Planning for Unique, Illiquid, Illegal and Unusual Assets: Good Grief, Grandma’s Got a Gun Collection! (Part 1)

Wendy S. Goffe

I. Introduction

This outline examines a few unusual and highly regulated assets that an estate planner may encounter from time to time, often after the client has died. These include aircraft, wine, guns, and cannabis. While the rules with respect to handling these assets can vary widely from state to state, this outline is intended to provide a broad overview. Because the purpose trust—a trust that exists to carry out a specific purpose rather than for the benefit of a particular individual or group of individuals—is an often used planning tool in the context of unusual assets, this outline will begin with a brief discussion of this type of trust.

II. Purpose Trusts

A. Background

A purpose trust exists to carry out a specific objective rather than for the benefit of individual beneficiaries. Examples include trusts for a non-charitable purpose—most frequently for the care of pets, or the ownership of regulated assets such as firearms and aircraft—and trusts for charitable purposes—notably, private foundations organized as trusts and charitable land banks.

A charitable purpose trust breaches a number of basic tenets of traditional trust law. First, it violates the rule against perpetuities because it lacks a measuring life. Next, it has no ascertainable ben-
eficiary whose identity can be established (although individuals may benefit through scholarships or grants). Finally, it lacks someone with standing to enforce it.

The Uniform Trust Code (UTC) and the Uniform Probate Code (UPC) specifically permit purpose trusts. UTC section 409, adopted in Washington as RCW 11.98.015, permits the creation of “[a] trust . . . for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.” While a purpose trust may be used to maintain a cemetery plot, it may not be used to maintain human remains.

Before purpose trusts were legally recognized, courts considered them honorary trusts, which were unenforceable if the named trustee failed to carry out the specified purpose. However, the residuary beneficiaries could sue to terminate the trust.

Several countries have enacted legislation specifically to promote the use of non-charitable purpose trusts and serve as non-charitable purpose trust havens. In 2008, Delaware enacted legislation to treat non-charitable and charitable purpose trusts as equivalent entities, except with respect to their federal tax consequences.

B. Taxation of Purpose Trusts

Because a purpose trust lacks an individual beneficiary, the federal tax consequences are complex and not clearly defined. Typically, the Internal Revenue Code (Code) would allow a deduction to the trust for distributions to an individual beneficiary carrying out income and require the beneficiary recipient to pay income tax on that distribution. Different rules apply, however, when the

---


2 See Alexander A. Bove Jr., The Purpose of Purpose Trusts, 18 Prob. & Prop. 34 (May/June 2004). The law permits charitable purpose trusts because the attorney general of the applicable jurisdiction has the authority to enforce their terms. See Restatement (Second) of Trusts §348 (1959) (defining a charitable trust as “a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose”); see generally Joshua C. Tate, Should Charitable Trust Enforcement Rights Be Assignable?, 85 Chi.-Kent L. Rev. 1045 (2010) (providing a history of the charitable purpose trust and the inherent challenges of enforcement of its purpose).


4 The right to human remains is limited to possession for the purpose of burial or other lawful disposition, which is not a property right. Wilson v. Wilson, 138 So. 3d 1176 (Fla. Dist. Ct. App. 2014).


6 See Bove Jr., supra note 2, at 34; Alexander A. Bove, Jr., Rise of the Purpose Trust, 144 Tr. & Est. 18, 22 (Aug. 2005).

7 See Hirsch, supra note 5, at 14.


9 See I.R.C. §§651, 661.
beneficiary is not a person, as defined by Code §7701(a), and thus not a taxpayer, but instead is a family cabin or a pet.

A purpose trust may be taxed as a grantor trust or a non-grantor trust, depending upon its drafting. If the purpose trust is a grantor trust, the taxation is relatively straightforward. All incidents of taxation pass through to the grantor. However, if the gift to the grantor trust was incomplete at funding, then, as funds are distributed, the grantor will be deemed to have made taxable gifts that are ineligible for annual exclusion treatment. When the gift to the trust was incomplete and a distribution is made to an entity, there is a look-through to the shareholders or owners, who are considered the recipients of the gifts in proportion to their interests.

On the other hand, a non-grantor trust typically creates a tax liability for its beneficiaries to the extent of distributions received. “If the trust is a non-grantor trust and the funding of the trust was a completed gift, no additional gifts would result when trust distributions are made in furtherance of [its] purpose.” However, if an entity receives a distribution, the entity would pay income tax, and the trust would be able to take a distribution deduction.

If the recipient is not an individual or an entity, income tax may be payable by “U.S. persons connected with or benefiting from the object or purpose of the trust.” In other words, although a distribution to a caretaker for the family cabin or the family pet would be treated as taxable income to the caretaker and entitle the trust to a distribution deduction, no authority clearly validates this position. Another approach would be to have the trustee pay the tax without taking a deduction for distributions.

Distributions may also be subject to generation-skipping transfer (GST) tax. If the purpose trust has no individual beneficiaries, a distribution should have no GST tax consequences because it has no skip-person. On the other hand, if the trust’s purpose permits distributions to or for the benefit of a non-charitable entity, distributions may be treated as if passed through to individuals. For example, if the purpose is to maintain a family corporation, distributions from the trust would

---

10 See Treas. Reg. §25.2511-1(c)(1); see also I.R.C. §2501.
12 Bove Jr., supra note 6, at 24.
13 Id. at 24–25.
14 Id.
15 Id.
16 Note, however, in CCA 201016073, it was noted that a trustee could choose not to take a distribution deduction under I.R.C. §661 and instead pay the tax on the income at the trust level. However, it was also stated that whether or not the deduction was taken under I.R.C. §661 would not affect whether or not the beneficiary had income under I.R.C. §662. It is not clear whether this would apply to purpose trusts.
17 See Bove Jr., supra note 2, at 37.
18 See I.R.C. §2613(a).
be deemed to be for the benefit of the corporation’s shareholders. Accordingly, if a distribution is attributable to a shareholder who is a skip-person, it could be construed as a taxable distribution for GST tax purposes.

With this background in mind, the following is a discussion concerning planning with highly regulated assets where purpose trusts can be useful, followed by a discussion concerning cannabis where it intersects with the estate plan and probate.

III. Pet Trusts

A. Pet Trusts Historically

Historically, gifts in trust for pets failed because, among other reasons, the gifts, which had no human measuring life, violated the rule against perpetuities. Attempts to circumvent this problem by creating honorary trusts also failed because they lacked a human or legal entity with standing to enforce the trust as a beneficiary. Honorary trusts created great uncertainty for the grantor, who had no assurances that the trust corpus would be used for the trust’s intended purpose, because the terms of the gift were predatory in nature and unenforceable.

In 1990, the National Conference of Commissioners on Uniform State Laws (NCCUSL) recognized the importance of pets and the need to have some confidence that pet owners’ intent would be carried out with respect to the care of their pets. As a result, the Commissioners amended the UPC to validate a “trust for the care of a designated domestic or pet animal.” The original amendment allowed the trust to last for a period of 21 years. That limitation was modified in 1993 to allow adopting states to add a different duration.

19 Id. §2651(0)(2).
20 Id. §2612(b); see also Treas. Reg. §25.2511-1(h)(1).
21 See, e.g., Restatement (Second) of Trusts §112 (1959) (“A trust is not created unless there is a beneficiary who is definitely ascertained at the time of the creation of the trust or definitely ascertainable within the period of the rule against perpetuities.”); Beyer & Wilkerson, supra note 8, at 1221–25 (discussing the history of the pet trust); see also Gerry W. Beyer, Pets Trusts: Fido with a Fortune? (Dec. 6, 2009), Trusts and Estates Law Section, New York State Bar Association Annual Meeting, January 2010, Texas Tech Law School Research Paper No. 2010-22, available at http://ssrn.com/abstract=1519123 (last visited Mar. 29, 2016) (setting forth a comprehensive set of forms, links to all pet trust statutes, and a frequently asked questions section that can be used as a client handout).
22 See Beyer & Wilkerson, supra note 8, at 1222.
24 See Beyer & Wilkerson, supra note 8, at 1222–23.
25 Id.
In 2000, the NCCUSL amended the UTC to add section 408, which specifically allows trusts for animals. Section 408 limits the purpose of a pet trust to care for animals alive during the grantor or testator’s lifetime. Additionally, the UTC allows for the appointment of a third party (either a trust protector appointed in the instrument or a guardian ad litem appointed by the court) to enforce the terms of the trust. The UTC also addresses the problem of excess funds. If the court determines that the trust property exceeds the amount needed for the intended purpose and that the terms of the trust do not direct the disposition, any excess funds must be held for the benefit of the grantor or the grantor’s successors in interest.

The UTC and the UPC contain default provisions that, depending upon how a particular state adopts them, govern the administration of a pet trust absent specific requirements in the governing instrument.

**B. Pet Trusts Generally**

To date, over 45 states and the District of Columbia have adopted some form of pet trust legislation. In some states, this provision applies only to a specific pet. In others, it applies to descendants as well.

For example, Washington’s Pet Trust Act (WPTA) was passed in 2001 and permits trusts created for the benefit of non-human vertebrate animals. WPTA provides that, unless otherwise stated in the trust document, the trust will terminate upon the death of all animals designated as beneficiaries of the trust. Disposal of the remaining trust property occurs either as a part of the testator’s residuary estate, if the trust constituted a pre-residuary bequest under a will, or if the trust itself consisted of the residuary estate, to the grantor’s then-living heirs. WPTA permits a person named in the trust instrument, a person appointed by the court, or the person with custody of the animal to enforce the trust for the benefit of the animal beneficiary.

The IRS has ruled that if a pet trust is valid under applicable state law, then pursuant to Code

---

27 Id. §408(b).
28 Id. §408(c).
30 Id.
31 Id.
32 Id.
33 See RCW 11.118.005–.010.
34 RCW 11.118.040.
35 RCW 11.118.050.
§641, the income of such trust would be taxable under section 1(d). As a result, the Service treats income distributed to a caretaker for the care of a pet as the caretaker’s taxable income to the extent of distributable net income. Some practitioners have advocated for the trust to pay the income tax, and others advise trustees to gross up distributions to the caretaker to defray the tax consequence of having to include the distribution in taxable income.

C. Drafting Tips

The following are a few pet trust drafting recommendations:

1. Beneficiary of Trust. If substantial sums or valuable animals are involved, specifically identifying the animal that the trust is to benefit is important to avoid the possibility of a different pet benefiting from the trust. A grantor can use photos and a description of unique characteristics, veterinary records, a tattoo, a microchip, or DNA testing to provide sufficient identification.

2. Trustee, Representative Payee, and Caretaker of the Pet. The grantor may want to bifurcate duties, naming a trustee to manage funds and a caretaker to take possession of the pet. In some instances (such as a prize racehorse with extraordinary expenses), the trust will name a third party as representative payee to receive distributions on behalf of the pet and make disbursements, except for distributions made directly to the caretaker for out-of-pocket expenses or compensation. In other cases, one named individual will fill all three roles. If substantial funds are involved, multiple individuals should divide the labor and allow for a system of checks and balances. In that case, a mechanism for distributions to the caretaker and representative payee should be provided.

3. Fiduciaries and Successors. In addition to naming initial fiduciaries and successors, the trust agreement might place certain conditions on their appointment. For example, the agreement could instruct the personal representative to deliver the animal into the caretaker’s possession only after obtaining a written promise from the caretaker to provide proper care and an agreement to relinquish the animal to a successor if that promise is not met. The agreement should also name a sanctuary or shelter of last resort in the event that the pet outlives the caretakers or none of the caretakers are able to serve.

4. Distributions for Proper Care and Reasonable Expenses. The trust agreement should define what proper care means. Proper care could include hiring a full-time caretaker for certain animals, such as farm animals, race horses, and other large or valuable animals. Reasonable expenses

---

37 See Beyer & Wilkerson, supra note 8, at 1229.
38 Id.
41 Id.
could include food, housing, veterinary and dental care, toys, exercise routines, grooming, compensation for individuals involved in caring for the pet (including walkers), travel, and burial or cremation fees. If acupuncture, aromatherapy, massage, and other unusual expenses are regularly incurred and expected to continue, the agreement should describe them in detail.

5. Liability Insurance. The trust agreement may permit the purchase of property and casualty insurance to protect the fiduciaries for damage that the pet may cause to property or individuals.

6. Trust Protector. The grantor should consider a trust protector or a mechanism for the appointment of one. The trust agreement could give a trust protector the power to remove and replace fiduciaries, periodically check on the animal, consult with the pet’s health care providers, and review trust financial records. The trust protector might also have the authority to locate an appropriate animal sanctuary if no suitable caretaker can be found. In the absence of a trust protector, both the UPC and the UTC allow for court-appointed oversight of a trust.

7. Termination of Trust. If permitted under applicable state law, the trust agreement should specify whether the trust will terminate upon the death of the named animals or their offspring. Often, one or more charities may be named. Note, however, that the Service has stated that an otherwise qualified charitable remainder trust for the lifetime of a pet would not qualify as a charitable deduction for the value of the remainder passing to charity.

8. Reimbursement for Taxes. If the caretaker or representative payee will be subject to additional income taxes as a result of trust distributions, the agreement should specify whether distributions should be grossed up to account for that additional tax liability.

9. Special Needs of Particular Animals. While typically considered in connection with domesticated cats and dogs, pet trusts may also be used for the care of more demanding animals, such as horses. Horses live longer than a house pet, and have more complex and expensive needs. In addition to the drafting suggestions above, provisions should be made for the services of a farrier, trainer, stable manager, and all of the other specialists who typically work with the type of horse involved.

Attached as Exhibit A is a form of Pet Trust to be adapted based on applicable state law.

IV. Gun Trusts

When an estate includes firearms, the personal representative must be careful to avoid violating federal,

---

42 Id.
43 See Casteel, supra note 39, at 10.
state, and local firearms laws. Federal law prohibits possession of and access to certain weapons, regulates the transfer of permissible weapons, and bars certain persons from owning or having access to firearms. Failure to comply with these laws may result in criminal liability, including stiff punishments and fines and forfeiture of any weapons involved.⁴⁶

A. Regulatory Scheme

First, an understanding of the basic regulatory scheme under federal and state law is helpful. Federal firearms laws, codified under the Gun Control Act of 1968 (GCA) categorizes weapons as either Title I firearms or Title II firearms. Title I of the GCA, 18 U.S.C. ch. 44, generally regulates the interstate disposition of rifles, shotguns, and handguns, the vast majority of guns privately owned in the United States.⁴⁷ State law generally regulates the intrastate transfer of Title I firearms.⁴⁸

The National Firearms Act of 1934 (NFA), 26 U.S.C. ch. 53, regulates Title II firearms (also referred to as NFA weapons), which include automatic firearms (machine guns), silencers, short or short-barreled (that is, sawed-off) shotguns, short or short-barreled rifles, destructive devices (such as missile bearing rockets, grenades, and bombs), and “any other weapon.”⁴⁹

The NFA Branch of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) administers the National Firearms Registration and Transfer Record (NFA Registry).⁵⁰ The transfer or possession of an unregistered Title II weapon is a criminal act covered by Code §5861(e).

Under the NFA, Title II weapons are subject to strict registration, transfer, and tax requirements.⁵¹ It is illegal for any person to possess an NFA weapon that is not registered to that person in the NFA Registry.⁵²

⁴⁶ See I.R.C. §5872; 27 C.F.R. §479.182.
⁴⁸ I-594, in Washington State, institutes background checks and certain additional notification requirements, for the possession and transfer of firearms by fiduciaries and their transferees. RCW 9.41.113. I-594 exempts the transferee (presumably a personal representative or trustee) of “a firearm other than a pistol” from its provisions where the firearm was acquired by operation of law upon the death of the former owner. RCW 9.41.113(4)(g) (emphasis added). The transferee who acquires a pistol upon the death of the former owner, however, must either lawfully transfer it (i.e., through a Federal Firearm Licensee), or notify the Department of Licensing that “he or she is in possession of the pistol and intends to retain possession of the pistol, in compliance with all federal and state laws.” So, in theory, a fiduciary can transfer a long gun without having to notify the Department of Licensing, but not so a pistol (unless the transferee takes it to a Federal Firearm Licensee to effect a transfer).
⁴⁹ See I.R.C. §5845(a)–(h); 27 C.F.R. §479.11. The definition of “any other weapon” includes smooth-bore rifles, muzzle-loading cannons, and other somewhat exotic firearms.
⁵¹ See I.R.C. §5861(d) (requiring the registration of certain particularly dangerous weapons under the NFA); see also id. §5845(a) (listing those weapons that require registration under title 18, section 5861(d) of the U.S. Code).
B. Transfer of an NFA Firearm

Transferring an NFA weapon without complying with several NFA transfer rules or possessing such a weapon is also illegal. For example, when an individual transfers or purchases an NFA weapon, the Chief Law Enforcement Officer (CLEO) of the city or county where the individual resides must sign a document called a Form 4, Application for Transfer and Registration of Firearm. Title II has a broad definition of transfer. Under the law, transfer “include[s] selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of” an NFA weapon.

Any transfer is also subject to a transfer tax, and the transferor must submit and attach to the form a photo of the transferee, as well as the transferee’s fingerprints in duplicate. A Form 4 is also required for the transfer to a trust, but the form does not require fingerprints or a photo. The transfer by a fiduciary requires the filing of Form 5, Application for Tax Exempt Transfer and Registration of a Firearm.

Finally, under federal law certain persons cannot possess or receive any firearms (whether Title I or Title II). These excluded individuals include convicted felons, persons either adjudicated a “mental defective” or committed to a mental institution, and persons convicted of misdemeanor domestic violence offenses. However, the list also includes categories that may not be so self-evident, including users of any illegal drug, dishonorably discharged veterans, and persons who have renounced their U.S. citizenship. This raises the question of what happens to your client’s firearm, originally possessed lawfully, if he later becomes an excluded individual.

In a May 2015 decision, the Supreme Court unanimously held that while a convicted felon is prohibited from possessing a firearm, nothing strips the individual of his property interest in the firearm, and thus he retains the right to sell or otherwise dispose of it. In addition, the Court held that 18 U.S.C. §922(g) does not bar such a transfer if the court is satisfied that the recipient will not give the felon control over the firearm, so that he could either use it or direct its use.

---

53 See I.R.C. §5861(e).
54 Id. §5861(b).
55 Id. §5812; 27 C.F.R. §479.84–.85 (2011).
56 I.R.C. §5845(j).
57 See 27 C.F.R. §479.85.
58 Note, however, the Department of Justice has amended the applicable regulations, effective June 13, 2016, discussed below.
60 Id. §922(g).
61 Id. §922(g)(3), (6)–(7); see also Nathan G. Rawling, A Testamentary Gift of Felony: Avoiding Criminal Penalties from Estate Firearms, 23 Quinnipiac Prob. L.J. 286 (2010) (discussing who may possess firearms, the various restrictions on transfer, and penalties for impermissible transfers).
63 Id.
other words, the felon will not need to turn over his firearms to law enforcement; instead he may
dispose of it by giving it to a friend or family member (a provision that could be inserted into a
trust, discussed below).

C. Fiduciaries and Firearms

Fiduciaries need to determine the registration status of firearms coming into their possession. Ret-
roactive registration may not be an option, putting the fiduciary in the position of having to turn
over an unregistered weapon to law enforcement. Transfers of firearms to satisfy bequests could
subject the executor, the heir, or both to criminal penalties. Life gets worse for both the execu-
tor and heir if the executor unlawfully transfers an NFA weapon to an out-of-state heir. Federal
law makes it unlawful for certain categories of persons to ship, transport, receive, or possess Title
II firearms. These categories include convicted felons, wanted fugitives, users of illegal controlled
substances, individuals adjudicated as mentally defective or those committed to any mental in-
stitution, illegal aliens, those who have renounced U.S. citizenship, and individuals dishonorably
discharged from the military. Appraisals can also be tricky. Fiduciaries should only use appraisers
who are licensed to take possession of the weapons to be appraised. Appraisers are usually licensed
gun dealers. Before returning a weapon, an appraiser may ask the executor to confirm that the
executor is lawfully able to possess a firearm. If the executor is not, then the appraiser may not
return the weapon.

State and local laws also complicate an executor’s job. Several states have assault weapons bans
that make it illegal to own some Title I weapons (mostly certain semi-automatic rifles, pistols, and
shotguns) that would be legal to possess under federal law. States or localities might further regu-
late or prohibit ownership of NFA weapons. State law must be reviewed for proper compliance,
before transferring any weapon to another person.

Effective June 13, 2016, the Department of Justice has added a new section to 27 C.F.R. Part
479 to address the possession and transfer of NFA items registered to a decedent. The new sec-
tion clarifies that the executor, administrator, personal representative, or other person authorized
under state law to dispose of property in an estate may possess a firearm registered to a decedent
during the term of probate without such possession being treated as a “transfer” under the NFA.
It also specifies that the transfer of the firearm to any beneficiary of the estate may be made on a
tax-exempt basis.

While fiduciaries often obtain receipts when releasing an item to a beneficiary, the fiduciary may
want to consider adding special provisions such as the following, when a firearm is involved:

64 See 18 U.S.C. §922(d).
65 See I.R.C. §5861(b), (c).
66 18 U.S.C. §922(d), (g).
I certify that: I possess a valid, current [State] Weapons Carry License; I am legally entitled to receive, own, possess and use the Gun[s], under all applicable federal, state and local laws and regulations; I have no knowledge of, and I have never been informed of, any restrictions or prohibition on my right to receive, own, possess or use the Gun[s] or other such firearms; and I will fully comply with all federal, state and local laws and regulations regarding my ownership, possession and use of the Gun[s].

D. Gun Trusts

What can be done during estate planning to lower the risk of criminal violations? Individuals may purchase NFA weapons in, or transfer NFA weapons to, an entity, such as a corporation, limited liability company (LLC), or revocable trust, to avoid some of the rules that otherwise regulate such transfers. Individuals often opt for trusts because they avoid annual filing fees, public disclosure, or a separate tax return. A revocable trust designed specifically for the ownership, transfer, and possession of an NFA weapon may be known as a gun trust, NFA Trust, Firearm Trust, or Title II Trust. According to IRS Info. Ltr. 2015-0039 (Dec. 24, 2015), a gun trust is still considered a “trust” for tax purposes under Treas. Reg. §301.7701-4 even when there are no ascertainable beneficiaries.

Properly documented NFA items can be transported and shot by their registered owner. A carefully drafted gun trust can ease compliance by multiple owners with the NFA laws. As its name implies, a gun trust can be used as the owner of firearms. Each trust must be carefully drafted to account for the different types of firearms that it may hold. The trust can name numerous trustees, each of whom may lawfully own the weapon without triggering transfer requirements. Once a weapon becomes a trust asset, any beneficiary may use it (including a trustee, but only if named as a beneficiary and not solely in a trustee capacity). Conversely, if an individual owner allowed another individual owner subject to trustee approval to use an NFA weapon not held in a trust, that use could be considered an unlawful transfer subject to criminal penalties. The trust can name minor children as its beneficiaries, subject to any state mandated use restrictions, until they are old enough to possess the weapon outright. Moreover, the grantor can be a life beneficiary—although not the sole beneficiary (or the doctrine of merger will cause the trust to be disregarded).

The trust agreement can direct the disposition of NFA weapons in the event an owner becomes an excluded person by, for example, providing that upon a felony, the felon will lose all ability to have direct or indirect use of the weapons in the trust and that the weapons will pass outright or in trust to the contingent beneficiaries.

---

68 David Goldman, an attorney in Jacksonville, Florida is credited with drafting the first gun trust, which he refers to as an NFA firearms trust, in 2007. See Margaret Littman, In Goldman Guns Trust, 97 A.B.A. J. 12, 13 (Feb. 2011).

Gun trusts have been popular because of the ability to avoid certain federal laws. Federal law has not historically required the NFA trust to submit fingerprints or seek CLEO approval required for individual firearm purchases or transfers (state laws may differ). Instead, the federal government would verify and investigate the application.\textsuperscript{70}

Effective June 13, 2016, the Department of Justice has amended the regulations of the BATFE regarding the making or transferring of a firearm under the NFA.\textsuperscript{71} This final rule, referred to as “41F,” defines a new term, “responsible person,” to include a partnership, association, LLC, or corporation.\textsuperscript{72} It also requires each responsible person, in connection with a trust or legal entity holding an ATF firearm, to complete ATF Form 5320.23, entitled “Responsible Person Questionnaire” and to submit photographs and fingerprints when the trust or legal entity files an application to make an NFA firearm a trust asset. It also requires that a copy of all applications be forwarded to the CLEO of the locality in which the applicant/transferee or responsible person is located. But it eliminates the requirement for a certification signed by the CLEO. The purpose of the new form is to ensure that the purported responsible person is not in fact a “prohibited person” who may not possess an NFA firearm.

Any new responsible persons added to the trust must submit Form 5320.23. If a trust is executed and funded prior to the new rules coming into effect, new beneficiaries may be added without having to comply with the responsible person questionnaire filing requirement.

A thorough discussion concerning the unique provisions of an NFA gun trust is beyond the scope of this article, but the provisions are numerous and complex. A standard revocable trust form is wholly inadequate in this context. For example, the trust agreement should provide which trustees and beneficiaries can have access to firearms and ammunition, under what circumstances, and what happens if a trustee, successor trustee, or beneficiary becomes a “disqualified person.”

The trustee’s power to change the trust name should be limited. Because a firearm is registered in the trust’s name in the NFA Registry, a change in trust name would require re-registration of the firearms and payment of a transfer tax.

The risk created by 41F is that a successor trustee appointment becomes effective and the new trustee is not aware of the need to qualify as a responsible person, thus failing to comply with 41F. Similar situations could arise for beneficiaries or for people later appointed to a trust containing firearms subject to 41F. New trusts should also contain guidance and savings language with respect to “responsible persons,” to avoid non-compliance with 41F.


\textsuperscript{72} 27 C.F.R. §479.11.
While not a panacea, gun trusts are most effective with respect to NFA compliance. Persons who are not allowed to buy or own firearms cannot serve as trustees. The trust may not transfer a firearm to a person who may not lawfully buy or own firearms. The transfer of an NFA firearm into a trust or other entity will be subject to a transfer fee. Accordingly, a trustee often purchases NFA weapons directly to avoid the second transfer fee that would accrue if an individual purchaser purchased a weapon and then transferred it to the trust. In addition, while the transfer of an NFA weapon to an heir in satisfaction of a bequest is exempt from the transfer tax, the transfer of an NFA weapon to a gun trust is not.

Even with a gun trust, the trustee is responsible for determining the capacity of the beneficiary and the federal, state, and local laws that apply to the individual before allowing a beneficiary to use a trust weapon or distributing an NFA weapon to a beneficiary. Unlike a traditional revocable trust, which can be revoked at any time by the grantor, BATFE must approve termination of the gun trust and distribution of its assets to its beneficiaries, as it would any other transfer. Nor may a trustee or beneficiary transport any of the assets across state lines where registered, without prior BATFE approval.

Because each state has different laws and local ordinances regulating firearms, unlike revocable trusts used for general estate planning purposes, trusts used to hold NFA firearms are not necessarily portable.73

V. WINE

With the wine market exploding, nationally and internationally, it is not unusual for a fiduciary to come into the possession of a sizeable and valuable wine collection in an estate or trust. Ideally, this would not come as a surprise to the fiduciary or his counsel, because the estate planning attorney would have asked the clients at the planning stage whether their portfolio included unique assets that might require special care and/or a fiduciary with special knowledge. Often this is not the case.

It is important to keep in mind that wine is a regulated asset and, therefore, selling it is different from selling most other estate assets. The sale of wine in most states is subject to the three-tier system. This system is a byproduct of the Twenty-First Amendment of the U.S. Constitution. When first passed in 1933, it overturned the Eighteenth Amendment, which outlawed the manufacture, distribution, and sale of all types of alcoholic beverages in 1919 (with only a few exceptions regarding medicinal or religious uses).

As a result of the three-tier system, which is still in place in most states, retailers can only purchase alcohol from distributors, and distributors can only purchase from manufacturers or importers. The typical personal representative does not fit into any one of these categories and, therefore, must typically turn to someone who does.

A. Drafting for the Wine Collector

At the planning stage, a collector should consider special provisions in his or her estate planning documents for the distribution of wine—whether to distribute to individuals, give to charity, sell at an auction, or store long-term, for either sale or consumption, in which case a wine trust should be considered. As discussed below, maintaining the collection, which will involve inventories, appraisals, insurance, storage, and transportation, comes at a steep price. There is also the option of simply having it consumed by the collector’s loved ones at the funeral or memorial service. (Keep in mind that the value of the collection will still be included in the decedent’s gross estate for estate tax purposes.)

When handling an estate, one of the fiduciary’s first and most important jobs is to marshal the assets. This includes locating the wine collection. Often a fiduciary might use a personal property insurance rider as a guide to a client’s most valuable assets. These are often incomplete as to typical valuables such as art and jewelry, and rarely list fine wine. Therefore, a fiduciary is going to have to dig deeper, sometimes literally.

This might be an easy task for clients who have built sophisticated cellars to properly store and often display their prized wines. However, for most families, the wine is often located in basements so dusty and dirty that the identity of its contents can be obscured. On the other hand, the urban client might have what appears to be a small collection at home, but may have rented temperature controlled off-site storage for a collection, or at least for part of a collection that did not fit in the home storage. Moreover, the collector may also have placed orders for future distributions, even future releases, or may belong to a wine club that ships regularly. An older client may have decided to downsize a collection, and consigned bottles or cases to be sold. In other words, never assume that what you see is all there is. A thorough review of a collector’s records (i.e., letters, faxes, confirmation emails, invoices, canceled checks, credit card bills, etc.) by a fiduciary is necessary to locate all of the bottles, present and future.

B. Advising the Fiduciary

Like jewelry and artwork, the fiduciary has a duty to preserve and store a collection appropriately. If the fiduciary does not have experience with fine wine, he or she may need to be educated about the basics: store it on its side to avoid drying out the cork, do not store it on wood that emits fumes that could seep into the wine, and avoid sunlight, which degrades the wine over time. Storage should be not only humidity-and temperature-controlled (55°F is considered ideal by some), but secure. Stories abound of the fiduciary showing up with an appraiser to find that the collection
had already been consumed by thirsty heirs. If the temperature is maintained with a heating or cooling system, it should have a backup power supply. It should also be protected from flooding and moisture damage. If that is done with a sump pump, it too needs a backup power supply. And on and on.

A fiduciary should not put off having a collection inventoried, and under certain circumstances appraised. It is important to know the extent of the collection to determine whether it needs to be insured, or if the insurance in place is adequate.

If the estate is taxable for federal or state purposes, the fiduciary must ascertain the value of the collection at the time of the decedent’s death or as of six months after the decedent’s death, if the alternate valuation date is elected.74 The necessity for an appraisal arises where one bottle of wine may have a value of more than $3,000, or a collection in its entirety may have a value that totals more than $10,000.75

C. Estate Tax Issues

Wine is reported on Schedule F, “Other Miscellaneous Property Not Reportable Under Any Other Schedule,” of the estate tax return. Even if consumed at the funeral, it is considered an asset of the estate (although the value might be deducted as a funeral expense). Liquidity (no pun intended) is going to be an important concern for the fiduciary of an estate. It may be necessary to sell some of the wine to raise funds for taxes. So, the fiduciary will need to begin planning early for the payment of estate tax on the illiquid “liquid assets.” On the other hand, putting too much of one wine on the market at once may result in a blockage discount when it comes to pricing it, a concept borrowed from the securities market and now frequently used for the sale of large collections, such as art and wine.76 Many contributing factors enter into the blockage discount, somewhat based on a sense of supply and demand. In other cases, factors such as the quality of the wine, whether the bottle is in pristine condition, or its rarity may be considered.

If wine is to be distributed to an individual or charity, or auctioned off, the fiduciary should consider distribution as soon as feasible, to eliminate the risk of loss from theft or damage in the estate, and to reduce the expense of storage and insurance. In other circumstances, the decedent may not have left provisions in his or her estate plan for the distribution of the wine collection. Thus, a fiduciary may simply elect to sell the collection as part of settling the estate. Prior to selling, however, the fiduciary must consider federal and state alcohol distribution laws. Some states still maintain a three-tier system for distribution of alcohol, put in place following the end of prohibition. In these states, individuals may only buy from retailers, who may purchase from importers or manufactur-

74 Treas. Reg. §§20.2031-1(b), 2032-1(a).
75 Treas. Reg. §20.2031-6(b).
76 The IRS recognizes that the price may be depressed when multiple cases or bottles of the same wine are appraised or placed on the market. This is referred to as a blockage discount. Treas. Reg. §§20.2031-2(c), 25.2512-2(c).
ers. A few states allow direct sales to the consumer or have exceptions for brewpubs. And a few allow a one-time permit to sell from an estate. Otherwise, it is necessary to use an auction house to facilitate a sale.\textsuperscript{77}

To protect against blockage discounts and allow wine to be sold over an extended period of time, or simply to hold wine to be consumed by extended family members, wine could be left in trust.

D. Practice Tips

Purpose trusts should not be forgotten as a planning tool for a wine collection meant to be held long-term. When wine is left in trust, the fiduciary should waste no time in making arrangements for long-term storage. If collectors opt for a trust, they should also direct that sufficient funds be distributed to the trust to maintain the collection.

A wine trust is a good candidate for a trust protector. A trust should either name one or contain a mechanism for the appointment of one. The trust agreement could give a trust protector the power to remove and replace fiduciaries, periodically check on the wine, and review trust records, including records of sales, auction results, and consignment agreements. The trust should also contain a provision for termination—when the wine has been sold, drunk, or otherwise liquidated. Or, perhaps, when the inventory reaches a certain level, the remaining bottles could be donated to charity.

V. Aircraft

Aircraft ownership and registration is a technical area not typically familiar to the average estate planning attorney. The following is by no means a thorough examination of the laws applicable to aircraft owners. Rather, it outlines considerations for the attorney advising aircraft owners with respect to estate planning, and fiduciaries who find themselves in possession of aircraft. It is, as they say, just enough to make you dangerous. It should also cause sufficient fear to convince you to seek the help of an expert any time things with wings in an estate plan are involved.

Aircraft include airplanes, rotorcraft, gliders, and anything else that may become airborne and is required to be registered with the Federal Aviation Administration (FAA). Planning should also cover an interest in a fractional ownership program, hangar leases, long-term service contracts, expensive aviation equipment, and certain aircraft components and parts.

Because aircraft are generally deprecating assets and expensive to use and maintain, they are not ideal assets for lifetime gifting. However, they often show up on the inventory of a high-net-worth decedent’s

\textsuperscript{77} More and more places conduct wine auctions now—not just Christie’s. Beyond Christie’s, a fiduciary may also look to organizations such as New York-based Scarsdale, Zachy’s, winebid.com, winecommune.com or Chicago-based Hart Davis Hart to auction the estate’s wine collection.
estate. Because aircraft can be quite valuable, illiquid, and subject to multiple regulatory schemes, they can make an estate administrator’s job extremely complex.

Federal excise tax, as well as state sales and use tax, while not discussed in detail below, must also be addressed when advising clients regarding the purchase or lease of aircraft.

The FAA’s Aircraft Registration Branch regulates aircraft registration and transfers.

Like cars, weapons, and cannabis (in states where legal), aircraft are highly regulated. Aircraft owners must be registered with the FAA civil aircraft registry. Owners may include individuals and entities, including trusts. Where an owner is a non-U.S. citizen, specialized trusts or corporations are required. Failing to follow the strict regulations of the FAA can result in an invalid registration, leading to a cascade of further problems, including loss of insurance coverage.

A. Transfer of Ownership

Transfer of an aircraft is accomplished using FAA form “Aircraft Bill of Sale,” available online at http://www.faa.gov/documentLibrary/media/form/ac8050-2.pdf. Where an estate or trust is involved, additional rules apply. When a transfer is by an estate executor or administrator, a certified copy of Letters of Administration or Letters Testamentary must be included. Where no probate was conducted, an heir may submit an affidavit attesting to a lack of probate and legal entitlement to ownership. A trustee may transfer ownership by including a certified copy of the court order appointing the trustee or, if no court order is involved, a certified copy of the trust instrument.

B. Taxation Basics

Many states impose a personal property sale or use tax on transfers of aircraft, in addition to annual excise taxes. For example, information regarding registration and taxation of aircraft in Washington is found at http://www.wsdot.wa.gov/aviation/registration/register3steps.htm. Washington imposes an annual excise tax on any aircraft, with limited exceptions, used within the state.

If an aircraft is first delivered in a state without a sales tax, it still may be subject to use tax if later brought into a state that imposes one. If sales tax was previously paid, use tax may be imposed.

78 49 U.S.C. §44102; 14 C.F.R. §47.3. Documentation required for registration includes original signed documents filed with the FAA, a bill of sale transferring title (which reflects a complete chain of title from the last registered owner), and an Aircraft Registration Application (AC Form 8050-1, found at http://www.faa.gov/documentLibrary/media/Form/AC_8050-1_OMB_4-2017.pdf), which requires detailed information regarding the aircraft and the owner, and proof of citizenship of the individual owners or the underlying owners of an entity (for trusts, all trustees and beneficiaries must be U.S. citizens unless a “non-U.S. citizen trust” is used, in which the beneficiary is not a U.S. citizen but the trustee-owner is).

79 A good resource for taxes applicable to aircraft owners is maintained by the Aircraft Owners and Pilots Association (AOPA), available at http://www.aopa.org/Pilot-Resources/Aircraft-Ownership/The-Pilots-Guide-to-Taxes.aspx (last visited May 1, 2016).

80 RCW 82.48.020, 82.48.100 (exempt aircraft).
on the difference between the state’s sales or use tax and the tax paid to the state where the sale occurred. A fiduciary delivering aircraft to a beneficiary in another jurisdiction must keep these potential taxes in mind when completing the transfer.

Keep in mind that some states, like Washington, consider an aircraft owned by a non-resident to be based in-state if it has spent more than 90 days in the state during any 12-month period, subjecting the aircraft to use tax in that state.\textsuperscript{81} This is true even if the aircraft is legally based and pays tax in another state.

Most states consider transfers of aircraft to a revocable trust not to be a taxable event.\textsuperscript{82} Nevertheless, in some jurisdictions, taxes may be imposed when ownership is restructured and even when ownership of the aircraft is transferred to a trust simply for estate planning purposes.\textsuperscript{83} Moreover, some jurisdictions tax the transfer of a plane by a corporation or partnership to one of its affiliates solely for liability protection purposes.\textsuperscript{84}

C. Ownership Through an Entity

An LLC or corporate entity is often used to hold aircraft and shelter the owner’s other assets from the high possibility of owner or operator liability. For estate planning purposes, revocable trusts are commonly used simply for probate avoidance, but they do not afford liability protection. To obtain both liability protection and probate avoidance, a revocable trust may hold interests in the entity to which the aircraft is registered, but raises new issues, discussed below.

D. Trusts

A trust holding an airplane is a type of purpose trust.\textsuperscript{85} Similar to the structure of an Illinois Land Trust, the trustee is the titled and registered owner of the aircraft, but the beneficiary has the right to dissolve the trust at any time and return possession of the aircraft back to him- or herself, or on to a qualified third party. Furthermore, the FAA has the right to obtain information directly from the owner/operators because, in spite of the trust structure, they have non-delegable regulatory obligations to the FAA. Typically, the beneficiary will be the one to insure the aircraft, and to operate and maintain it in accordance with FAA requirements.

Also similar to an Illinois Land Trust, title to the aircraft can be transferred at any time from the trustee to any party designated by the beneficiary using an FAA form bill of sale. This, however,

\textsuperscript{81} RCW 8.48.100(3).
\textsuperscript{82} See, e.g., Cal. Rev. & Tax Code §6285(b); 68 Okla. Stat. §6003(17).
\textsuperscript{85} A purpose trust exists to carry out a specific objective, in this case holding and maintaining aircraft, rather than for the benefit of individual beneficiaries.
would have the effect of cancelling the aircraft’s registration. The trustee cannot sell the aircraft without the beneficiary’s direction. While this is an inherent aspect of a trust holding aircraft, it should be specifically provided in the trust instrument.

The trust agreement should create an affirmative duty on the part of the aircraft operator (where the operator is not the beneficial owner) to regularly maintain and provide current information regarding the aircraft and its operations.

The FAA imposes a number of requirements for trusts holding aircraft. Under Federal Aviation Regulation (FAR) 47.7(c), each trustee must be either a U.S. citizen or a resident alien. The trustee must also submit an Affidavit of Citizenship from each trustee, a copy of the trust agreement, and an Aircraft Registration Application to the FAA. If the trustee does not want to make a representation regarding the citizenship of the beneficiary, the beneficiary must provide a separate affidavit of citizenship.

Again, beware that states may subject the transfer of title to a special purpose entity to sales or use tax.

E. Advising the Trustee

If a trust was established during the grantor’s lifetime, a successor fiduciary should, immediately upon appointment, confirm that registration with the FAA and airworthiness directives (ADs) are all in good standing. ADs are legally enforceable regulations issued by the FAA in accordance with 14 C.F.R. Part 39 to correct an unsafe condition in a product. Part 39 defines a product as an aircraft, engine, propeller, or appliance. Note that ADs are delivered electronically or by paid subscription, so a search of the grantor’s email may be necessary. A periodic review of the FAA website by product name for applicable ADs is also a prudent practice. If ADs are not timely acted upon, registration may lapse.

Aircraft can be registered to a single applicant as trustee, or to several applicants as co-trustees. To register, the trustee(s) must submit:

- An affidavit showing that each beneficiary under the trust is either a U.S. citizen or a resident alien. This includes each person whose security interest in the aircraft is incorporated in the trust. If any beneficiary is not a U.S. citizen or a resident alien, the trustee must provide an affidavit stating that the trustee is not aware of any reason or relationship that would give the non-citizen a share of control greater than 25% to influence or limit the exercise of the trustee’s authority.

86 U.S. citizen is defined for FAA purposes under 14 C.F.R. §47.2.
88 For more information, download the form at [Information to Aid in the Registration of U.S. Civil Aircraft, AC Form 8050-94](http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAD.nsf/MainFrame?OpenFrameSet).
Furthermore, the trust agreement must provide that those persons together may not have more than 25% of the aggregate power to direct or remove a trustee for cause.89

- A certified copy of the complete trust instrument and a “copy of each document legally affecting a relationship under the trust.”90

- An original signed bill of sale from the present registered owner to the trustee(s).

- An original application for registration showing the trustee(s) as applicant, signed by the trustee(s).

- A $5 registration fee payable to the FAA.

If a client prefers to use an existing trust or a trust organized for a different purpose to own the aircraft, the trust agreement will need to be amended in order to satisfy the FAA requirements mentioned above. The FAA must approve all trust agreements used to register an aircraft. Because the agreement will be shared with the FAA, confidentiality of the terms regarding other assets held in a trust will be lost. Where confidentiality is a concern, clients should use a single purpose trust for aircraft.

Finally, like in a family cabin trust, the grantor should be encouraged to fund the trust with either a substantial endowment or a life insurance policy to fund the maintenance and operation of the aircraft in the future. Without this sinking fund, it is not likely that multiple family members will be able to agree upon how to maintain the aircraft, and it will likely be sold.

F. Corporations and LLCs

It is important that a client have a clear understanding of the type of conduct qualifying as commercial versus non-commercial use. FAA regulations classify aircraft into various categories, generally commercial and non-commercial, and grant airworthiness certificates authorizing aircraft for flights under one of these categories. An owner who operates aircraft for personal use holds a certificate under 14 C.F.R. Part 91 of the FAA regulations. The personal use regulations impose significantly less stringent operational and maintenance standards than those applicable to charter carriers, which may include family offices (under 14 C.F.R. Part 135) and airline carriers (under 14 C.F.R. Part 121).

The inclination in estate planning is to use an entity—a corporation or LLC—to own property with which risk is associated, to shield a client from liability. However, where the sole purpose for

89 14 C.F.R. §47.7(c)(3). While the C.F.R.s do not define “cause,” the FAA’s Notice of Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries, 78 Fed. Reg. 36,412 (June 18, 2013), refers to the Restatement of Trusts as illustrative of the definition, and suggests that willful misconduct and gross neglect satisfy this limitation.

90 14 C.F.R. §47.7(c)(2)(i).
an entity’s existence is to hold title to aircraft, there is a risk that this will be considered a commercial arrangement, subject to the more stringent rules applicable to charter carriers under 14 C.F.R. Part 135.

Under Part 91, the owner/user of the aircraft is responsible for full control over the operation of the aircraft. The flight crew may not operate the plane for compensation. Practically speaking, the owner must also be the operator. The mere fact that the owner/operator funded the expenses of a flight crew has brought the operator within the definition of a commercial operator and no longer covered by Part 91. The practical solution to this problem is typically to have the owner/operator enter into a “dry lease” arrangement with an entity, which provides support services, including pilots, crew and maintenance.

The FAA classifies aircraft leases as either “dry leases” or “wet leases.”

Under a dry lease, the aircraft owner provides only the aircraft and no crew to the lessee.91 An entity may be formed for the sole purpose of ownership of an aircraft by the lessor. It may lease that aircraft without a crewmember or any other amenities to a related company or party, the lessee. The lessee is considered to be in “operational control” of the aircraft in a dry lease arrangement, and provides its own flight crew, maintenance, and any other amenities. Dry leasing is not considered a commercial operation from the FAA’s perspective as long as the pilots do not have a financial or employment relationship with the lessor.

A wet lease is a leasing arrangement, defined under FAR 91.501(c)(1), whereby the lessor of an aircraft provides the aircraft, crew, maintenance, and any other services required by the lessee. The lessee typically pays the lessor based on hours operated. The lessee may also be required to cover the cost of fuel, airport fees, and any other fees.

Operation under the wrong certificate is subject to steep fines.92 On top of the fines, insurance coverage is contingent on the aircraft being operated in compliance with FAA regulations, and may be lost if an operator is not covered by the proper certificate.

G. Practical Alternatives to Aircraft Ownership

Some families are attached to their planes, especially those with historic, sentimental, or collectible value. However, for the client who strictly wants to provide the convenience of private travel to her heirs, she might consider the advantages of fractional ownership or a jet card.93 The testator needs

---

91 14 C.F.R. §91.1001(b)(2).
92 14 C.F.R. §13.305(d) (providing for fines of $11,000 for each violation of operating under a Part 91 certificate rather than a Part 135 certificate).
93 Some of the more popular fractional ownership companies include NetJets, FlexJet or FlightOptions; and popular charter jet card arrangements are provided through companies such as Marquis Jet (a division of NetJets), Blue Star Jets, Skyjet and JetCard.
to realize that once a plane passes to multiple heirs, it cannot be in two places at once, making its use even harder to allocate than the family cabin, which at least stays in one place. Either arrangement—fractional ownership or a jet card (akin to an expensive Starbucks card)—can provide the family with on-demand transportation with less cost, liability, and opportunity for family strife.

EXHIBIT A
PET TRUST

I leave [description of pet animal] and [amount of money adequate for animal’s care and trust administration expenses] to the trustee, in trust, under the terms of the [name of trust] created under Article [____] of this Will below. If [animal] does not survive me by [survival period], this provision of my Will shall lapse and be of no effect. [Modify for multiple animals.]

ARTICLE [___] [NAME OF ANIMAL] TRUST

A. Beneficiary of Trust. This trust is for the sole benefit of [animal] during [animal’s] lifetime, pursuant to RCW ch. 11.118.

B. Trustees. I appoint [primary trustee] as Trustee of this trust. If [primary trustee] is unwilling or unable to serve, I appoint [alternate trustee] as successor trustee. A Trustee shall serve as such, provided [trustee] receives [name of animal] into [his] [her] home and provides [animal] with proper care as defined in Section ___ of this Article. My Personal Representative shall deliver [animal] into [Trustee’s] possession after securing a written promise from [trustee] to provide [animal] with proper care. If [Trustee] (1) dies, (2) is unable to provide [animal] with proper care, or (3) is not providing [animal] with proper care, I appoint [alternate trustee] to serve as successor trustee of this trust provided [alternate trustee] receives [name of animal] into [his/her] home and provides [animal] with proper care. [Continue in like manner for additional alternates]. If there is no qualified alternate trustee, [allow the Trustee to select successor].

C. Bond. No bond shall be required of any trustee named in this Article.

D. Trustee Compensation. The trustee shall be entitled to reasonable compensation from the trust for serving as trustee. [or] No trustee shall be entitled to compensation for serving as trustee.

E. Proper Care. Proper Care means [description of care including, for example, requirement of regular visits to a veterinarian].

F. Distribution of Trust Property While [Animal] is Alive. The trustee shall use trust property for all reasonable expenses incurred by [trustee] in the Proper Care of [animal] as defined in Section (E) of this Article.
Reasonable expenses include, but are not limited to, [food, housing, grooming, medical care, and burial or cremation fees.]

G. Termination of Trust. This trust shall terminate upon the death of [animal].

H. Distribution of Property Upon Trust Termination. Upon the termination of this trust all remaining trust property shall pass to [remainder beneficiary] if [he/she] is alive at the time of trust termination. If [remainder beneficiary] is not alive at the time of trust termination, all remaining trust property shall pass to [alternate remainder beneficiary] if [he/she] is alive at the time of trust termination. [Continue in like manner for additional alternates]

I. Trustee Powers. The trustee shall have all powers granted to trustees under Washington law. [or] The trustee shall have the following powers: [enumerate trustee powers].

J. Exculpatory Clause. The trustee shall not be liable for any loss, cost, damage, or expense sustained through any error of judgment or in any other manner except for and as a result of a trustee’s own bad faith or gross negligence.

Note: The pet owner should consider naming several alternate trustees, in the event the first choice is unable to serve for the duration of the pet’s life. To prevent the pet from ending up homeless, the owner may consider authorizing the trustee to name further successors, or the personal representative to name successors, should none of the named individuals be willing and able to care for the pet. The more unusual the pet, the more important this becomes.

Purchase the online version of this outline at www.ali-cle.org.