as valid, and that such trusts be enforceable in accordance with their terms.

[2001 c 327 § 1.]

#### 11.118.010 Definition.

As used in this chapter, "animal" means a nonhuman animal with vertebrae.

[2001 c 327 § 2.]

#### 11.118.020 Validity of animal trust.

A trust for the care of one or more animals is valid. The animals that are to be benefited by the trust may be individually identified, or may be identified in such other manner that they can be readily identified. Unless otherwise provided in the trust instrument or in this chapter, the trust will terminate when no animal that is designated as a beneficiary of the trust remains living.

[2001 c 327 § 3.]

#### 11.118.030 Use of trust principal or income.

Except as expressly provided otherwise in the trust instrument or in RCW 11.118.070, and except as may be necessary to pay the trustee reasonable compensation and to reimburse the trustee for reasonable costs incurred on behalf of the trust, no portion of the

principal or income of the trust may be converted to the use of the trustee or to any use other than for the trust's purpose or for the benefit of the designated animal or animals. [2001 c 327 § 4.]

#### 11.118.040 Termination of trust.

Upon termination of the trust, the trustee shall transfer the unexpended trust property in the following order:

- (1) As directed in the instrument;
- (2) If the trust was created in a nonresiduary clause in the trustor's will or in a codicil to the trustor's will and the will or codicil does not direct otherwise, under the residuary clause in the trustor's will, which shall be read as though the testator died on the date the trust terminated; and
- (3) If no taker is produced by the application of subsection (1) or (2) of this section, to the trustor's heirs under RCW 11.04.015, as it exists at the time of the trust's termination. [2001 c 327 § 5.]

#### 11.118.050 Enforcement of trust provisions.

The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust. [2001 c 327 § 6.]

#### 11.118.060 Accounting requirements.

Except as ordered by the court or required by the trust instrument, no filing, report, registration, or periodic accounting shall be required of the trust or the trustee. [2001 c 327 § 7.]

#### 11.118.070 Appointment and removal of trustee.

If no trustee is designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the removal of an acting trustee and the transfer of the property to another trustee if it is necessary or appropriate in order to assure that the intended use is carried out. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the trustor and the purpose of this chapter. [2001 c 327 § 8.]

#### 11.118.080 Construction of trust language.

In construing the language of a trust for an animal, the governing instrument shall be liberally construed to provide the protections of this chapter. It is presumed that language contained in a trust for an animal is not merely precatory or honorary in nature unless it can be shown by clear and cogent evidence that such was the trustor's intent. Extrinsic evidence is admissible in determining the trustor's intent. [2001 c 327 § 9.]

11.118.090 Application of rule against perpetuities — Effective date of trust.  
RCW 11.98.130 through 11.98.160 apply to trusts that are subject to this chapter.  
[2001 c 327 § 11.]

11.118.100 Trustee powers.  
Except as otherwise provided in the trust instrument or in this chapter, all powers and duties conferred on a trustee under Washington law also apply to the trustee of a trust for animals.  
[2001 c 327 § 12.]

11.118.110 Application of chapter.  
This chapter applies to trusts that are created on or after July 22, 2001, and to trusts that are in existence on July 22, 2001, but that are revocable by the trustor on July 22, 2001. If a trustor is incompetent to exercise a power of revocation on July 22, 2001, this chapter does not apply to such trust unless the trustor later becomes competent to exercise such power of revocation, in which case this chapter applies to such trust.  
[2001 c 327 § 13.]

## Wisconsin

### **701.11 Honorary trusts; cemetery trusts.**

701.11(1)

(1) Except under sub. (2), where the owner of property makes a testamentary transfer in trust for a specific noncharitable purpose, and there is no definite or definitely ascertainable human beneficiary designated, no enforceable trust is created; but the transferee has power to apply the property to the designated purpose, unless the purpose is capricious. If the transferee refuses or neglects to apply the property to the designated purpose within a reasonable time and the transferor has not manifested an intention to make a beneficial gift to the transferee, a resulting trust arises in favor of the transferor's estate and the court is authorized to order the transferee to retransfer the property.

701.11(2)

(2) A trust may be created for maintaining, keeping in repair and preserving any grave, tomb, monument, gravestone or any cemetery. Any cemetery company, association or corporation may receive property in trust for any of those purposes and apply the income from the trust to the purpose stated in the creating instrument.

701.11(3)(a)

(a) A trust described in sub. (2) is invalid to the extent it was created for a capricious purpose or the purpose becomes capricious.

701.11(3)(b)

(b) If the assets of any trust described in sub. (2) are valued at less than \$5,000 and the court finds that the cost of operating the trust will probably defeat the intent of the settlor or if the trustee, including a cemetery company, association or corporation, named in the creating instrument is improperly described, the court may order distribution of the assets on terms which will as nearly as possible carry out the settlor's intention.

701.11 - ANNOT. History: 1989 a. 307.

## Wyoming

**4-10-409. Trust for care of animal.**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust, trust advisor, trust protector or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

**States without Pet Trust Statutes**

Georgia

Kentucky

Louisiana

Massachusetts

Mississippi

Oklahoma

West Virginia