

PLANNING FOR PETS
WITH POWERS OF ATTORNEY
HANDBOOK & DRAFTING MANUAL

INTRODUCTION:

Most pets are considered companions rather than assets and it can be difficult to apply estate planning and estate administration laws and standards governing other types of property to pets. Yet, with careful and deliberate drafting, we can use powers of attorney to provide for and protect both pets and their people.

It is my personal mission to increase both the prevalence and quality of Pet Planning throughout Ohio and beyond. This *Planning For Pets With Wills Handbook and Drafting Manual* was created to help all estate planning attorneys do our part to fill the growing need and demand for Pet Planning services. The information and example drafting clauses contained herein will assist you in providing competent representation to pet owners and drafting a range of pet-related power of attorney terms and plans, from the simplest to the most complex. There are solutions here for every pet, person, family, and circumstance.

You are welcome and encouraged to use the examples provided here to assist you in preparing powers of attorney for pet owners. However, the drafting examples included in this handbook and drafting manual are provided for illustration and are not intended to represent the only or best way to draft pet-related power of attorney terms. There are many good ways to plan and provide for pets. The pet-related terms you draft may differ from those included here depending on your personal drafting style and the circumstances and objectives of individual pet-owning clients.

The resources contained within this handbook and drafting manual will enable you to meet or exceed the planning objectives of almost every pet-owning principal. Admittedly, the range of pet planning options and features provided here is much more than the average pet owner needs. Please do not allow the length and depth of the material provided here to alarm you. While planning for pets in a will can become complicated under some circumstances, most plans are relatively simple, and you will find that you return to and use many of the same terms and clauses over and over. Despite the length and breadth of this handbook and drafting manual, many pet plans fit on a single page in a general power of attorney document.

Laura J. Martin, Esq.

WHAT IS PET PLANNING?

Pet Planning is estate planning for animal owners and their pets. Pet Planning is the process of planning and preparing in advance to maintain human-animal relationships and provide for and protect a pet if the owner is unable to care for the animal or needs assistance to properly care for the animal. Pet Planning involves providing for the needs and benefit of *both pets and their people*.

Pet Planning often involves adding pet-specific terms to routine estate planning documents many pet owners already have or are in the process of creating, including:

- General Powers of Attorney
- Wills
- Traditional estate planning trusts

Pet Planning sometimes involves creating more specialized planning documents just for pets, such as:

- Pet Powers of Attorney
- Pet Trusts

Pet Plans can range from very simple to extremely complex. There are Pet Planning options available to fit every person, family, pet, and budget.

In Ohio, there are no limitations on the types or species of animals that may be planned and provided for. Dogs and cats are the most common household pets and thus the animals most frequently planned for. Horses and birds are also frequently planned for, due to both their popularity as companions and their longer life expectancies. The information in this handbook and drafting manual can also be used to plan for other household pets, exotic and non-traditional pets, service and emotional support animals, commercially valuable animals, farm-type animals, and others. The words “pet” and “animal” are used interchangeably herein and are all-inclusive.

OUR FURRY, FEATHERED (AND SCALED) FAMILY MEMBERS & FRIENDS:

Pet ownership has been steadily increasing over the past several decades. More than 62% of Ohio households include pets.¹ Nationwide, roughly two-thirds of all households own pets,² and pet ownership continues to rise. Historically, the U.S. pet populations held relatively steady while our human population grew exponentially. Now the reverse is true. Since 2000, dog and cat populations have both increased at double the rate of our own human population growth.³ This trend is likely to continue. Seventy-five percent of U.S. millennials own a dog and 50% own a

¹ American Veterinary Medical Association 2017-2018 Pet Ownership & Demographic Study (62.4% of Ohio households owned pets at the time of this study).

² Mark L Cushing, *Pet Nation*, p. 10 (2021).

³ Mark L Cushing, *Pet Nation*, p. 12-13 (2021) (dog and cat populations have both increased more than 31% while the human population increased only 15.2%).

cat.⁴ Generation Z (born between 1997 and 2012) is widely considered the fastest-growing pet-owning generation, and its members are most likely to own multiple pets.⁵

The roles pets play in our lives and culture have also evolved. Eighty percent of pet owners consider their pets members of the family and an additional 17% view them as valued companions.⁶ Sixty-two percent describe their pet as their “best friend”.⁷ Seventy-five percent of pet owners seek comfort from their animals,⁸ and 72% of dog owners would risk their own life or limb to save a pet.⁹ Many millennials and Gen-Zers are choosing pets before or instead of children. Pets outnumber minor children more than 4 to 1, and this gap continues to widen.¹⁰

As we increasingly consider pets family members, valued friends, companions, and substitute children, the amount of money spent on their care and enjoyment has skyrocketed. Pet-related spending in the U.S. increased a whopping 90% during the six-year span of time between 2018 and 2024. In 2024, Americans spent a total of \$151.9B on their beloved pets,¹¹ and Bloomberg Intelligence projects this amount will swell to \$200 billion by 2030.¹² Recent research shows that spending money on pets not only makes us humans happy, it makes us happier than when we spend money on ourselves or another person.¹³ Considering this, perhaps it is not surprising that 17% of pet owners spend as much or more on pet food as they do for their own meals,¹⁴ and 52% spend more money overall on their pets than on themselves.¹⁵ In addition to the short-term gratification received from pet-related spending, two-thirds of pet owners consider pets when making long-term financial plans.¹⁶

⁴ Mark L Cushing, *Pet Nation*, p. 20 (2021).

⁵ American Pet Products Association, <https://americanpetproducts.org/industry-trends-and-stats> (last visited April 21, 2025).

⁶ American Veterinary Medical Association 2017-2018 Pet Ownership & Demographic Study.

⁷ See, <https://people.com/pets/three-in-five-people-say-theyd-call-their-pet-their-soulmate-survey-finds/> (last visited October 6, 2021).

⁸ Orth, Taylor, YouGovAmerica, “Dogs, cats and other pets play a meaningful role in the lives of many Americans”, <https://today.yougov.com/society/articles/42697-dogs-cats-pets-meaningful-role-lives-americans> (poll conducted May 6-10, 2022) (last visited May 31, 2022).

⁹ Survey conducted by OnePoll for JustFoodForDogs (2021), <https://get.justfoodfordogs.com/love-your-pet/> (last visited October 6, 2021).

¹⁰ Jonathan V. Last, *What to Expect When No One's Expecting: America's Coming Demographic Disaster*, p. 2 (2013).

¹¹ American Pet Products Association, <https://americanpetproducts.org/industry-trends-and-stats> (last visited April 21, 2025).

¹² Global Pet Industry To Grow To \$500 Billion By 2030, Bloomberg Intelligence Report Finds (March 24, 2023) <https://www.bloomberg.com/company/press/global-pet-industry-to-grow-to-500-billion-by-2030-bloomberg-intelligence-finds/> (last visited February 19, 2024).

¹³ White, Michael W., Nazia Khan, Jennifer S. Deren, Jessica J. Sim, and Elizabeth A. Majka. 2021. “Give a Dog a Bone: Spending Money on Pets Promotes Happiness.” *The Journal of Positive Psychology*, March 13, 2021. doi:10.1080/17439760.2021.1897871.

¹⁴ Wren Kitchens (Sept 15, 2021) How Much Do Americans Spend on Pet Food? <https://www.wrenkitchens.com/us/blog/revealed-how-much-do-americans-spend-on-pet-food> (last visited February 18, 2024).

¹⁵ Cariaga, V. (Nov 10, 2021) Most Americans Spend More on Their Pets Than Themselves Each Year. <https://www.gobankingrates.com/saving-money/pets/americans-spend-more-on-pets-than-themselves-each-year/> (last visited February 18, 2024).

¹⁶ American Pet Products, “Latest Pet Ownership and Spending Data from APPA Reveals Continued Strength of National Pet Industry in the Face of Economic Uncertainty”, <https://www.americanpetproducts.org/news/press->

If given the opportunity, most will also choose to include pets in their estate planning!

WHY WE PLAN FOR PETS:

Our clients choose to share their homes, their lives, and their money with pets. Our job as attorneys involves caring about what our clients care about, and that includes pets. We need to plan for pets because our clients are interested in and invested in the future fate of their animals! These lucky pets obviously benefit from being planned and provided for. Perhaps less obvious but no less significant, people benefit from the preservation of human-animal relationships, communities benefit when people demonstrate responsibility for their animals, and in many cases planning ahead can actually save money in the long run.

Provide For and Protect Animals:

When considering or undertaking Pet Planning, the primary objective is usually to provide for and protect the animals we share our lives with. Animals need someone to care for them, somewhere to live, and money or other resources available to pay for their care expenses. Like minor children or special needs family members, pets depend on us for all their care. When an owner dies or is unable to provide care, pets may be left days or longer without food, water, medication, or a way to appropriately relieve themselves. Some pets may even die from lack of care. Others may be surrendered to high kill-rate shelters, unnecessarily euthanized, abandoned or dumped, or sold for research, dog fighting, pet-mill breeding, or other unsavory purposes.

Veterinarians are increasingly reluctant to euthanize a healthy pet due to recent updates in their professional guidelines.¹⁷ While this initially sounds like good news, it increases the likelihood that a pet will be abandoned to fend for itself or sold for objectionable purposes if there is no plan for its care in place. In addition, pets that spend time in a shelter or are “passed around” from home to home may develop behavior problems or health issues that are difficult to resolve.¹⁸ Even those pets who are lucky enough to be placed in a loving permanent home could find themselves in peril if a new owner dies or becomes unable to provide or afford pet care in the future.

We can use Pet Planning to protect animals from these unfortunate fates by ensuring they have somewhere to go, someone to care for them, and resources available for their future care.

Preserve Human-Animal Relationships:

The many ways that people benefit from Pet Planning are less obvious, but no less significant. People benefit tremendously from our association with animals! The impact of human-animal relationships is a growing area of serious academic study, but we already know that living with pets makes us happier and physically, mentally, and emotionally healthier.

[release/latest-pet-ownership-and-spending-data-from-appa-reveals-continued-strength-of-national-pet-industry-in-the-face-of-economic-uncertainty](#) (last visited February 19, 2024).

¹⁷ See, *AVMA Guidelines for the Euthanasia of Animals: 2020 Edition*.

¹⁸ See, <https://www.maddiesfund.org/behavior-problems-and-long-term-housing.htm> (last visited August 11, 2025)

Pets provide valuable companionship, reduce loneliness,¹⁹ and help owners manage feelings and symptoms of depression,²⁰ post-traumatic stress disorder,²¹ and other mental health conditions.²² Interacting with animals increases blood levels of the neurotransmitter oxytocin, which leads to decreased anxiety, fear, and stress.²³ Raising children with pets aids in the development of their self-esteem, relationship skills, compassion, and responsible behaviors.²⁴ Pet ownership provides older adults with socialization, a sense of purpose, and meaning in their lives²⁵ and may protect against age-related cognitive decline.²⁶ Older adults living with pets are less lonely and nervous and more optimistic and interested in making plans for the future.²⁷ Those in fair or poor health also tend to cope better with their physical and emotional symptoms, including any pain they may experience.²⁸

The physical health benefits of living with pets are extensive and include lower heart rate and blood pressure, faster stress recovery,²⁹ less harmful cardiovascular responses to stress,³⁰ lower triglyceride and cholesterol levels,³¹ a stronger immune system,³² and reduced all-cause

¹⁹ Stanley IH, Conwell Y, Bowen C, Van Orden KA. Pet ownership may attenuate loneliness among older adult primary care patients who live alone. *Aging Ment Health*. 2014;18(3):394-9.

²⁰ Brooks, H., Rushton, K., Walker, S., Lovell, K., & Rogers, A. (2016). Ontological security and connectivity provided by pets: a study in the self-management of the everyday lives of people diagnosed with a long-term mental health condition. *BMC psychiatry*, 16(1), 409.

²¹ van Houtert EAE, Endenburg N, Wijnker JJ, Rodenburg B, Vermetten E. The study of service dogs for veterans with Post-Traumatic Stress Disorder: a scoping literature review. *Eur J Psychotraumatol*. 2018 Aug 13;9 (Suppl 3):1503523.

²² Brooks, H. L., Rushton, K., Lovell, K., Bee, P., Walker, L., Grant, L., & Rogers, A. (2018). The power of support from companion animals for people living with mental health problems: A systematic review and narrative synthesis of the evidence. *BMC Psychiatry*, 18(1).

²³ Yount, R., Ritchie, E., St. Laurent, M., Chumley, P., & Olmert, M. (2013). The role of service dog training in the treatment of combat-related PTSD. *Psychiatric Annals*, 43, 292–295.

²⁴ See, “Pets and Children”, Facts for Families N. 75, American Academy of Child & Adolescent Psychiatry (January 2019), https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Pets-And-Children-075.aspx (last visited Dec. 17, 2022); L. Maranda, M. Lau, S. M. Stewart, O. T. Gupta. A Novel Behavioral Intervention in Adolescents With Type 1 Diabetes Mellitus Improves Glycemic Control: Preliminary Results From a Pilot Randomized Control Trial. *The Diabetes Educator*, 2015; 41 (2): 224 DOI: [10.1177/0145721714567235](https://doi.org/10.1177/0145721714567235).

²⁵ Hui Gan, G. Z., Hill, A. M., Yeung, P., Keesing, S., & Netto, J. A. (2020). Pet ownership and its influence on mental health in older adults. *Aging & mental health*, 24(10), 1605-1612.

²⁶ Braley, Tiffany M.D., M.S., “Study says pets may protect your brain’s cognitive processing as you age, (January 13, 2023), <https://medresearch.umich.edu/department-news/study-says-pets-may-protect-your-brains-cognitive-processing-you-age>.

²⁷ Goldmeier, J. (1986). Pets or people: Another research note. *The Gerontologist*, 26(2), 203–206.

²⁸ 2019 National Poll on Healthy Aging, conducted by University of Michigan Institute for Healthcare Policy and Innovation, sponsored by AARP and Michigan Medicine, www.healthyingpoll.org (last visited March 24, 2023).

²⁹ Allen, Karen PhD; Blascovich, Jim PhD, and; Mendes, Wendy B. MS. Cardiovascular Reactivity and the Presence of Pets, Friends, and Spouses: The Truth About Cats and Dogs. *Psychosomatic Medicine* 64(5):p 727-739, September 2002.

³⁰ Allen, K., Blascovich, J., & Mendes, W. B. (2002). Cardiovascular reactivity and the presence of pets, friends, and spouses: The truth about cats and dogs. *Psychosomatic medicine*, 64(5), 727-739; Allen K, Shykoff BE, Izzo JL Jr. (2001). Pet ownership, but not ace inhibitor therapy, blunts home blood pressure responses to mental stress. *Hypertension*. Oct;38(4):815-20.

³¹ Anderson WP, Reid CM, Jennings GL. Pet ownership and risk factors for cardiovascular disease. *Med J Aust*. 1992 Sep 7;157(5):298-301. PMID: 1435469.

³² Fall T, Lundholm C, Örtqvist AK, et al. Early Exposure to Dogs and Farm Animals and the Risk of Childhood Asthma. *JAMA Pediatr*. 2015;169(11):e153219. doi:10.1001/jamapediatrics.2015.3219; Charnetski, Carl & Riggers,

mortality.³³ Heart attack and stroke patients with pets survive longer than those without,³⁴ and senior pet owners make fewer doctor visits and take less medication.³⁵ Recent research indicates that living with pets may slow the progression of dementia and Alzheimer's disease³⁶ and reduce the frequency of angry outbursts and other dementia-associated behavioral disturbances.³⁷ Taking care of pets also helps people take better care of themselves – pet owners exercise more,³⁸ and are more mindful about their own eating habits and taking their own medications.³⁹

This is far from a complete list of the positive impacts pets have on our lives. For many of our elderly, disabled, or caregiving clients, a pet may be their only or most important source of daily social interaction and companionship. Planning ahead can prevent the devastating loss of a pet if the owner is temporarily hospitalized or needs assistance due to age or declining health. Having a pet to return home to is incredibly motivating for patients who are battling an illness or struggling with rehabilitation. Family members sometimes view pets as a nuisance or begrudge mom or dad paying pet-related expenses that could reduce a potential inheritance. Without proper planning and protection, these family members may be motivated to discard a pet against the owner's wishes. Similarly, when children lose parents or other primary caretakers it is confounding to lose a pet too. Planning ahead to keep pets and kids together can provide stability and an emotional anchor that helps children cope with extreme loss and upheaval. The import of protecting these valuable human-animal relationships cannot be overstated.

Despite the significant benefits, pet ownership by seniors tends to decline with age.⁴⁰ The reasons seniors give for not having pets include the fear that a pet will outlive them or similar worries about what will happen if they can no longer care for the pet.⁴¹ Seniors are the

Sandra & Brennan, Francis. (2005). Effect of Petting a Dog on Immune System Function. *Psychological reports*. 95. 1087-91. 10.2466/PRO.95.7.1087-1091.

³³ Kramer, Caroline K., Mehmood, Sadia and Suen, Renée S. (2019). Dog Ownership and Survival: A Systematic Review and Meta-Analysis. *Circulation: Cardiovascular Quality and Outcomes*; 12:e005554; Mubanga, M., Byberg, L., Nowak, C., Egenvall, A., Magnusson, P. K., Ingelsson, E., & Fall, T. (2017). Dog ownership and the risk of cardiovascular disease and death—a nationwide cohort study. *Scientific Reports*, 7(1), 1-9.

³⁴ Mubanga, Mwenya, Byberg, Liisa, Egenvall, Agneta, Ingelsson, Erik and Fall, Tove (2019). Dog Ownership and Survival After a Major Cardiovascular Event: A Register-Based Prospective Study. *Circulation: Cardiovascular Quality and Outcomes*; 12:e005342.

³⁵ Headey B, Grabka M., Pets and Human Health in Germany and Australia: National Longitudinal Results. *Social Indicators Research*. 2007;80(2):297–311; Headey B. Health, Benefits and Health Cost Savings Due to Pets: Preliminary Estimates From an Australian National Survey. *Social Indicators Research*. 1999;47(2):233–43.

³⁶ Rusanen M, Selander T, Kärkkäinen V, Koivisto A. The Positive Effects of Pet Ownership on Alzheimer's Disease. *J Alzheimers Dis*. 2021;84(4):1669-1675. doi: 10.3233/JAD-210557. PMID: 34719492.

³⁷ McCabe BW, Baun MM, Speich D, Agrawal S. Resident Dog in the Alzheimer's Special Care Unit. *Western Journal of Nursing Research*. 2002;24(6):684-696. doi:10.1177/01939450232055421.

³⁸ See, Reeves, M. J., Rafferty, A. P., Miller, C. E., & Lyon-Callo, S. K. (2011). The impact of dog walking on leisure-time physical activity: results from a population-based survey of Michigan adults. *Journal of Physical Activity and health*, 8(3), 436-444.

³⁹ Good News Network, “Pet Owners Say Taking Care of Their Furry Friends Encourages Taking Better Care of Themselves” (June 14, 2021) (survey by Stella & Chewy's pet food company), <https://www.goodnewsnetwork.org/7-in-10-americans-are-healthier-because-of-pets/>.

⁴⁰ Applebaum JW, Peek CW, Zsembik BA. Examining U.S. pet ownership using the General Social Survey. *Soc Sci J*. (2020).

⁴¹ Kathy Kruger and Dr. Sandra McCune, Mars Petcare, “The Role of Pets in Human Healthy Active Aging”, p. 29 (citing, Anderson, K. A., Lord, L. K., Hill, L. N., & McCune, S. (2015), *Fostering the Human-Animal Bond for Older Adults: Challenges and Opportunities*. *Activities, Adaptation & Aging*, 39(1), 32-42).

demographic least likely to own a pet,⁴² though this may change as the generations responsible for the boom in pet ownership age. In this author's experience, seniors are more likely to get a pet if they know there are Pet Planning options available. Discussing Pet Planning options and including basic pet terms in estate planning documents increases the likelihood of future pet ownership by seniors, with all of the accompanying benefits.

Pet Planning gives animal owners peace of mind that their non-human family members will be cared and provided for upon the owner's death or incapacity.

Responsible Pet Ownership Benefits Our Communities:

Our communities benefit when pet owners behave responsibly. Responsible pet ownership includes planning for the future. Pets that aren't planned for often become a community problem. Communities suffer and incur expenses for the control, care, and euthanasia of stray dogs, roaming cats, and other abandoned animals. Loose or stray animals are a safety risk to themselves, other animals, and humans. Non-native species wreak havoc on our natural ecosystems and cost money to control.

Most community animal control departments, humane organizations, and shelters are already overwhelmed with abused, neglected, and abandoned animals. Failing to plan ahead may add to their burdens and divert limited resources away from other causes. Without advance planning, these organizations may lack resources to provide for a client's pet at all when the need arises. In Ohio, there are currently not enough organizations available to accept all unplanned for pets when an owner dies, becomes ill, or needs long-term care.

To combat the growing problem of abandoned pets, many local shelters, humane societies, and rescue organizations have or are developing formal programs for the care and adoption of donors' pets following a donor's death. Some of these organizations will also accept pets when a donor enters a nursing home or assisted living facility that does not permit pets, moves in with a family member who can't accept a pet, or is otherwise unable to continue caring for a pet. A Pet Plan may include a formal arrangement with a local shelter, humane society or rescue organization for the care and placement of a pet in exchange for a donation.

Avoid Unnecessary Pet-Related Expenses:

Yes, Pet Planning costs money. But failing to plan ahead can cost so much more! Pets that are abandoned in a residence when their owner dies or falls ill make a terrible mess and cause significant property damage. The costs of clean-up and damage repair must be paid for by someone – current property owner, landlord, owner's estate, or a subsequent property owner – and are completely avoidable. In addition, abandoned or neglected pets often have increased veterinary, grooming and other care expenses, and may require a period of physical and behavioral rehabilitation before they can be placed in a new home.

The estates of deceased pet owners who fail to plan ahead may incur increased costs for veterinary treatment, grooming, boarding or in-home pet care, rehabilitation, efforts to place a pet

⁴² Mark L. Cushing, *Pet Nation*, p. 292 (2021).

in a new home, court costs, etc. Costly legal disputes may arise over the “custody” or future ownership of a pet and payment of pet-related expenditures from estate funds. All of these circumstances needlessly deplete estate resources and are avoidable by planning in advance.

INCLUDING PET PLANNING IN YOUR ESTATE PLANNING PRACTICE:

There are a lot of pets and animal owners to plan for in Ohio. Based on the demographics, it is safe to assume that a majority of your current and prospective clients have pets. It is also safe to assume that nearly all consider their pets family members or valued friends and are willing to spend hard-earned money to provide for their future care and protection.

To satisfy the growing demand, Pet Planning cannot remain a niche practice area! As the role of animals in our personal lives and society at large evolves, our legal practices and standards must follow suit. All estate planners need to become proficient in Pet Planning.

If you are not doing so already, make it a practice to ask each and every estate planning client, “*Do you have any pets?*” This should be a standard estate planning question. Nearly 100% of pet owners will choose to include their animals in their estate plan if given the opportunity and educated on the pitfalls of failing to plan.

Adding Pet Planning services to your law practice will attract new pet-owning clients and better serve your existing clients. People love their pets! When you care about the future fate of their pets, they will appreciate you too. This builds lasting attorney-client relationships and generates future referrals.

Becoming proficient in Pet Planning will also help you become a better attorney overall. Pet Planning requires thinking outside of the box because existing estate planning, trust and probate laws are not very good fits for living animals. You will find other applications for these new ways of thinking! The estate planning skills and tools you develop to provide for and protect pets can be used to serve clients and their families in a variety of other estate planning contexts.

Eventually, Pet Planning competence may be required to avoid malpractice claims. The clearest expression of a client’s expectations and intent are the words contained within estate planning documents. As Pet Planning and the inclusion of pet-specific terms in estate planning documents become more common, failing to include these terms may be considered evidence of an owner’s lack of intent to provide for pets or intent to exclude pets. If this is not the owner’s actual intent, failing to include pet-specific terms could be considered malpractice. It’s good practice now but may become essential in the future.

PETS ARE CONSIDERED TANGIBLE PERSONAL PROPERTY:

Regardless of how we may think of them, animals are considered tangible personal property under the law,⁴³ not persons,⁴⁴ or family members. This is contrary to the expectations of most pet owners. People do not consider their pets mere property, and many are unaware of the deliberate steps that must be taken to protect them.

Pets have very different needs from other types of tangible personal property, and it can be difficult to apply laws and standards governing property in general to pets. Unlike furniture, pets require daily care and cannot be placed in temporary storage when their owner is temporarily unable to provide care or needs assistance.

Although not legally correct, it can be useful to think of animals like minor children when drafting estate planning terms. Many owners consider pets their “fur babies” or substitute children and their planning needs *are* similar to minor children since they rely on us for all their needs and care.

Unlike children, however, pets have owners not guardians and Ohio courts do not have special jurisdiction to consider the needs of animals. Ohio courts and fiduciaries are not required to consider the “best interests” of pets at all. In fact, there are plenty of circumstances where doing what is in a pet’s best interest could violate a fiduciary duty owed to a person, including the duty to preserve property for a prospective beneficiary of a principal,⁴⁵ or protect estate property for the benefit of a human beneficiary.⁴⁶

Fortunately, it is relatively easy to add terms and create duties in a power of attorney that benefit pets indirectly. We can deliberately create what the law does not automatically provide by including specific pet-related terms in power of attorney documents.

STANDARD POWER OF ATTORNEY AGENT AUTHORITY REGARDING TANGIBLE PERSONAL PROPERTY:

There are two options available in Ohio to grant a power of attorney agent authority over the principal’s tangible personal property:

- (1) Reference or rely on R.C. 1337.46; or
- (2) Draft and include specific authorities to deal with the principal’s tangible personal property (which are usually similar to the statutory authorities).

⁴³ See, R.C. 955.03 (governing dogs); *Sentell v. New Orleans & C. R. Co.*; 166 U.S. 698, 700 (1897) (dogs are property under common law); *Hill v. Micham*, 116 Ohio St. 549 (1927); *Rego v. Madalinski*, 2016-Ohio-7339 (Ohio App. 6th Dist., 2016).

⁴⁴ See, R.C. 5801.01(N); *In re Searight: Department of Taxation of Ohio v. Miller*, 87 Ohio App. 417, 426, 95 N.E.2d 779, 784 (Ohio App. 9 Dist., Wayne County, 1950).

⁴⁵ R.C. 1337.34(A)(4).

⁴⁶ See, *Elam v. Hyatt Legal Serv.*, 44 Ohio St.3d 175, 176 (1989); *Alibrando v. Miner*, 2021-Ohio-2827, ¶ 29 (5th Dist.), citing *Meek v. Geneva*, 2017-Ohio-7975, ¶ 43 (5th Dist.); *Estate v. Barry*, 2015-Ohio-1203, ¶ 17 (11th Dist.).

Most general powers of attorney include one or both of these options. Since pets are considered tangible personal property, the power of attorney terms governing tangible personal property will also apply to pets. Thus, nearly all GPOA agents have at least some authority regarding the principal's animals even if there are no pet-specific terms in the power of attorney document. If you are dealing with an existing standard GPOA document (without pet-specific terms) and an incapacitated client, the agent may deal with the principal's pets in some manners, absent unusual drafting.

R.C. 1337.46 does contain some useful powers when applied to pets, such as the authority to take possession of tangible personal property,⁴⁷ manage or conserve tangible personal property on behalf of the principal⁴⁸, insure against liability, casualty and loss,⁴⁹ and move the property from place to place.⁵⁰ A standard general power of attorney that does not reference R.C. 1337.46 will usually include similar general language permitting the agent to take possession of, manage, and maintain personal property.

However, the general authorities that are appropriate for managing other types of tangible personal property may not be at all consistent with a client's expectations regarding their pets or may have dreadful unintended consequences. The authorities governing tangible personal property contained in R.C. 1337.46 and standard power of attorney documents are not very good fits for living animals.

PROBLEMS WITH R.C 1337.46 AND STANDARD POWER OF ATTORNEY TERMS:

There are no references to animals within R.C. 1337.46 or most standard general power of attorney documents. Nevertheless, since animals are considered tangible personal property, the terms of R.C. 1337.46 or a standard POA tangible personal property clause will apply to pets unless the terms of a power of attorney state otherwise.

The tangible personal property authorities that may be applied to pets under R.C. 1337.46 include all of the following (statute reprinted in its entirety):

Section 1337.46 Tangible personal property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to do all of the following:

- (A) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;
- (B) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

⁴⁷ R.C. 1337.46(A).

⁴⁸ R.C. 1337.46(E).

⁴⁹ R.C. 1337.46(E)(1).

⁵⁰ R.C. 1337.46(E)(4).

(C) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(D) Release, assign, satisfy, or enforce by litigation or otherwise a security interest, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;

(E) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:

(1) Insure against liability or casualty or other loss;

(2) Obtain or regain possession of or protect the property or interest by litigation or otherwise;

(3) Pay, assess, compromise, or contest taxes or assessments or apply for and receive refunds in connection with taxes or assessments;

(4) Move the property from place to place;

(5) Store the property for hire or on a gratuitous bailment;

(6) Use and make repairs, alterations, or improvements to the property.

(F) Change the form of title of an interest in tangible personal property.

Overall, R.C. 1337.46 and standard tangible personal property power of attorney clauses are problematic when dealing with pets because the statutory and standard terms: (1) include unwanted authorities, (2) lack needed authorities, and (3) are not very good fits for living animals. To complicate matters further, there are many uncertainties regarding how existing laws may be applied to situations involving pets.

We must also consider who will be scrutinizing pet-related power of attorney terms. While powers of attorney are generally reviewed by attorneys, financial institutions, and legal departments with some knowledge and experience, pet-related terms are typically reviewed by laypersons and pet professionals who may not understand how R.C. 1337.46 and standard personal property clauses apply to pets.

Unwanted General POA Authorities:

Under R.C. 1337.46 and most standard tangible personal property power of attorney clauses, an agent may sell, exchange, reject, lease, pledge for security, or dispose of items of tangible personal property, which includes pets. These authorities are inconsistent with most pet owners' intentions for their animals. Nearly all pet owners would be horrified if their agent sold a beloved pet for research, dogfighting, or meat-trade. Similarly, it is not appropriate for an agent to reject or dispose of a inconvenient pet or exchange one pet for another, even if the new pet is of objectively higher value or better quality. Most pet owners would also object to their pets being used for research, experimentation, or breeding even if such activities are economically advantageous. We can limit or prohibit all these unwanted agent authorities and more by including properly drafted pet terms in powers of attorney.

POA Authorities That Are Lacking or Unclear:

There are many pet-related authorities an agent may need to exercise that are missing from R.C. 1337.46 and most standard tangible personal property power of attorney clauses, or do not clearly fall within parameters of the statute or general terms. For example, humanely euthanizing a pet could be considered a crime under R.C. 959.02 unless expressly authorized.⁵¹ With veterinary malpractice and disciplinary cases on the rise, veterinarians are understandably cautious about obtaining proper authorizations, consents for treatment, and waivers before providing services.

It is not clear whether the authority to “make repairs, alterations, or improvements” in R.C. 1337.46(E)(6) includes routine veterinary treatment, emergency veterinary treatment, grooming, farrier service, and training. If these services are implicitly authorized, do the costs have to be reasonable? And how will reasonableness be judged? Is it reasonable to spend thousands of dollars to prolong the life or improve the health of a house cat with zero fair market value without express authorization? It is similarly unclear whether the authority to “store property for hire” in R.C. 1337.46(E)(5) covers activities like animal boarding or in-home pet care. To date, there are no published cases to guide drafting attorneys or agents.

Apart from being permitted to insure and transport an animal, the scope of a power of attorney agent’s authority over pets is not at all clear from the statutory language. Specific pet-related terms are needed to clarify exactly what an agent has authority to do for and with animals.

Statutory and Standard POA Terms Are Not Good Fits for Living Animals:

Pets have very different needs from other types of tangible personal property and it can be difficult to apply laws and standards governing property in general to pets. Unlike furniture, pets require daily care and cannot be placed in temporary storage. Although pets are considered property, they are often more like a liability than an asset. Most of our household pets have minimal or even zero economic value and the costs of caring for a pet are considerable. The cost of maintaining most pets for even one month exceeds their fair market value.

Under R.C. 1337.46(E), an agent may “manage and conserve” tangible personal property on behalf of the principal. A power of attorney agent is responsible for protecting the economic value of a principal’s property. Conversely, pet owners are usually more concerned about an animal’s wellbeing than its monetary value or income-earning potential. Without specific authorization or clear evidence of the principal’s expectations, the scope of an agent’s authority to spend money for the maintenance and care of a pet with little economic value is unclear. To date, we have no guidance from Ohio appellate courts on what may be considered reasonable or in the principal’s best interest.

⁵¹ Under R.C. 959.02, “[n]o person shall maliciously, or willfully, and without the consent of the owner, kill or injure a horse, mare, foal, filly, jack, mule, sheep, goat, cow, steer, bull, heifer, ass, ox, swine, dog, cat, or other domestic animal that is the property of another.”

Review by Laypersons and Pet Professionals:

General powers of attorney are typically reviewed by attorneys, financial institutions, brokers, title companies, legal departments and others with a degree of legal knowledge and experience. But when it comes to pets, powers of attorney are most likely to be reviewed by pet professionals or service providers with no legal knowledge (veterinarians, boarding facility or daycare operators, groomers, trainers, animal breeders). If we are uncertain how R.C. 1337.46 and standard tangible personal property POA clauses apply to pets, imagine how lay people feel.

Non-attorneys tend to rely on Google for legal research (to be fair, attorneys sometimes use Google too ☺). If you Google pets and powers of attorney, the results will lead you to believe that a power of attorney document needs to contain specific animal-related terms and authorities. Pet professionals and conscientious agents may be understandably uncomfortable relying on a power of attorney that doesn't specifically reference pets. Pet service providers are more likely to understand and accept a power of attorney if it contains pet-specific terms and powers.

With malpractice cases and disputes on the rise, veterinarians in particular are becoming more concerned about obtaining consents and waivers from someone with obvious authority before providing care. Similarly, as pets have become “fur babies” and substitute children in our culture, there is an expectation that many of the powers and authorities we have become accustomed to for minor children, such as treatment and medication consents, or pick-up and drop-off authorizations, also apply to pets. As our cultural and societal expectations regarding animals evolve, our legal practices need to progress to keep pace.

EXISTING LEGAL SAFEGUARDS MAY BE INADEQUATE:

To be fair, Chapter 1337 does contain a couple of built-in safeguards. Under R.C. 1337.34(A)(1), an agent is required to act in accordance with the principal's reasonable expectations, if known, or otherwise in the principal's best interest. Thus, if the agent knows that the principal has certain expectations regarding the care and treatment of pets, the agent must act in accordance with those expectations, at least to the extent they are considered reasonable. Similarly, it may arguably be in the best interest of the human principal for the agent to provide and care for the principal's animals rather than abandoning or disposing of them. It's not just the animals that benefit from being cared and provide for - humans benefit significantly from our relationships with animals.⁵² It is very possible that a reviewing court may hold that application of Section 1337.34(A)(1) requires an agent to at least minimally maintain a principal's pet. However, that still leaves the question of what may be considered “reasonable”. An agent's or court's opinion of what is reasonable may differ wildly from a pet owner's actual expectations.

⁵² For more general information, see Mark L. Cushing, *Pet Nation*, p. 115-142 (2021); the Human Animal Bond Research Institute website at <https://habri.org/> (last visited August 29, 2022); Dana Casciotti, PhD., and Diana Zuckerman, PhD., National Center for Health Research, “The Benefits of Pets for Human Health”, <https://www.center4research.org/benefits-pets-human-health/> (last visited August 29, 2022); and Michigan State University College of Veterinary Medicine, “The Human-Animal Bond Throughout Time” (December 7, 2018), <https://cvm.msu.edu/news/perspectives-magazine/perspectives-fall-2018/the-human-animal-bond-throughout-time>.

Section 1337.34(A)(4) of the Ohio Revised Code imposes a duty on the agent to attempt to preserve the principal's known estate plan if preserving the plan is consistent with the principal's best interest based on all relevant factors, including the criteria listed in the statute. If a pet owner has specifically bequeathed or otherwise provided for an animal in his or her estate plan, there is certainly an argument that the POA agent has a duty to provide for and thereby "preserve" the pet, but only if it is consistent with the principal's best interest. When determining whether preserving the estate plan is consistent with the principal's best interest, the agent must consider the principal's foreseeable obligations and need for maintenance.⁵³ Caring for a pet or animal can be expensive. This is especially true for an animal suffering from chronic illness or other special needs. So, while there may be some duty for an agent to preserve a pet that is part of the principal's estate plan, that protection may be inadequate. Family members have been known to dispose of pets to avoid depleting their potential inheritance. It is unknown whether courts might also prioritize preserving the monetary value of a principal's estate over preserving relationships with pets.

Chapter 959 of the Ohio Revised Code provides concrete, albeit marginal safeguards for pets by prohibiting certain criminal acts towards animals. Abandoning,⁵⁴ injuring or killing an animal without consent,⁵⁵ poisoning,⁵⁶ torturing or cruelly beating,⁵⁷ or causing other serious physical harm⁵⁸ to an animal are all considered criminal acts. Dog fighting⁵⁹ and other animal fighting⁶⁰ are crimes. Failing to provide an animal with adequate food and water,⁶¹ and minimal shelter⁶² are also crimes. A power of attorney agent does have some minimal legal obligations for the principal's animals under Chapter 959. However, the criminal laws protecting animals set very low bars of acceptable treatment and most owners want better than the minimum standards for their pets. Plus, crimes involving animals tend to be under-reported and under-prosecuted in most jurisdictions.⁶³

R.C. 1337.54 contains safeguards for the maintenance of a principal's human family members and dependents. Power of attorney agents are authorized under this code section to use the principal's resources for the maintenance, support, housing, health care, and other living expenses of the principal's family members and others the principal customarily supports. Unfortunately, pets are not included despite their complete dependence on owners for financial support.

Although an agent has some duties and authorities for pets under law, those protections are inadequate. Thankfully, power of attorney documents can be easily adapted to provide for the unique needs of pets with a bit of careful and deliberate drafting. Including animal-specific terms

⁵³ R.C. 1337.34(A)(4)(b).

⁵⁴ R.C. 959.01.

⁵⁵ R.C. 959.02.

⁵⁶ R.C. 959.03.

⁵⁷ R.C. 959.13(A)(1); R.C. 959.131(B); R.C. 959.131(D)(1).

⁵⁸ R.C. 959.131(C).

⁵⁹ O.R.C. 959.16(A). Dog fighting is an F4 or F3 offense under O.R.C. 959.99(H).

⁶⁰ O.R.C. 959.15(A). Animal fighting is an M4 offense under O.R.C. 959.99(C).

⁶¹ R.C. 959.13(A)(1); R.C. 959.131(D)(2).

⁶² R.C. 959.13(A)(2); R.C. 959.131(D)(3).

⁶³ See, <https://www.humaneworld.org/en/resources/animal-cruelty-facts-and-stats> (last visited Aug. 14, 2025); <https://www.sheriffs.org/publications/Animal-Cruelty-Issue.pdf> (last visited Aug. 14, 2025).

in a power of attorney document is the best evidence of the principal's expectations and intent to provide for and protect pets.

PET-RELATED POWER OF ATTORNEY PLANNING & DRAFTING OBJECTIVES:

When creating a power of attorney to maintain human-animal relationships and provide for and protect pets during their owner's lifetime, we have *up to* nine basic planning and drafting objectives that will be covered in this handbook and drafting manual:

- (1) Appoint a "pet-friendly" agent and nominate alternates
- (2) Grant pet-related authorities or "pet powers" the agent may exercise
- (3) Place desired pet-related limitations on the agent's authority or prohibit certain acts
- (4) Create pet-related duties that require the agent to provide care, spend money, etc.
- (5) Provide additional guidance through standards and instructions for the pet's lifestyle and care
- (6) Provide authority and/or instructions (a plan) for each of these possible lifetime circumstances:
 - a. The owner is absent or temporarily unable to care for a pet (interim pet care)
 - b. The owner becomes permanently unable to care for a pet (rehoming a pet)
 - c. The owner needs assistance to continue living with or caring for a pet
- (7) Authorize or direct payment of pet-related expenses (and grant access to money or credit!)
- (8) Provide grounds for enforcing pet-related terms and means to terminate an agent's authority for pet-related cause (if desired)
- (9) Authorize fiduciary self-dealing if appropriate

In a nutshell, our overall goal is to create within a pet owner's power of attorney what the law does not automatically provide: (a) the authorities needed to care and provide for pets, (b) reasonable limitations on agent authority, (c) duties to care for and maintain the pet in accordance with the owner's expectations, and (d) means for enforcing the pet-related terms or terminating an agent's authority for pet-related cause (if desired). We want to ensure that a pet owner's wishes for themselves and their pets will be honored and carried out to the fullest extent possible!

The information and example drafting clauses contained within this handbook and drafting manual will assist you in meeting or exceeding the planning objectives of almost every pet-owning principal. Admittedly, the range of pet planning options and features provided herein is much broader than the average pet owner needs. In many cases, a pet owner's objectives can be met through the inclusion of relatively simple and routine pet-related power of attorney terms. On the other hand, when more detailed and complex terms are warranted, the components and examples provided herein can be combined to create a custom and very comprehensive lifetime pet plan.

COMPONENTS OF A COMPREHENSIVE POWER OF ATTORNEY PET PLAN:

When creating powers of attorney, our focus is primarily on the grant of various powers to the agent to act on behalf of the principal. Yet, to take optimal advantage of a power of attorney's usefulness, there are multiple possible components to consider. These components can be combined and intertwined within a power of attorney to precisely tailor the terms to an individual pet owner's objectives and expectations:

- (1) **Authorities or Powers** are permissive and describe what an agent "may" do without incurring liability
- (2) **Duties** are mandatory and describe what an agent "must" do to avoid incurring liability
- (3) **Instructions and Directives** are also mandatory and impose additional duties on the agent (at least to the extent they are reasonable under the circumstances)
- (4) **Standards Governing the Exercise of Authorities** establish the degree of agent discretion and the parameters or range of permissible agent conduct
- (5) **Limitations on Authority** are prohibitive and describe what an agent may not do

While these descriptions are somewhat oversimplified for illustration, the basic differences and distinctions are important. There is, of course, considerable overlap between the elements. For example, where an agent has a duty the authority to carry out the duty is implied. Similarly, a grant of specific authority may create an additional duty under R.C. 1337.34(A)(1) if the principal expects the authority to be exercised. When drafting power of attorney terms, these elements are commonly co-mingled and interwoven together. However, considering each component and its impact separately will improve the clarity and comprehensiveness of the resulting pet-related power of attorney terms.

Each of these separate components is discussed in greater detail elsewhere in this handbook and drafting manual. This basic overview is provided as background for reviewing the various power of attorney clause drafting examples provided and how the components fit and work together. Many of the examples provided herein contain a combination of these elements.

"PET POWERS" – PET-RELATED POWER OF ATTORNEY AGENT AUTHORITIES:

An agent acting on behalf of an animal owner will need specific pet-related authorities or "pet powers" to maintain and care for the pet during the owner's absence or to assist the owner in providing care. If the owner becomes permanently unable to care for and continue living with a pet, the agent will need authority to place the pet in a new home or surrender it to a rescue or shelter. A power of attorney agent may only act within the scope of authority granted by the principal.⁶⁴ The pet powers that may be granted to a POA agent include authority to:

- (1) Determine and provide general animal maintenance and care
- (2) Determine and provide veterinary treatment

⁶⁴ R.C. 1337.34(A)(3); See, *In re Estate of Baughman*, 2020-Ohio-6928, *8 (5th Dist.).

- (3) Provide any assistance the owner may need to continue living with and caring for a pet
- (4) Provide temporary animal care during the owner's absence, illness, etc.
- (5) Transport, pick-up and drop-off the animal (or authorize another to transport, etc.)
- (6) Provide grooming, exercise, training, and behavioral intervention as appropriate
- (7) Rehome a pet (and transfer or surrender ownership) if the owner becomes permanently unable to live with or care for the animal or as otherwise appropriate
- (8) Enter into contracts or agreements for animal care with third parties
- (9) Create and fund trusts for the care of animals
- (10) Maintain or obtain insurance coverage
- (11) Maintain or purchase equipment and supplies
- (12) Humanely euthanize a pet when appropriate
- (13) Spend the principal's money, use the principal's property, and/or extend the principal's credit for animal care and maintenance

Each of these “pet power” authorities are explored in more detail below and example drafting clauses are provided for each power. Please note that this is not an exhaustive list of all possible pet-related authorities an individual agent may be granted and many pet owners may not need or want to include all the “pet powers” listed above.

Depending on the circumstances, a power of attorney agent may be responsible for pets or need to provide assistance to the pets' owner over an extended period of time. It is important that the power of attorney terms address all of the various pet-related issues that may arise. The resources contained herein cover most common scenarios, but animal owners and estate planners are free to be creative in designing plan to fit a particular situation or objective. Sometimes, “pet powers” may need to be detailed and customized to meet a particular animal owner's unique needs and expectations. Though, the objectives of many pet owners can be met by including more standard clauses.

PET POWER #1 – GENERAL ANIMAL MAINTENANCE AND CARE:

A pet owner's agent will need the authority to determine and provide for the day-to-day maintenance and care of the owner's animals, including housing, feeding, and other routine needs. This general umbrella authority arguably includes some of the other more specific authorities listed above and described below, like grooming and exercise. However, for both clarity and to justify the costs it is best to list or describe all the agent's specific pet-related authorities.

Some pet owners may want to leave instructions to the agent regarding the animal's day-to-day care or provide standards or additional guidance on *how* the agent should exercise the authority granted. As a practical matter, only the most important or general instructions that are unlikely to change over time or as circumstances change should be included within a power of attorney document. Specific instructions that may change with time or circumstances are better

included in a separate document. Pet owners can (and should) prepare basic care instructions for each animal that can be updated periodically and will be available to an agent when needed. This is particularly important if the agent is not familiar with the day-to-day needs and routine of the animal. For example, instructions to muzzle a dog before a walk may be appropriate for a dog with a history of biting children. But a mandate to feed a particular brand and formulation of food may be inappropriate as the animal ages or develops a chronic health condition or protein source allergy.

Example General Animal Maintenance and Care Power #1: *My agent may determine and provide for the day-to-day and ongoing maintenance and care of all dogs, cats, and other pets or animals that I may own.*

Example General Animal Maintenance and Care Power #2: *During any period of time and to the extent that my spouse and I are both unable to care for my Animals, my agent shall determine and provide for the maintenance and care of my Animals and shall maintain the lifestyle they are accustomed to, consistent with my past practices.*

Example General Animal Maintenance and Care Power #3: *My agent shall maintain and care for my Pets in accordance with the written or verbal instructions that I may provide to my agent from time to time, or if I have failed to provide instructions my agent shall maintain and care for my Pets in a manner that is consistent with my past practices.*

PET POWER #2 – VETERINARY TREATMENT:

A pet owner's agent may need the authority to determine, provide for, and consent to routine, non-routine, and emergency veterinary care and treatment. This power may include the authority to:

- Consult and share information with veterinarians and other treatment providers
- Sign treatment authorizations, consents, and waivers on the owner's behalf
- Order, pick-up, and administer medications and other treatments.

Example Veterinary Treatment Power #1: *My agent may determine, provide, authorize, and consent to any appropriate routine, non-routine, or emergency veterinary treatment for my birds.*

Example Veterinary Treatment Power #2: *My agent is authorized to: determine the veterinary treatment and care my Animals will receive; request and consent to routine, nonroutine, emergency and palliative veterinary care and treatment; share information with veterinary treatment providers; sign all necessary authorizations, consents and waivers to receive such treatment; order, pick-up or authorize the pick-up of medications or other treatments; administer or authorize the administration of medications and other veterinary treatments.*

It is becoming more common for animal owners to seek out and provide alternative and supplemental health care for their pets. However, many of these services are still not mainstream

and should be expressly authorized or directed if desired, both for clarity and to justify the additional expense. Supplemental or alternative veterinary services that should be expressly authorized if desired include:

- Alternative treatment and holistic medicine
- Chiropractic treatment and maintenance
- Physical therapy, acupuncture, massage, and laser treatment
- Regenerative medicine procedures (such as PRP and stem cell therapy)

Example Veterinary Treatment Power #3: *The authority granted to my agent to determine and provide veterinary treatment for my horses includes the authority to provide and use alternative or supplemental treatments or services, including without limitation, chiropractic care, acupuncture, laser treatment, massage, physical therapy, energy healing, holistic or complementary medicine, homeopathy, vitamins, minerals, herbs, and supplements.*

If an animal sees a veterinary specialist, such as an oncologist, dermatologist, cardiologist, ophthalmologist, etc., or the pet owner wants to authorize future treatment by a veterinary specialist, this may also be expressly provided for in the power of attorney terms to clarify the principal's expectations and justify the costs, which could be significant.

Example Veterinary Treatment Power #4: *My agent shall provide veterinary treatment for my Pets consistent with my past practices and is encouraged to consult with and use the services of veterinary specialists whenever such services will or may improve a pet's health or physical condition, lengthen a pet's healthy lifespan, reduce a pet's suffering, or is recommended by the pet's primary veterinarian.*

Many owners and their pets have established relationships with a particular veterinarian or veterinary clinic. The power of attorney terms may include a preference for treatment by a specific veterinarian or clinic or may even direct the agent to use the preferred veterinary service provider whenever possible.

Example Veterinary Treatment Power #5: *My agent is instructed to consult with and follow the recommendations of Dr. My Favorite Veterinarian, currently practicing at My Favorite Vet Clinic, located in Anytown, Ohio. If Dr. My Favorite Veterinarian is no longer practicing veterinary medicine within the tri-county area or is otherwise unavailable or unwilling to treat any of my Animals, my agent may select, consult with, and provide for the treatment of my Animals with another veterinarian as my agent determines is appropriate.*

On occasion, a pet owner may want to place some limitations on an agent's authority regarding veterinary care and treatment. The most common limitations relate to very expensive or life-prolonging treatment.

Example Veterinary Treatment Power #6: *My agent is granted complete authority and discretion to determine, request, provide, and consent to any routine, non-routine, or*

emergency veterinary treatment that may be appropriate or recommended for any of my dogs, cats, or any other household pets, except that my agent may not request, provide or consent to any veterinary treatment, procedure or course of treatment if any of the following apply: (a) the total cost of treatment is likely to exceed \$5,000.00, (b) the total cost of treatment is likely to exceed \$2,000.00 and it is probable that the pet will die within one year of receiving such treatment, or (c) the treatment is intended to prolong the life of the pet but will not reduce the pet's pain or suffering or will increase the likelihood of pain and suffering.

PET POWER #3 – PROVIDING PET OWNER ASSISTANCE:

A disabled, ill, aging, or recuperating pet owner may need some assistance to continue caring for and living with an animal. A power of attorney agent may be granted authority to provide any assistance that may be needed to facilitate the owner's continuing relationship with a pet and the companionship and other benefits of living with an animal. This power may include providing (and paying for) any of the following:

- pet sitters, dog walkers, in-home pet caregivers, pet daycare services, temporary pet boarding
- mobile groomers, mobile veterinarians
- house cleaning and yard maintenance services
- alternative living arrangements, such as a condo, apartment, independent living or assisted living facility, that permits pets

Depending on the precise needs of the owner, the level of assistance required may be quite minimal (an occasional dog walker) or more comprehensive (a pet caregiver that comes to the home several times a day). When drafting pet care assistance clauses, use an "unable to care for without assistance" trigger criteria for this authority rather than the more commonly used "disabled", "incompetent" or "incapacitated" criteria to cover all possible scenarios where a pet owner may need and want assistance.

Example Assistance for Pet Owner Power #1: *My agent may determine and provide for any assistance or services I may need to continue living with or caring for my Animals in my home, on my property, or any other location where I may temporarily or permanently reside, including without limitation, any or all of the following: pet sitters, dog walkers, mobile groomers, mobile veterinarians, in-home pet caregivers, pet daycare services, temporary pet boarding, house cleaning, yard maintenance services, and other similar appropriate services.*

Example Assistance for Pet Owner Power #2: *During any period of time that I am unable to care for any of my horses, my agent may board my horses, or may hire one or more individuals to feed, exercise, groom, and care for my horses on my property, and to clean their stalls daily, buy feed, bedding and other supplies, make and keep veterinary and farrier appointments, and do all other related activities necessary or appropriate for the maintenance and care of my horses in a manner that is consistent with my past practices.*

Example Assistance for Pet Owner Power #3: *My agent has both the power and responsibility to provide and pay for any assistance or services I may need to continue living with or caring for my Pets in my own home and shall consult with, retain, and manage the services of pet sitters, dog walkers, mobile groomers, mobile veterinarians, pet caregivers, pet daycare services, transportation providers, house cleaning, yard maintenance services, and other similar services, as may be needed or appropriate. If I am unable to continue living in my own home with my Pets, my agent shall assist me in procuring alternate living arrangements as appropriate to enable me to continue safely living with my Pets to the fullest extent possible, including without limitation a condo, apartment, independent living facility, assisted living facility, or nursing home that permits pets.*

Some pet owners are adamant about remaining in their own home with their pets indefinitely or as long as possible. A power of attorney agent is required to act in accordance with the principal's reasonable expectations.⁶⁵ A pet owner's expectations to remain living with his or her pets may be expressly stated within the POA terms.

Example #1: *It is my intention to remain living with my pets so long as it is beneficial to me, not harmful to my pets, and I can do so safely.*

Example #2: *It is my intention to continue living with my pets indefinitely, regardless of any concerns for my personal safety or wellbeing. My Agent may not substitute his or her judgment for my own on this matter and is released, held harmless, and indemnified for any claims, liability or damages my Agent might otherwise incur as a result of following my wishes and directions as stated herein.*

Note that a principal's preferences to remain living at home with pets may not be honored if his or her health or safety is at risk, particularly if adult protective services or a probate court becomes involved. Nonetheless, a pet owner's wishes are more likely to be followed if set forth explicitly.

More and more hospice providers are choosing to become Pet Peace of Mind[®] partners or provide other resources to keep terminal patients and pets together. The terms of a pet owner's general power of attorney and health care power of attorney may request or require the agents to work together to provide pet-friendly hospice services if the need arises.

PET POWER #4 – TEMPORARY PET CARE ARRANGEMENTS:

An animal owner may be temporarily unable to care for pets due to travel, illness, injury, hospitalization, rehabilitation, etc. If this occurs, an agent will need authority to determine and provide for interim pet care until such time as the owner is able to resume those responsibilities. Pet owners may choose to specify the animal's temporary care arrangements or may leave it up to the agent's discretion. The most common options chosen include:

⁶⁵ R.C. 1337.34(A)(1).

- (1) Maintaining the animal in its own home or on its own property with the agent or another family member or friend providing day-to-day care
- (2) Maintaining the animal in its own home or on its own property with a paid care provider
- (3) Temporarily moving the animal into the agent's home or the home of a family member or friend
- (4) Temporarily moving non-household animals to the agent's property or the property of a friend or family member
- (5) Boarding the animal at a kennel, resort, stable, or other facility (particularly one the animal is already familiar with)

The pet owner may specify the individual family member(s) or friend(s) who will provide temporary care or the facility where the animal will be boarded. Such decisions may also be left to the agent's discretion. If an agent is not particularly animal-savvy or lacks experience with a certain type or species of animal, the agent may be required to consult with or follow the recommendations of another person regarding the animal's temporary care and placement.

When planning for any temporary pet care or placement that may be needed, use an "unable to care for" trigger criteria for this authority rather than the more common "disabled", "incompetent" or "incapacitated" criteria to cover all possible scenarios when temporary pet care or placement may be needed.

Example Temporary Care Power #1: *My agent has the power to determine and provide for the temporary placement, boarding, or in-home care of my Pets during any period of time that my spouse and I are both temporarily unable to care for them.*

Example Temporary Care Power #2: *During any period of time that I am temporarily unable to care for my Animals due to travel, illness, injury, disability, hospitalization, rehabilitation, absence, or otherwise, my Agent shall contact, cooperate with, and make arrangements to compensate one of the following people, in the order of priority as listed, to provide for the temporary placement and care, boarding, or in-home care of my Animals: (Name) (Address) (Telephone Number), or (Name) (Address) (Telephone Number).*

Example Temporary Care Power #3: *During any period of time that I am temporarily unable to care for any of my dogs, cats or other household pets, my agent may determine and provide for their temporary care in my home, in the home of my agent, or in the home of one of my other children or grandchildren. Only as a last resort, if my agent is unable to provide for the temporary care of my dogs, cats or other household pets in a home setting as set forth herein, may my agent temporarily board my pets at a kennel, pet resort, or other boarding facility.*

PET POWER #5 – TRANSPORTATION:

A pet owner's agent may need to transport, pick-up, or drop-off animals if the owner is unavailable to do so, or for the owner's convenience. Although the power to move tangible personal property from place to place is granted in R.C. 1337.46(E)(4), it is a good idea to expressly include this authority within the power of attorney terms. Some veterinary clinics, animal daycares, and boarding facilities require authorization for non-owner pick-ups and drop-offs. This mirrors the authorization requirements we have become accustomed to for minor children. Express authorization requirements protect the pet from theft and the facility from liability.

Depending on the species of animal and destination, explicit authorization to transport animals may be required. This is especially important for animals that may cross state lines, such as horses, competition or breeding animals, and animals travelling to temporary or new permanent homes.

The agent may also have authority to delegate transportation, pick-up, or drop-off powers and responsibilities to another. The authority to delegate is a "hot power" under R.C. 1337.42(A)(5) that must be expressly authorized within the power of attorney terms. The power to delegate certain responsibilities to another can be extremely useful when dealing with living animals that have daily care needs.

Example Transportation Power #1: *My agent may transport, pick-up and drop-off my Animals and may authorize another person to do the same.*

Example Transportation Power #2: *My agent may transport horses as necessary or appropriate, including across state lines, and may authorize another person or a professional or commercial carrier to do the same.*

PET POWER #6 – GROOMING, EXERCISE, TRAINING AND BEHAVIORAL INTERVENTION:

An agent may be granted specific authority to determine and provide for an animal's grooming, exercise, training, and any behavioral intervention needs. Routine grooming and exercise are arguably included under an agent's general care and maintenance authority but may be separately included for clarity or if there are special circumstances. While many household pets are rarely professionally groomed or exercised, others may attend a regular playgroup, have a twice daily dog walker, or frequent grooming appointments. Some animals have routine training schedules to provide both physical and mental stimulation. If a pet owner wants these activities to continue, they may be specifically included within the power of attorney terms.

A pet owner's agent may also be granted the authority to provide for any special training or behavioral intervention needs the animal may have. Whenever a pet's life is disrupted due to an owner's absence or illness, the presence of other people in the household, or a temporary alternate living arrangement, the animal's behavior may be negatively impacted. Some pets suffer from ongoing issues, such as aggression or separation anxiety, that require periodic training or

routine management and behavioral intervention. A pet owner's power of attorney may include authority and instructions needed to handle these common situations. This is especially important when there are safety concerns for a pet or people handling the pet,

Granting express authority for any grooming, exercise, training, or behavioral intervention needs is useful guidance regarding the principal's expectations and to justify the considerable costs of such services.

Example Grooming, Exercise, Training, Behavioral Power #1: *My agent may provide grooming, exercise, training, and behavioral intervention or modification for my pets and animals, consistent with my past practices or as needed.*

Example Grooming, Exercise, Training, Behavioral Power #2: *My agent may determine and provide my dogs with grooming, exercise, training, and behavioral intervention or modification services as needed or appropriate and shall facilitate their regular participation in doggie daycare and playgroups consistent with my past practices.*

Example Grooming, Exercise, Training, Behavioral Power #3: *My Agent shall request, authorize, and pay the costs of any hoof or farrier care, grooming, training, or behavioral management my goats may require to remain healthy and safe, and may hire professionals to provide these services as needed.*

Example Grooming, Exercise, Training, Behavioral Power #4: *My Agent is authorized to request and consent to grooming, exercise, training, and behavioral intervention or modification for my Animals, consistent with my past practices. Without limiting the foregoing, my Agent is directed to continue working with and compensating (Trainer's Name) to manage (Animal's Name)'s behavioral issues and to follow her recommendations regarding training, exercise, behavioral intervention, environmental management, and other related matters; Or, if (Trainer's Name) becomes unable or unwilling to continue working with (Animal's Name), to retain the services of, compensate, and follow the recommendations of another suitable, competent, and experienced trainer.*

Example Grooming and Exercise Power With Instructions: *My agent shall exercise my dog or hire someone to exercise my dog and shall have my dog professionally bathed and groomed in accordance with any instructions I may leave or provide to my agent. If I fail to leave instructions regarding any exercise or grooming matter, my agent shall exercise and groom my dog in a manner that is consistent with my past practices or in the best interest of the dog.*

Occasionally, a pet owner will want an animal to continue training and competing towards a particular title, award, or other recognition, or for the pleasure of the animal or other persons. This is an unusual enough expectation that it should certainly be described within the power of attorney terms if applicable.

Example Dog Exercise, Training and Competition Power: *During any period of time that I am unable to do so, my agent is authorized and encouraged to continue exercising and*

training my Shetland Sheepdog, “Trooper”, in the sport of agility, at my expense. My agent may enter and handle Trooper in agility trials or competitions, at my agent’s expense.

Example Horse Training and Showing Power: *My agent shall maintain my Arabian show horse, AK Regalia Rose Reggae, or purchase and maintain another Arabian or Half-Arabian show horse for the purpose of providing my granddaughter, Rebecca Jones, with a show horse of appropriate quality, nature, training, and performance to be competitive on the Class A show circuit. My agent shall spend my income and assets and use my resources without limitation for the training, boarding, exercise, veterinary treatment, alternative health care, grooming, farrier service, and any additional care, goods, or services that may enhance such horse’s health, appearance, or performance. My agent shall also spend my income and assets and use my resources without limitation to purchase any tack, clothing, equipment and supplies my granddaughter may consider appropriate and to pay for instruction, costs of competition, transportation costs, travel expenses, and all other expenses that will further my granddaughter’s enjoyment or success on the Class A show circuit. My agent shall continue this financial support until my granddaughter attains the age of twenty-five (25) years.*

PET POWER #7 – REHOMING A PET:

There are various scenarios where an owner may be unable to remain living with a pet, even with assistance. A pet owner may permanently relocate to a nursing home, rehabilitation center, or other facility where pets are not permitted. The owner could also move in with a family member who suffers from animal allergies, or whose household includes another animal that is not a good match. On occasion, there may be legitimate safety concerns for the owner or pet if they remain living together. Although humans and animals normally enjoy a mutually beneficial relationship, animals may present a fall risk for an elderly or disabled owner, or an owner suffering from severe dementia or paranoia may be at risk of causing harm to an animal.

Under such circumstances, a pet owner’s agent will need authority to place the owner’s animals in new permanent homes or surrender the animals to a shelter or rescue organization. An agent may be granted broad discretion to permanently re-home pets as he or she sees fit, or the principal may designate specific successor owners or provide other placement criteria. The terms governing pet rehoming during the owner’s lifetime usually mirror or are similar to the dispositive terms contained within the pet owner’s will or traditional trust. The most common options include:

- (1) Designating one or more specific successor owners (include alternates whenever possible)
- (2) Referencing the pet owner’s will and directing the agent to transfer or place pets under the same terms, as if the owner were deceased
- (3) Designating a class, group, or list of acceptable persons or placement options for the agent to choose from, such as “any of my children or grandchildren” or “any members of XYZ cat club”

- (4) Directing the transfer or surrender of a pet to a specific rescue organization, humane society, or shelter
- (5) Directing the agent to consult with a specific person or persons for permanent placement recommendations or assistance, such as a trusted veterinarian, animal breeder, trainer, friend, rescue volunteer, etc.
- (6) Instructing the agent to place a pet using specific criteria provided, for example:
 - (a) in a permanent family home
 - (b) in an indoor only home
 - (c) with a no-kill or low-kill rescue organization or shelter facility
 - (d) in a home with/without children under the age of 14 years
 - (e) in a home with/without other animals
 - (f) with an animal breeder or competitor in a particular venue
 - (g) in the same home as other animals the pet is bonded with
- (7) Authorizing or directing the agent to sell a valuable or marketable animal, such as a horse, large bird, breeding animal, or show animal (terms of sale, criteria, or limitations may be included)

Include a re-homing plan and a back-up plan! Giving away animals is not as easy as giving away money or other property. People often refuse to accept the gift of a pet when the need arises even if they have agreed in advance to care for the animal. Ideally, the agent should have authority and discretion to permanently place or surrender pets if the owner's preferred plans fail to provide homes for all animals. The power of attorney terms may also explicitly grant an agent the related authority to advertise and market animals for adoption or sale. While this authority is arguably implied, its specific inclusion is helpful to clarify the principal's expectations and to justify paying advertising and marketing expenses.

If a pet or animal was purchased from a breeder or was adopted from a humane society or rescue organization, the owner may be contractually required to return the animal to the breeder or rescue if he or she is unable to keep the animal. Some pets or animals may also be co-owned with another person, and the co-owner may have contractual rights to the pet. Most organizations and many breeders are willing to waive return-of-pet requirements if the pet is otherwise adequately provided for. In the alternative, returning a pet to a breeder or organization under a contractual requirement may serve as a valuable lifetime placement plan or back-up option if the owner doesn't have family members or friends who are willing and able to accept the pet.

When a pet is rehomed, the agent may be directed or authorized to make a gift of money to a pet's successor owner, or a donation to an organization or facility that accepts the pet, to help defray the costs of future care. The agent may also be authorized or directed to transfer pet-related equipment, supplies, and other tangible personal property to the animal's new owner. Gifting

authority is a “hot power” and any gifts or donations to successors must be expressly authorized within the power of attorney terms under R.C. 1337.42(A)(2).⁶⁶

To combat the growing problem of abandoned pets, many local shelters, humane societies, and rescue organizations have or are developing formal programs for the care and adoption of donors’ pets following a donor’s death. Some of these organizations will also accept pets when a donor enters a nursing home or assisted living that does not permit pets, moves in with a family member who doesn’t accept a pet, or is otherwise unable to continue caring for a pet. A Pet Plan may include a formal arrangement with a local shelter, humane society or rescue organization for the care and placement of a pet in exchange for a donation.

If a pet owner would like his or her agent to have the option of placing the animal and any accompanying money or other property with himself or herself, this needs to be expressly stated within the power of attorney terms. Otherwise, self-dealing by the fiduciary is voidable and a breach of fiduciary duty,⁶⁷ even if it is in the best interest of the animal or consistent with the pet owner’s expectations. Keep in mind that the laws governing power of attorney agent conduct are intended to protect the principal and preserve the value of his or her resources from agent overreach or misconduct. Such laws are not always good fits for living animals, especially those with minimal economic value. We often need to draft around our laws to adequately protect and provide for pets.

Be very careful when defining triggering events for the permanent re-homing of an owner’s pets. No one wants to discover that their “trusted” agent rehomed a beloved pet during their temporary absence for hospitalization or rehabilitation. Use “permanently unable to care for my pets” or similar criteria to trigger an agent’s power to permanently rehome the owner’s animals.

Example Permanent Pet Placement Power #1: *My agent shall determine and provide for the placement of my Animal(s) in one or more suitable permanent homes or with one or more no-kill or low-kill rescue organizations or no-kill or low-kill shelters and transfer or surrender ownership of my Animal(s) accordingly if my spouse and I become permanently unable to care for them.*

Example Permanent Pet Placement Power #2: *If I become permanently unable to care for or live with any of my Animals, even with appropriate assistance, my agent shall transfer possession and ownership of such Animal(s) to the beneficiary(ies) of such Animal(s) designated in my Last Will and Testament as if I were deceased. If there is no beneficiary designated or none of the designated beneficiaries are willing and able to accept ownership of and responsibility for any of my Animals, my agent may determine and provide for their placement in suitable permanent homes or with one or more no-kill or low-kill rescue organizations, and transfer or surrender ownership of such Animal(s) accordingly.*

Example Permanent Pet Placement Power #3: *If my spouse and I are both permanently unable to care for and live with any of our cats, my agent shall transfer such cats to the*

⁶⁶ An agent under a power of attorney may may a gift on behalf of the principal or of the principal's property only if the power of attorney expressly grants the agent the authority.

⁶⁷ *Tewksbury v. Tewksbury*, 2011-Ohio-3358, (4th Dist.).

first person named below who is willing to accept ownership and responsibility of caring for one or more of my cats:

- (1) My daughter, Cindy Summers;*
- (2) My granddaughter, Lucy Leonard; or*
- (3) My grandson, Samuel Sanders.*

The cats may, but are not required to, be placed together in the same home. If any of my cats are not accepted by any of the foregoing persons, my agent shall transfer each such cat to XYZ Cat Sanctuary along with the sum of \$10,000.00 per cat.

Example Permanent Pet Placement Power #4: *If I am permanently unable to care for any of my Pets, my Agent is directed to contact, cooperate with, and make arrangements to compensate one of the following people, in the order of priority as listed, to assist my Agent in determining and providing for the placement of my Pets in one or more suitable permanent homes or with one or more no-kill rescue organizations or animal sanctuaries, and to transfer or surrender ownership of my Pets accordingly: (Name) (Address) (Telephone Number), or (Name) (Address) (Telephone Number).*

Example Permanent Pet Placement Power #5: *If I become permanently unable to care for any of my animals, my agent shall transfer ownership and possession of each animal to the animal's original breeder, prior owner, or to the shelter, rescue or organization such animal was adopted from, pursuant to the terms of the contract or agreement I entered into when I purchased or adopted the animal. If there is no prior breeder, owner, shelter, rescue or organization to return an animal to, or if the animal is not accepted by a prior breeder, owner, shelter, rescue or organization, my agent shall place the animal in a suitable permanent home or with no-kill or low-kill rescue organization, in my agent's discretion.*

Example Permanent Pet Placement Power #6: *If I become permanently unable to care for any of my pets, my Agent has the power to determine and provide for the placement of any such pets in one or more suitable permanent homes or with one or more rescue organizations or shelters as my Agent considers appropriate, and to transfer or surrender ownership of my pets accordingly. In exercising this authority, my Agent shall make all reasonable attempts to place (Pet 1) and (Pet 2) together in the same permanent home.*

Example Permanent Pet Placement Power #7: *If my spouse and I are both permanently unable to care for our dogs, my agent shall place all of our dogs in one or more suitable permanent, companion-animal homes, with no cats or children under ten years of age in the household. My agent shall in good faith attempt to place dogs who are bonded to one another in the same permanent home whenever possible. My agent shall transfer ownership of my dogs to their new respective owners and may also appoint and transfer any dog related equipment or supplies and any reasonable sum of money that my agent may determine is appropriate under the circumstances to one or more new owners of my dogs for the future and ongoing care and maintenance of such dogs.*

PET POWER #8 - ENTER INTO CONTRACTS FOR PET CARE:

A general power of attorney agent who is authorized to care for pets almost certainly has the authority to enter into contracts or agreements with third parties for the care of a pet without a specific grant of contractual authority.⁶⁸ Nonetheless, express authority may be useful under certain circumstances, such as a horse that is boarded off the owner's property, a dog that lives with its show handler, or when an agent needs to manage the services of multiple pet care service providers on behalf of an owner who needs temporary or permanent assistance to care for an animal.

The authority to enter into formal agreements also allows an agent to exercise greater oversight and control when a friend, family member, or other lay person is providing temporary care. Pet Care Agreements were more popular years ago before Pet Trusts were statutorily authorized, but they are still useful today under the right circumstances.

An agent may also be expressly granted the authority to contract with himself or herself or a related business to provide animal services in exchange for compensation. Depending on the agent's personal qualifications, such services may include temporary pet care, boarding, grooming, training, and more. Self-dealing by an agent is voidable and considered a breach of fiduciary duty if not expressly authorized within the power of attorney terms.⁶⁹

Example Contract Power #1: *My agent is authorized to create and enter into one or more contracts or agreements for the care of my Animals.*

Example Contract Power #2: *My agent may create and enter into one or more contracts or agreements for the care, boarding, training, handling, management, or breeding of my Standardbred racehorses, at my agent's discretion.*

Example Self-Dealing Contract Power: *My agent may contract for the boarding and care of my dogs during any period of time that I am unable to care for them in my home and my agent may contract with himself or with Fair Acres Pet Resort, owned in part by my agent, to provide such services at the standard rates of compensation charged for the services.*

PET POWER #9 - CREATE AND FUND TRUSTS FOR THE CARE OF ANIMALS:

A pet owner's agent may also be granted the authority to create and fund a trust for the care of animals under R.C. 5804.08, commonly referred to as a "Pet Trust". This is a useful option if an animal owner is currently undecided about creating a Pet Trust or if circumstances change and the need arises later. The authority to create a trust, including a Pet Trust, is a "hot power" that must be expressly granted to an agent under R.C. 1337.42(A)(1).

⁶⁸ See, R.C. 1337.44(B).

⁶⁹ *Tewksbury v. Tewksbury*, 104 Ohio App.3d 603, 2011-Ohio-3358, 957 N.E.2d 362 (Ohio App. 4 Dist., Pike County, 2011).

If an animal owner already has a Pet Trust or a traditional estate planning trust that provides for pets, the agent will need authority to transfer pets and property to the trustee under specified circumstances or upon triggering events. It is common for trust settlors to retain personal ownership of their pets until a triggering event occurs, such as the owner's death or permanent inability to care for the pet. A power of attorney agent may be authorized or directed to transfer pets and money or other property for their care to the trustee if the owner becomes permanently unable to care for and live with the pet or another triggering event occurs.

The authority to make gifts is another "hot power" that must expressly granted to an agent under R.C. 1337.42(A)(2) and gifts in excess of the annual gift tax exclusion amount must be expressly authorized under R.C. 1337.58. The authority to make transfers to the trustee of a traditional estate planning trust that provides for pets must be expressly authorized within the power of attorney terms. Technically, transfers of an animal or other property to the trustee of a Pet Trust aren't "gifts" because the transfers are not for the benefit of a person (the IRS does not include animals in its definition of "person").⁷⁰ However, there is no existing caselaw directly on point and no guarantee that a reviewing court will appreciate this distinction. Both the authority to create and the authority to fund a Pet Trust should be expressly granted if those powers are desired.

Example Pet Trust Creation and Funding Power #1: *My agent is authorized to create one or more trusts for the care of my Animals and to fund any such trust(s) sufficiently to provide for and maintain my Animals throughout their lifetimes in the manner and lifestyle they are accustomed to in my care, which may include funding that exceeds the annual federal gift tax exclusion amount.*

Example Pet Trust Creation and Funding Power #2: *If I become permanently unable to care for any of my Pets during my lifetime, my agent shall transfer ownership of such Pet(s) to the Trustee of My Pet Trust, dated January 1, 2010. In any such event, my agent shall also transfer to the Trustee money or money and property with a total value equal to the amount necessary to increase the total principal value of My Pet Trust to \$500,000.00.*

PET POWER #10 – INSURANCE COVERAGE:

The authority to insure tangible personal property "against liability or casualty or other loss" is included in R.C. 1337.46(E)(1). The express pet-related grant of insurance powers probably isn't necessary for the agent to have such authority per se but may be useful to put the agent on notice of any existing coverage or to define the parameters of the agent's authority and duties.

A very small minority of pets and companion or hobby animals are covered under pet health, wellness, or veterinary insurance policies. However, this is a growing market and is likely to expand in the coming years. An even smaller percentage of animals are insured against casualty or economic loss associated with mortality, injury, theft, or loss of a particular use. The market for this type of insurance coverage is limited since it applies only to animals with significant value

⁷⁰ IRS Rev. Rul. 76-486.

or earning potential. If a pet is covered by health or loss insurance of any nature, the agent will need to know about the coverage in order to maintain it. Notice of any such insurance policies can be provided within the power of attorney terms. The power of attorney may also clarify whether the agent has a duty to obtain and maintain insurance coverage, or discretion to do so but no corresponding duty.

An agent acting on behalf of an animal-owning principal must also consider any corresponding personal liability the agent may have for damages or injury caused by an animal under the agent's care or control. As any litigator will confirm, our beloved animals are lawsuits waiting to happen. Riding and handling horses comes with inherent risks of severe injury, head injury, or even death from a kick or fall. A normally well-behaved dog may bite a caregiver or someone else. Large birds can lacerate or break fingers, some species of pet snakes are poisonous, and many animals may transmit disease to an immunocompromised or elderly person.

An animal owner's agent will need to review existing homeowners or farm insurance policies (both the owner's and the agent's) to determine current coverage and any exclusions or limits that may apply to horses, dogs, exotics, and other pets. Animal-related liability insurance coverage is a constantly moving target with insurance companies adding and amending exclusions to both homeowner's and commercial policies. Many of the most popular breeds of dogs are routinely excluded. Dogs with any sort of bite history, no matter how trivial, and dogs trained for personal or property protection are almost always excluded from standard coverage. Sometimes, animal-claim coverage may be available under an umbrella policy or policy rider, but the same exclusions often apply to these supplemental forms of insurance coverage.

Liability insurance coverage for an animal considered low-risk or average-risk may be available through the company insuring the real property where the animal is kept. Otherwise, the agent may need to obtain and maintain a separate animal liability insurance policy. When investigating insurance coverage options and selecting a policy, it is extremely important to provide all relevant information to the insurance agent, including the type of animal, the animal's history, where and how it is kept, any off-premises activities the animal engages in, who owns the animal, who possesses and cares for the animal, and any other relevant details. Review the policy terms carefully and confirm available coverage, who is covered, where the coverage applies, and any policy exclusions in writing. Depending on the circumstances, an agent may need authority to obtain and pay for additional liability insurance coverage for the agent's own protection.

Example Insurance Coverage Power #1: *My agent may obtain, maintain, contract for, and pay the premiums due on any insurance policies relating directly or indirectly to my Pets that my agent deems appropriate, however my agent shall have no duty to so.*

Example Insurance Coverage Power #2: *My agent shall maintain and pay the premiums due on any preexisting policy of pet health or veterinary insurance coverage covering any of my pets or animals.*

Example Insurance Coverage Power #3: *My agent may insure the life, health, and wellness of any of my horses, may insure against the theft, mortality or loss of use of any of my horses, and may insure against any damage, death, injury, harm, loss, or other liability*

any of my horses may cause. My agent may maintain, obtain, contract for, and pay all premiums due on any policy of life or mortality, accident, theft, comprehensive, animal health, general liability, animal liability, property owners, or other insurance covering or pertaining to any of my horses.

Example Insurance Coverage Power #4: *My Agent has the authority to: (a) obtain or maintain pet health or veterinary insurance coverage for any of my Animals and pay premiums due thereon; (b) obtain or maintain mortality, injury, theft, or loss of a use insurance coverage for any of my Animals and pay premiums due thereon; and (c) obtain or maintain any liability insurance coverage protecting against damages or loss caused by my Animals and pay premiums due thereon. However, my Agent has no duty to obtain or maintain any animal-related insurance coverage in addition to or in excess of the insurance coverage in effect when my Agent begins acting on my behalf or that is inconsistent with my past practices, and no duty to maintain any existing insurance coverage that becomes economically burdensome compared to the risk of loss or that my Agent has no actual knowledge of.*

PET POWER #11 – PET-RELATED EQUIPMENT AND SUPPLIES:

A general power of attorney agent nearly always has authority to deal with tangible personal property under R.C. 1337.46 or the terms in a power of attorney document. This authority includes the power to purchase, retain, possess, use, maintain, and insure animal-related equipment and supplies. An agent will not always need specific authority to deal with “pet stuff”, but such authority may be useful to clarify the principal’s expectations and justify expenses.

If there is a particular item of property the pet owner wants an agent to maintain, such as a separate vehicle to transport hairy and dirty dogs, or commercial grade appliances to launder horse blankets, this should be explicitly provided for. Specifically granted authority is also needed for an agent to authorize others to use or possess animal-related items or to transfer an animal’s “stuff” with a pet that is rehomed (which is essentially the power to make a gift).

Example Pet-Related Property Power #1: *My agent may use, retain and maintain any equipment or supplies for the care and maintenance of my pets and animals and may purchase and maintain any additional equipment, supplies, toys, and other tangible personal property as may be needed or appropriate for the care and maintenance of my pets and animals, to facilitate their physical or emotional wellbeing, or to further my enjoyment of their companionship.*

Example Pet-Related Property Power #2: *My Agent is authorized to possess, use, and maintain any equipment and supplies I may own and use for the care, training and management of my Animals and is authorized to purchase any additional animal-related equipment and supplies my Agent deems appropriate. My Agent may authorize any third-party providing maintenance, care, or services for my Animals to possess and use any of my animal-related equipment and supplies and may transfer ownership of my animal-related equipment and supplies to a successor owner whenever one of my Animals is transferred or surrendered under the terms and conditions set forth above.*

Example Pet-Related Property Power #3: *My agent shall retain, use, maintain and insure a separate vehicle for the transport of my dogs, consistent with my past practices.*

PET POWER #12 – HUMANELY EUTHANIZE A PET:

There may be instances when an agent will need the authority to euthanize a principal's animal upon the recommendation of a veterinarian or if necessary or humane due to:

- the animal's health, physical condition, age, or injury
- severe behavioral issues that do not improve with training or treatment
- lack of suitable permanent placement or care options (if the owner is permanently unable to care for the animal)
- prohibitive costs of necessary veterinary treatment (as determined by the owner or agent)
- poor veterinary treatment outcome prognosis
- other specified criteria

Pet owners have widely varying opinions on when euthanasia is and isn't appropriate and this authority is often custom drafted to conform to the principal's personal preferences. Although this can be a difficult subject for animal owners and estate planners alike, it needs to be addressed within the power of attorney terms. The unauthorized euthanasia of a pet could be considered a crime under Ohio law,⁷¹ and may also be a breach of fiduciary duty.

Some pet owners find the subject of euthanasia so unpleasant that they would rather leave the decision up to someone else. An animal may be euthanized upon the recommendation of a veterinarian, or at the discretion of the agent if the principal has confidence in the agent's judgment.

Example Euthanasia Power #1: *My agent may request and authorize the euthanasia of one or more of my Animals if necessary or humane due to the animal's health, physical condition, age, injury, severe behavioral issues that do not significantly improve with training or treatment, lack of suitable permanent placement options or care, the prohibitive costs of recommended veterinary treatment, or poor treatment outcome prognosis. My agent is encouraged to humanely euthanize any of my Animals that are suffering from unmanageable pain or immobility.*

Example Euthanasia Power #2: *My agent is expressly authorized to consent to the humane euthanasia of one or more of my pets if recommended by a veterinarian due to the animal's health, physical condition, age, injury, or suffering.*

Example Euthanasia Power #3: *My agent may request and authorize the euthanasia of any of pets as my agent may consider appropriate, in his or her sole and absolute discretion.*

⁷¹ See, R.C. 959.02.

On occasion, animals that have safely and successfully lived with the principal may pose an unacceptable liability risk to the agent, another caregiver, or a successor owner. While this is unpleasant to think and talk about, the terms of the owner’s power of attorney may authorize or direct the agent to humanely euthanize a potentially dangerous animal. Veterinarians have become increasingly unwilling to euthanize healthy pets,⁷² but may be more willing to do so when appropriate if euthanizing the pet is expressly authorized by the owner within the power of attorney terms.

Example Euthanasia Power #4: My Belgian Malinois, known as “Beau”, is a retired police patrol dog and may be considered dangerous. He may pose an unacceptable safety and liability risk to my agent and others. If I am unable to care for Beau and my agent is unable to temporarily or permanently place Beau in the care of an experienced current or retired handler or trainer of patrol or protection-trained dogs within a reasonable period of time, my agent is authorized to have Beau humanely euthanized by a licensed veterinarian.

PET POWER #13 – PAYING FOR ANIMAL-RELATED EXPENSES:

Lastly, but certainly not of least importance, an agent will need authority to spend the principal’s money to pay for everything described above. Many pet owners spare no expense where their animals are concerned. Consumer spending for pets has increased significantly over the past two decades and continues to rise. Not surprisingly, many pet owners choose to authorize generous or unlimited agent spending for animal-related goods and services.

However, not everyone feels comfortable spending large or indefinite sums of money on animals. Some pet owners may need to place reasonable limits on spending consistent with their personal incomes and assets. This can be accomplished by using a “reasonable” spending standard, imposing monetary limits on pet-related expenditures, or instructing an agent to pay for pet care expenses consistent with the owner’s past practices.

A power of attorney agent may be authorized or directed to pay the costs of all pet-related goods and services. Alternatively, the specific categories and types of pet-related expenses that are permitted may be described or listed in the power of attorney terms. Pet-related expenses that an agent may need to pay on behalf of a principal include the costs of:

- Day-to-day care and maintenance
- Food or feed, supplements, and treats
- Bedding, equipment, supplies, toys
- Veterinary treatment (routine, non-routine, emergency, alternative, holistic, etc.)
- Pet sitters, dog walkers, pet daycare services, mobile groomers, mobile veterinarians
- House cleaning and yard maintenance services

⁷² See, Coghlan, Simon (April 29, 2019), “Why Your Veterinarian May Refuse to Euthanize Your Pet”, The Conversation, <https://theconversation.com/why-your-veterinarian-may-refuse-to-euthanise-your-pet-110263> (last visited Oct. 22, 2022); *AVMA Guidelines for the Euthanasia of Animals: 2020 Edition*.

- Housing, in-home pet care or boarding
- Transportation (including costs of transporting the animal to a new home)
- Grooming, exercise, training, instruction, and farrier service for hooved animals
- Advertising, marketing and evaluating re-homing options
- Premiums on any pet health, mortality, theft, or liability insurance (if applicable)
- Agent compensation (if applicable)

It is a good idea to describe or list the various types or categories of pet-related expenses that an agent is authorized or directed to pay rather than relying exclusively on general “any or all” language. The best evidence of a principal’s expectations are the words used within the power of attorney. A detailed grant of pet-related spending authority provides valuable guidance to the agent, protects the agent from unwarranted accusations of over-spending (or under-spending), and provides a benchmark for any reviewing court to use in determining whether an agent has acted within the scope of authority granted or breached his or her duties.

Example Spending Power #1: *My Agent may spend my income and/or assets for the care, maintenance, veterinary treatment, boarding, in-home care, grooming, exercise, training, transport, and any other needs and expenses of any pets or animals that I may own, at my Agent’s discretion.*

Example Spending Power #2: *My agent shall pay for the reasonable costs of caring for and maintaining my pets, including the costs of food, toys, equipment, supplies, grooming, exercise, training, veterinary treatment, boarding, in-home care, transportation, premiums due on any insurance policy covering my pets or animals, any costs associated with placing my pets in new homes if I am unable to care for them, and any similar or related expenses*

Example Spending Power with Monetary Limits: *My agent has the power to spend or authorize and contract for the expenditure of my income and/or assets for the purposes, goods, and services described in (1) through (12) above and to maintain my Pets in their accustomed lifestyles, but subject to the following limitation: no matter what the circumstances, my agent may not spend or authorize the expenditure of more than \$10,000.00 per Pet per year or more than \$20,000.00 per Pet total on veterinary treatment, procedures, medications, and related expenses.*

The power to use a pet owner’s financial resources to pay for pet-related goods and services may include the power to incur debt on the owner’s behalf or extend the principal’s credit. More and more veterinary clinics, urgent care facilities, and animal hospitals require a credit card authorization on file before providing treatment services. Many veterinary clinics offer and will assist with CreditCare®, iCare, or similar veterinary treatment credit card or loan applications on site.

Example Spending and Borrowing Power: *My agent may spend my income and/or assets and extend my credit, borrow funds, and apply for additional credit as necessary or appropriate to exercise the powers and authorities granted to my agent in (1) through (12)*

above, to comply with my instructions, to maintain my Animals in the lifestyle they are accustomed to, and to ensure that I am able to continue living with my Animals and enjoy their companionship, irrespective of the amount or total amount of such expenditures.

If a principal supports any pets that are owned by another person, such as an adult child or other family member, or provides for unowned animals, such as stray or community cats, an agent may also be granted authority to continue such support and related expenditures.

Example Spending Power for Community Cats: *My agent may use my income to pay for the costs of feeding, trapping, neutering and spaying (TNR), and meeting other basic needs of stray and community cats in my neighborhood, consistent with my past practices.*

Example Detailed Spending Directive, Including Means of Paying Expenses: *My agent shall spend my income and assets generously and without limitation for: (1) the general and day-to-day care and maintenance of my dogs, (2) food, bedding, toys, treats, equipment, and supplies, (3) routine, non-routine, emergency, speciality and alternative veterinary treatment and care, medications, supplements, and other health care needs, (4) in-home care or boarding, (5) pet sitters, dog walkers, mobile grooming services, mobile veterinarians, (6) house cleaning and yard maintenance services, and any other assistance I may need to safely continue living with and caring for my dogs indefinitely, (7) grooming, exercise, training, daycare, and playgroups, (8) the costs of transporting my dogs to and from appointments, events and enjoyable outings, (9) premiums due on any policy of insurance covering the life, health and wellness, theft, or loss of use of any of my dogs, and any liability insurance covering damages, losses or harms caused by any of my dogs, (10) all costs related to placing my dogs in new permanent homes if I become permanently unable to care for them, including the costs of evaluating potential placement options, (11) agent compensation for dog-related time and services, and (12) all other costs and expenses related in any manner to my dogs or their maintenance and care in accordance with my expectations. To facilitate the payment of dog-related expenses, my agent may: (a) use or withdraw funds from any bank, credit union or other financial account held in my personal name, individually or jointly, (b) use and charge expenses to any debit or credit card issued in my name, (c) contract for and agree to pay for goods and services on my behalf, and (d) sign any checks, withdrawal slips, charge slips, receipts and other documents as may be necessary.*

Example Detailed Spending Power: *My agent may contract for and incur, and shall pay from my income or assets, all expenses related to the maintenance and care of my horses, including without limitation expenses related to all the following:*

- (1) Day-to-day care and maintenance in their accustomed lifestyle;*
- (2) Professional or private care providers, stall cleaners, grooms, and other labor or assistance that may be needed;*
- (3) Feed, treats, supplements, bedding, equipment and supplies, including the continuation of their accustomed diet and performance supplements and the purchase of dust-free bedding and non-toxic grooming products, consistent with my past practices;*

- (4) *Routine, non-routine, emergency, and extraordinary veterinary treatment, including alternative or holistic treatment, treatment by veterinary specialists, surgery, medication, health supplements, and any other recommended veterinary or health treatment, in an unlimited amount;*
- (5) *Daily turnout, lunging, or other exercise;*
- (6) *Grooming and farrier service, as needed;*
- (7) *Any training that may be needed or appropriate, consistent with my past practices;*
- (8) *Transportation costs to and from appointments, outings and events, including the costs of maintaining and insuring a horse trailer and towing vehicle;*
- (9) *Barn, pasture, turnout, and fencing maintenance, repairs and improvements, as needed;*
- (10) *Premiums due on any mortality or liability insurance coverage I may have obtained and any additional insurance coverage my agent considers appropriate, including without limitation animal liability insurance;*
- (11) *Reasonable compensation to my agent for time and services related to the care and maintenance of my horses; and*
- (12) *Any and all additional costs and expenses related in any manner to the care and maintenance of my horses.*

PET-RELATED AGENT DIRECTIVES:

By its very nature, a power of attorney is a grant of authority or “power” to act on behalf of the principal. However, as you may have noticed from the examples provided, each of the “pet powers” discussed above can also be phrased as a directive to the agent. While powers and directives are commonly intertwined, there are important distinctions between the two to keep in mind. Authorities are permissive (what the fiduciary may do), while directives and instructions are compulsory (what the fiduciary must do). Directives create a duty for the agent to act. Both must be carried out reasonably, so even explicit directives are not always 100% absolute.⁷³

Nonetheless, including directive language like “shall” or “must” when appropriate provides additional clarity to the agent and any reviewing court regarding the pet owner’s expectations and the agent’s duties. There is a significant difference between “my agent *may* use my income, assets and credit to pay for my cat’s care” and “my agent *shall* use my income, assets and credit to pay for my cat’s care.” There is an even bigger disparity between “my agent *is authorized to* determine my horse’s exercise and turnout” and “my agent *shall provide* for the turnout or exercise of my horse at least six days a week, with reasonable exceptions for inclement weather or my horse’s health and wellbeing.”

Directives are more powerful than authorities. Directives establish very clear criteria for animal care and for determining whether an agent has breached his or her fiduciary duty. They

⁷³ R.C. 1337.34(A)(1).

are a valuable tool to ensure an animal continues to be cared for in a manner consistent with the owner's expectations.

However, some directives may also be unduly burdensome for an agent to carry out. Directives that are too numerous or too restrictive may discourage a prospective agent from accepting the responsibility. When counseling pet owners, we need to help them strike the right balance between what they want and what an agent is or may be willing to do. The most protective pet plan in the world is no good if no one is willing to carry it out.

STANDARDS GOVERNING THE EXERCISE OF PET-RELATED AUTHORITY:

Under R.C. 1337.34(A)(1), a power of attorney agent is required to “[a]ct in accordance with the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, in the principal’s best interest.” Including detailed “pet powers” authorities (or directives) is the best way to communicate and substantiate the pet owner’s expectations. Authorities and directives may and often do include standards or other parameters that govern *how* the agent exercises the authorities granted. Standards may be applied to any of the pet care, placement, and spending “pet powers” authorities described above.

Standards governing the exercise of authority are useful to establish the range or parameters of permissible fiduciary conduct. Most of the standards governing the exercise of agent authority are variations or combinations of four basic options. An agent may be required to exercise or refrain from exercising the pet-related authorities granted:

- (1) In a manner that is consistent with the principal’s past practices or in accordance with the lifestyle an animal accustomed to (the “do what I would do or have done” standard);
- (2) In accordance with instructions contained within the power of attorney document;
- (3) In accordance with written or verbal instructions from the principal or another person outside of the power of attorney document (can change with the circumstances); or
- (4) At the agent’s discretion (the “do what you would do” standard, which is still limited by the known reasonable expectations or best interests of the principal).

Pet owners often direct their agent to treat and care for their animals in the same or similar manner as the owner has (consistent with the principal’s past practices) or to maintain them in the same or better lifestyle. Few pet owners will object to an upgrade in their pet’s lifestyle, but most want to avoid a significant downgrade. For example, it would be inappropriate to rehome a lazy housecat to a dairy farm, or keep a dog used to snuggling in the owner’s nice warm bed in a cold doghouse outside. Here is the catch – people have different opinions about what is an upgrade in lifestyle versus a downgrade. The previous examples were relatively easy, but here is a harder one: is life in a pasture an upgrade or a downgrade for a horse used to living in a stall? It probably depends on the circumstances and the horse – it could go either way. It can be very helpful to supplement standards with additional instructions or criteria where appropriate.

It is also common for a trusted agent who is also an animal lover to be granted complete discretion in carrying out the pet powers and corresponding duties. Though, pet owners on average have a tendency to be more particular about the continuing care of their animals than many parents are about the raising of their minor children.☺

Different standards can be applied to different authorities. For example, an agent may be directed to provide day-to-day care that will maintain an animal in its accustomed lifestyle, determine the animal's veterinary treatment at the agent's discretion, and pay for pet related expenses consistent with the owner's past practices. Or an umbrella standards clause may even include elements of all four options.

Example Umbrella Standards Governing Exercise of Pet-Related Authority: *In exercising or refraining from exercising the authorities granted in Section B above, my Agent shall provide for my Animals and pay the expenses of my Animals in a manner consistent with any express instructions or guidance contained herein, any written or verbal instructions given by me outside of this document, and my past practices (in that order of priority). My Agent may use his or her good faith discretion in exercising or refraining from exercising the authorities granted in Section B above, provided that my Agent's decisions and actions are not inconsistent with any express instructions or guidance contained herein or given by me, and do not diminish the quality of my Animals' lifestyle or circumstances to less than they were accustomed to in my care.*

Many of the examples contained in this handbook and drafting manual include standards governing the agent's conduct within the terms of the specific power granted. It is impossible to provide examples of all the various standards that pet owners may choose to apply, but some of the most common standards are variations of the following:

- Providing day-to-day maintenance and care consistent with what the owner has provided in the past and the animal is accustomed to
- Maintaining an animal in a similar or better lifestyle than the animal enjoyed in the owner's care
- Spending "generously", "in an unlimited amount", "without limitation" or "irrespective of amount" for animal care and maintenance
- Spending "reasonably" or "consistent with my past practices" for pet care and maintenance
- Absolute discretion to determine and provide temporary pet care
- Following the owner's instructions regarding exercise, grooming and training
- Absolute discretion to determine the permanent placement of a pet in a new home
- Particular permanent pet placement criteria the agent must comply with

Example Standards Governing Exercise of Pet-Related Authority: *My Agent shall maintain, care for, and provide for my Animals in a manner that is consistent with my past practices and shall provide my Animals with a lifestyle and circumstances that is of the same or better quality as they were accustomed to before I became unable to care for them*

without the assistance of my Agent. My Agent is encouraged to spend generously for the maintenance, care, wellbeing, and benefit of my Animals, irrespective of the amount or total amount of such expenditures.

Standards provide valuable additional guidance to both the agent and any reviewing court regarding the pet owner's expectations. The more guidance provided within the power of attorney terms, the more likely the owner's pet plan will be carried out and enforced as intended.

SPECIFIC PET-RELATED INSTRUCTIONS:

In addition to or in combination with the "pet powers" authorities (or directives) granted to an agent and any standards governing the exercise of those authorities, an animal owner may provide express or specific pet-related instructions.

General instructions that apply to all animals or are unlikely to change over time may be included within the power of attorney document. More specific instructions that pertain to individual animals or that may change over time or with circumstances are best left in a separate document that can be updated periodically. A pet owner may also provide verbal instructions to an agent, through written instructions are obviously preferable.

These instructions may be detailed, though pet owners should be cautioned against mandating rigid or inflexible schedules or care specifics. If a pet owner is adamant about providing detailed and specific instructions, it will be helpful if an agent is granted the discretion to disregard the pet owner's instructions if necessary for the animal's life, health, physical or emotional wellbeing, or other applicable circumstances. For example, a 3-mile daily walk that is necessary to keep an energetic young Labrador from chewing the furniture will not be appropriate when that same dog is 13 years old and suffering from arthritis and a cardiac condition.

Many of the "pet power" examples contained within this Drafting Guide include instructions to the agent. From a legal standpoint, a pet owner may leave any instructions to an agent that are not impossible, illegal, or against public policy.⁷⁴ As a practical matter, the instructions should be within the bounds of what could be considered normal or reasonable, which admittedly covers a wide range of possible standards of animal care. Instructions should also not be so burdensome that a reasonably diligent and competent agent will struggle to comply with the pet owner's expectations.

Example Specific Instruction #1: *My agent shall provide for the reasonable turnout or exercise of my horse at least six days a week, with reasonable exceptions for inclement weather or my horse's health and wellbeing.*

Example Specific Instruction #2: *My Cocker Spaniel, known as "Cola", has a bite history and must be muzzled by law outside of my home or fenced yard.*

⁷⁴ See, *In Re Estate of Krueger*, 1980 Ohio App. LEXIS 12494, 1980 WL 351587 (6th Dist.) (regarding instructions contained in a will that violate public policy).

Example Specific Instruction #3: *Each of my dogs must be walked a minimum of three times a day. Two or more of the daily walks should be a minimum of one-half mile in length, except in the event of inclement weather or if a walk of that length is inappropriate due to a dog's injury, illness, unmanaged pain, or other limiting physical condition. My dogs may be walked together or separately, but any dog that is unable to walk the full one-half mile or longer distance must be walked separately. My agent may delegate dog walking to someone else and may hire and compensate professional or private dog walkers as needed.*

Example Specific Instruction #4: *My cats, Tinkerbelle and Mr. Smithers, are bonded and declawed. If it becomes necessary to rehome them, they must be placed together in an indoor only home with no other cats and no dogs.*

Example Specific Instruction #5: *My Cocker Spaniel, known as "Cola", is aggressive towards people and other dogs and has a multiple-bite history. For the safety of my agent and others, and to relive my agent from any corresponding liability, my agent shall euthanize Cola rather than rehoming or surrendering him if I become permanently unable to care for him or will be unable to personally care for him for a period of time of one month or longer.*

In addition to any specific instructions provided to an agent, animal owners should be encouraged to prepare and regularly update basic information about their pets' feeding, housing, exercise, current veterinarians, any health conditions or medications, any behavioral issues, and other relevant information. This information will be invaluable to an agent or subsequent owner who is unfamiliar with the animal or its daily routines.

Avoid including instructions that require healthy and adoptable pets to be euthanized if the owner becomes unable to care for or live with them. Some pet owners believe that their animals will suffer unbearably without them.⁷⁵ This may lead them to request that their animals be euthanized rather than rehomed. While often motivated by good intentions, mandatory euthanasia instructions should not be included in a power of attorney document. Although it is not illegal to euthanize an animal merely for convenience, many veterinarians are understandably reluctant to euthanize healthy and adoptable pets and some outright refuse to do so.⁷⁶ The American Veterinary Medical Association recognizes the practical necessity but recommends that veterinarians provide alternatives to convenience euthanasia.⁷⁷

It is unknown how often a principal's convenience euthanasia instructions are quietly carried out by friends or family members since the issue typically only comes before a court if contested. When faced with this question, probate courts across the country have consistently refused to enforce a testator's instructions to euthanize healthy animals as not reflective of the

⁷⁵ See, Daniels, Suzette (2004), An Introduction to Pet in Wills and Pet Euthanasia, Section III. Michigan State University - Detroit College of Law. Retrieved October 22, 2022, from <https://www.animallaw.info/article/introduction-pet-wills-and-pet-euthanasia>.

⁷⁶ See, Coghlan, Simon (April 29, 2019), Why Your Veterinarian May Refuse to Euthanize Your Pet. The Conversation. Retrieved October 22, 2022, from <https://theconversation.com/why-your-veterinarian-may-refuse-to-euthanise-your-pet-110263>.

⁷⁷ AVMA Guidelines for the Euthanasia of Animals: 2020 Edition, at 8.

testator's true intent, a violation of public policy, or contrary to the anti-waste doctrine.⁷⁸ Ohio appellate courts have yet to rule on this issue, but we can assume our courts are likely to follow suit.

PET-RELATED LIMITATIONS ON AGENT AUTHORITY:

Agents acting under the authority of R.C. 1377.46 or standard general power of attorney terms have broad authority regarding a principal's tangible personal property, which includes animals. Many of these authorities may not be appropriate when dealing with pets or may need significant modification to align with a pet owner's expectations. For example, most pet owners will not want their agent to reject a pet,⁷⁹ exchange a pet for another,⁸⁰ or donate the animal to a research lab. Unless the owner is permanently unable to care for the pet, the owner probably doesn't expect the pet to be surrendered to a shelter.⁸¹ Similarly, unless the animal has significant commercial value and is kept for its investment value or earning potential, most owners do not want their animals sold, leased⁸² or pledged as security.⁸³ Some pet owners may also want to place reasonable limitations on how their animals may be used under R.C. 1337.46(E)(6), such as prohibiting experimentation, racing, breeding, or commercial exploitation. Without express limitations, a power of attorney agent may have all these unwanted authorities over pets.

As discussed in more detail under legal safeguards, animals enjoy some limited degree of protection from agent misconduct under Chapter 959 of the Ohio Revised Code. For example, it is illegal to abandon,⁸⁴ torture,⁸⁵ or cause serious physical harm to an animal,⁸⁶ or deprive an animal of adequate food and water,⁸⁷ or minimal shelter.⁸⁸ However, the criminal code sets a very low bar for animal care, and most owners want better for their pets.

Some of the unwanted or objectionable activities identified above may also violate the agent's duty to act in accordance with the principal's reasonable expectations or in the pet owner's best interest under R.C. 1337.34(A)(1). This is particularly true when the power of attorney contains pet-specific terms. Even where pet-specific terms are lacking, it may not be consistent with the principal's expectations or in the principal's best interest for a pet to be surrendered, transferred or disposed of. Such acts would deprive the principal of the benefits of a future relationship with the pet and may cause the principal serious emotional distress. Some limitations on the exercise of agent authority may be implied due to the nature and benefits of our relationships between with companion animals. To date, however, we do not have the benefit of any published court decisions verifying this.

⁷⁸ *In re Capers' Estate*, 34 Pa. D. & C.2d 121, 141 (Orphans' Ct. 1964); and see, Emerson, Kaity Y. and Bennardo, Kevin, *Unleashing Pets From Dead-Hand Control*, 22 Nev.L.J. 349, 363-370 (Fall, 2021).

⁷⁹ Authorized under R.C. 1337.46(A).

⁸⁰ Authorized under R.C. 1337.46(B).

⁸¹ Authorized under R.C. 1337.46(B).

⁸² Authorized under R.C. 1337.46(B).

⁸³ Authorized under R.C. 1337.46(C).

⁸⁴ R.C. 959.01.

⁸⁵ R.C. 959.13(A)(1); R.C. 959.131(B); R.C. 959.131(D)(1).

⁸⁶ R.C. 959.131(C).

⁸⁷ R.C. 959.13(A)(1); R.C. 959.131(D)(2).

⁸⁸ R.C. 959.13(A)(2); R.C. 959.131(D)(3).

For the sake of clarity, pet protection, and the owner's peace of mind, it is best to state any desired limitations on an agent's pet-related authority within the power of attorney terms. Including an express list of limitations or prohibited acts provides valuable guidance regarding the principal's expectations and also lays the groundwork for terminating an agent's authority in the event of any violations. Common pet-related limitations on an agent's authorities or acts that may be prohibited within power of attorney terms include:

- (1) Selling, exchanging, leasing, or abandoning animals
- (2) Giving away, donating, surrendering, or transferring ownership of animals, except as specifically provided for within the power of attorney terms
- (3) Pledging animals as security
- (4) Using animals for research, experimentation, testing, or meat trade
- (5) Using or permitting animals to be used for any form of racing, fighting or other competition
- (6) Breeding the animals (may be prohibited or limited)
- (7) Using animals for labor or any commercial activity or purpose
- (8) Kenneling, crating, chaining, tethering, or keeping animals primarily outdoors
- (9) Exposure to substances the pet owner may consider unhealthy (examples: vaccines, chemical insect repellants or growth regulators, chemical herbicides or fertilizer, preservatives, overly processed diets, etc.)
- (10) Using animals for a specific unwanted purpose (for example a horse owner may prohibit use for horseback riding lessons or multi-day trail rides)

Please note that all of these limitations will not apply to every situation. For example, if an animal owner is a breeder or regularly shows or competes, he or she may intend for such activities to continue. Similarly, an individual dog owner may regularly kennel or crate animals overnight or when no one is home for safety and to prevent destructive behaviors, and some horses are happier in a pasture than in a stall inside the barn. Limitations on an agent's pet-related authority may need to be customized to the circumstances, particularly if the client is not a typical household pet owner.

Example General Limitations for Household Pets: *Notwithstanding any contrary authority granted herein or under law, my agent may not, under any circumstances, whether or not foreseeable, sell, abandon, exchange, donate, lease, or breed any pets or animals I may own at the time of my death, surrender such pets or animals to a shelter or rescue organization that does not meet the standards of a "no-kill" or "low-kill" facility, use or permit such pets or animals to be used for research, experimentation, testing, labor, or any commercial activity or purpose, or dispose of my pets or animals in any manner other than as expressly authorized herein.*

Example Specific Limitations for Horses: *Notwithstanding any contrary authority granted to my Agent herein or under law, my Agent may not, under any circumstances, do or permit any of the following:*

- (1) *Give away, donate, surrender, exchange, or lease my Horses;*
- (2) *Sell or transfer ownership of my Horses, except as set forth in Section C above;*
- (3) *Pledge my Horses as security for any loan or other obligation;*
- (4) *Use my Horses for research, experimentation, testing or meat trade;*
- (5) *Use or permit my Horses to be used for any form of racing or trail rides lasting more than four hours in any twenty-four-hour period;*
- (6) *Use or permit my Horses to be used for horseback riding lessons, except that anyone who regularly rides one of my Horses may participate in private riding lessons with that Horse;*
- (7) *Breed my Horses or use them for labor or any commercial activity or purpose;*
- (8) *Surgically alter the appearance or aesthetics of my Horses;*
- (9) *House or keep my Horses outdoors for more than twelve hours in any twenty-four-hour period, and then only to the extent that they have adequate shelter from sun, wind, rain, cold, and inclement weather and adequate protection from biting insects; or*
- (10) _____.

INCLUDE STAPLE PET POWERS OR PET TERMS IN ALL POWERS OF ATTORNEY:

While the majority of Ohio households include pets, we prepare powers of attorney for many principals who are not current animal owners. Pet ownership and first-time pet ownership are both on the rise,⁸⁹ and non-pet owners may become pet owners in the future. Seniors and former pet owners who do not plan on getting a pet sometimes change their minds or acquire an animal from a friend or family member who can no longer care for the animal.

Due to the prevalence of pet ownership and the possibility of future pet ownership, it is a good idea to include general “pet powers” or staple pet terms in most powers of attorney (unless the principal objects). It is this author’s practice to include a pet clause in all powers of attorney unless the principal has never been a pet owner and has strenuous objections to becoming a pet owner in the future. This eliminates the need to update documents after a pet is acquired or deal with the problems an agent without pet powers may encounter.

Below are two examples of general pet powers clauses that could be included in all or most powers of attorney:

Example Basic Staple Pet Powers GPOA Clause #1: *I authorize my Agent to spend my income and/or assets for the care, maintenance, veterinary treatment, transport, temporary placement, and other needs and expenses of any pets or animals that I may own, and to determine the care, maintenance, veterinary treatment, transport, and temporary*

⁸⁹ See, Mansourian, Erika, “Millennial and First-Time Dog Owners on the Rise”, *American Kennel Club News* (July 22, 2015), citing American Pet Products Association 2015-2016 National Pet Owners Survey, <https://www.akc.org/expert-advice/news/millennial-dog-owners-on-the-rise/>.

placement of such pets or animals at my Agent's discretion. If I become permanently unable to care for any of my pets or animals, I authorize my Agent to transfer ownership of such pets or animals to my Agent, to place such pets or animals in suitable permanent family homes, or to surrender the pets or animals to no-kill or low-kill shelters or rescue organizations. I further authorize my Agent to request or consent to the euthanasia of any of my pets or animals if recommended by a licensed veterinarian.

Example Basic Staple Pet Powers GPOA Clause #2: *I authorize and direct my Agent to spend my income and/or assets for the care, maintenance, veterinary treatment, transport, boarding, in home care, temporary placement, and other needs and expenses of my animals, and to determine the care, maintenance, veterinary treatment, transport, and temporary placement of my animals as my agent may determine is consistent with my past practices and expectations. During all periods of time that I am unable to continue living with and caring for any of my animals without assistance, I authorize and direct my agent to provide or arrange for and pay the costs of any services or assistance that will enable me to continue living with my animals and provide for their ongoing care. If I become permanently unable to care for any of my animals, I direct my Agent to transfer ownership of such animals to the beneficiaries named in my Last Will and Testament, as if I were deceased. If there is no beneficiary named in my Last Will and Testament who is willing and able to accept ownership and the responsibility of caring for any animal, I authorize my Agent to transfer ownership of such animal to my Agent, to place such animal in a suitable permanent family home, or to surrender the animal to a no-kill or low-kill shelter or rescue organization. If my Agent is unable to place any of my pets directly into a new home, my Agent is encouraged to make a donation from my income and/or assets to a no-kill or low-kill shelter or rescue organization to facilitate the acceptance of the pet. I further authorize my Agent to request and consent to the euthanasia of any of my animals if recommended by a veterinarian or if appropriate or humane due to the animal's health, physical condition, age, injury, severe behavioral issues that cannot be reasonably managed or resolved, or lack of suitable permanent placement.*

In addition to providing a failsafe for those who do not currently own pets but may in the future, a staple or standard "pet powers" or pet terms clause may also be a viable option for many current pet owners. Most animal owners love their pets, but they don't always want to devote a lot of time, effort, or expense towards planning for them in powers of attorney. Some owners are interested in planning for pets only if it isn't too difficult. That's okay - any Pet Planning is usually better than none. While it is best to customize pet-related estate planning terms to the circumstances, it isn't always practical. The option to include a general pet powers clause or staple pet terms may encourage more pet owners to plan, provide for, and protect their animals.

This author often reuses the same standard formats for adding pet terms to general powers of attorney that can be modified or customized as needed or requested with minimal time and effort. Clients often have an easier time organizing and articulating their own particular wishes and concerns *after* reviewing general pet-related terms. Below are a couple examples of more detailed pet powers or pet term clause that are consistent with the expectations of the average pet owner and can be customized as needed:

Example Detailed Staple Pet Powers Clause: *With respect to any dogs, cats, birds, and other pets or other animals that I may own (“my Pets”), I grant my Agent the following powers and authorities, exercisable during any period of time that I am unable to care for my Pets without assistance and exercisable in my Agent’s sole and absolute discretion except as otherwise specifically directed or limited herein:*

- (1) To determine and provide for the day-to-day maintenance and care of my Pets and continue the lifestyle they are accustomed to;*
- (2) To determine the veterinary treatment and care my Pets will receive; To request and consent to routine, nonroutine, emergency and palliative veterinary care and treatment and to sign all necessary authorizations, consents and waivers to receive such treatment; To order, pick-up or authorize the pick-up of medications or other treatments; To administer or authorize the administration of medications and other veterinary treatments;*
- (3) To determine and provide for any assistance or services I may need to continue living with or caring for my Pets in my home, on my property, or any other location where I may temporarily or permanently reside, including without limitation, any or all of the following: pet sitters, dog walkers, mobile groomers, mobile veterinarians, pet caregivers, pet daycare services, house cleaning, yard maintenance services, and other appropriate services; To determine and assist me with procuring alternate living arrangements, as needed and appropriate to enable me to continue living with my Pets so long as I may safely do, including without limitation a condo, apartment, independent living facility, assisted living facility, or nursing home that permits pets;*
- (4) To determine and provide for the temporary placement, boarding, or in-home care of my Pets during any period of time that I am temporarily unable to care for them;*
- (5) To transport, pick-up and drop-off my Pets, or to provide for and authorize someone else to do the same;*
- (6) To provide grooming, exercise, training, and behavioral intervention or modification for my Pets, consistent with my past practices or as needed or appropriate to maintain their physical, mental, and emotional wellbeing;*
- (7) If I become permanently unable to care for any of my Pets, even with appropriate assistance, to transfer ownership of such animals to the beneficiaries named in my Last Will and Testament, as if I were deceased. If there is no beneficiary named in my Last Will and Testament who is willing and able to accept ownership and the responsibility of caring for any pet, I authorize my Agent to transfer ownership of such pet to my Agent, to place such pet in a suitable permanent family home, or to surrender the pet to a no-kill or low-kill shelter or rescue organization, in my Agent’s discretion;*
- (8) To retain and maintain any equipment or supplies used for the care and maintenance of my Pets and purchase and maintain any additional equipment, supplies, toys, and other tangible personal property as may be needed or appropriate; To authorize any third party providing maintenance, care or*

services for my Pets to possess and use any of my animal-related equipment and supplies; To transfer ownership of my animal-related equipment and supplies to a successor owner or placement whenever one of my Pets is transferred or surrendered under the terms and contained herein;

- (9) To obtain, maintain, contract for, and pay the premiums due on any insurance policies relating directly or indirectly to my Pets that my agent deems appropriate, however my agent has no duty to obtain or maintain any insurance coverage;*
- (10) To create and enter into one or more contracts or agreements for the care of my Pets;*
- (11) To consent to the euthanasia of any of my Pets upon the recommendation of a veterinarian; To request and consent to the euthanasia of any of my Pets if appropriate or humane due to the pet's health, physical condition, age, injury, severe behavioral issues that do not significantly improve with training or treatment, lack of suitable permanent placement options or care, the prohibitive costs of recommended veterinary treatment, or poor treatment outcome prognosis;*
- (12) To create one or more trusts for the care of my Pets under O.R.C. § 5804.08 and to fund any such trust(s) sufficiently to provide for and maintain my Pets in the manner and lifestyle they are accustomed to in my care, which may include funding that exceeds the annual dollar limits of the federal gift tax exclusion;*
- (13) To generously spend my income and/or assets and extend my credit or borrow funds as necessary or appropriate to exercise the powers and authorities granted to my Agent in (1) through (12) above, to provide for and maintain my Pets, and to facilitate my continuing enjoyment of their companionship consistent with my expectations and in a manner that is consistent with my past practices, irrespective of the amount or total amount of such expenditures; and*
- (14) To take all additional actions and sign all documents as may be necessary or appropriate to exercise or carry out any of the authorities listed in (1) through (13) above.*

Example Staple Pet Powers, Duties and Limitations GPOA Clause: *My Agent shall have the following authorities, duties, and limitations with respect to all dogs, cats, pets, or animals that I, my spouse, and/or any of my children may own. Each such dog, cat, pet or animal is referred to as a "Pet", and collectively they are referred to as the "Pets".*

- (1) General "Pet Powers". My Agent may, and during any period of time that I am unable to care for any of my Pets shall, do the following, consistent with my past practices and expectations:*
 - (a) Determine and provide for the day-to-day and ongoing maintenance and care of the Pets;*
 - (b) Request and consent to routine, nonroutine, emergency and palliative veterinary care and treatment; sign all necessary authorizations, consents and*

waivers to receive such treatment; and pick-up and administer, or authorize the pick-up and administration of medications or other treatments;

- (c) Request, consent to and administer alternative, holistic, complementary and supplemental health and wellness care and treatment;*
 - (d) Provide or provide for exercise, grooming, training or behavioral intervention or modification as needed or appropriate, and hire appropriate animal service providers or professionals;*
 - (e) Transport, pick-up and drop-off my Pets, or authorize another to transport, pick-up and drop-off the Pets; and*
 - (f) Determine and provide or provide for the temporary placement, boarding, or in-home care of the Pets during any period of time that I am temporarily unable to care for them.*
- (2) Pet-Related Spending. My Agent shall spend my income and/or assets for the care, maintenance, veterinary treatment, transport, temporary placement, any permanent rehoming, and other needs and expenses of the Pets and may extend my credit for pet-related expenditures.*
- (3) Benefit. My Agent is directed to maintain the Pets for the benefit and enjoyment of myself, my spouse, and my minor or dependent children.*
- (4) Pet Care Assistance. During all periods of time that my spouse and/or I are unable to continue living with and caring for any of the Pets without assistance, I authorize and direct my Agent to provide or arrange for and pay the costs of any services or assistance that will enable us and/or our minor or dependent children to continue living with the Pet and provide for their ongoing care, including without limitation any of the following services that are appropriate: pet sitters, dog walkers, mobile groomers, mobile veterinarians, pet caregivers, pet daycare services, house cleaning, yard maintenance services, and other services.*
- (5) Re-Homing Pets. If my spouse and I both become permanently unable to care for any of the Pets, I authorize and direct my Agent to rehome such Pet by: (1) transferring the Pet to a beneficiary or assignee under the terms of my Last Will and Testament, any Trust created by me or my spouse, or any assignment effective upon my death, as if I were deceased at the time of rehoming the Pet; (2) transferring the Pet to my Agent; (3) placing the Pet in a suitable permanent “pet-friendly” home selected by my Agent; or (4) surrendering the Pet to a no-kill or low-kill shelter or rescue organization (in that order of priority). If my Agent is unable to place any of the Pets directly into a new home, my Agent is encouraged to make a donation from my income and/or assets to a no-kill or low-kill shelter or rescue organization as appropriate or necessary to facilitate the acceptance of the Pet.*
- (6) Euthanasia. My Agent is authorized to request or consent to the euthanasia of a Pet if recommended by a veterinarian or if appropriate or humane due to the Pet’s health, physical condition, age, injury, severe behavioral issues that cannot be reasonably managed or resolved, or lack of suitable permanent placement despite good faith efforts to rehome the Pet.*

(7) *Limitations.* My Agent may not, under any circumstances, whether or not foreseeable, sell, abandon, exchange, donate, lease, or breed any of my Pets, permit any of my Pets to be used for research, experimentation, testing, labor, or other commercial activity or purpose, or transfer or dispose of any of my Pets in any manner not expressly authorized herein.

LIMITED PET POWERS OF ATTORNEY:

A Pet Power of Attorney, sometimes also called a Power of Attorney for Pet Care, is a separate, stand-alone, limited power of attorney for pet care, veterinary treatment, alternative placement, and related matters. Pet Powers of Attorney are widely promoted by animal registries, pet product producers, shelters and rescues, and animal welfare and humane organizations. They have become more broadly used and accepted in recent years – the U.S. military branches offer them to service members with pets.

A Pet Power of Attorney may be the best planning option to meet an animal owner’s needs and objectives under any of the following circumstances:

- (1) When the owner’s general power of attorney agent isn’t a “pet person” or doesn’t share the same values or standards regarding animal care
- (2) When family members or next of kin are likely to disagree with or contest pet plans
- (3) To provide for the special care or specific needs of an individual animal
- (4) When different agents will be responsible for different animals
- (5) To provide for different species of animals, particularly those that are not common household pets (horses, exotics, working dogs, etc.)
- (6) To cover a limited purpose or time period, such as emergency veterinary treatment while an owner is traveling, hospitalized, or unavailable
- (7) When a pet owner wants to maximize the likelihood that pet-related terms will be interpreted and enforced as intended for the indirect benefit of the pet

Pet Powers of Attorney are more likely to be detailed and customized than pet-related terms in a general power of attorney, but this is not always true. There is a perception that Pet Powers of Attorney are “better” for pets and they can be. But if there is no specific reason to create a separate Pet Power of Attorney, it can be an unnecessary complication.

A Pet Power of Attorney has several potential advantages over a general power of attorney. The most significant advantage relates to the scope of agent authority and the likelihood of interpretation and enforcement that will be beneficial and protective for the pet. The purposes of a Pet Power of Attorney are limited and an agent acting thereunder has only pet-related authorities and owes only pet-related duties to the principal. Contrast that to the many, possibly conflicting, responsibilities and duties an agent has under a multi-purpose general power of attorney. The pet-related terms contained within a general power of attorney may be considered secondary or of lesser importance. Conversely, the same terms included in a Pet Power of Attorney are central to

the very purpose of the fiduciary relationship and more likely to be interpreted and enforced in a manner consistent with the principal's pet-related expectations and the pet's indirect benefit.

A separate Pet Power of Attorney is also easier to amend or replace than a general power of attorney that may be on file with various financial institutions. This factor alone could justify the creation of a separate document for many pet owners. A Pet Power of Attorney may also be more readily accepted and understood by veterinarians, groomers, boarding facilities, trainers, and other non-lawyers than a longer, comprehensive general power of attorney document.

All of the pet-related terms discussed within this Drafting Guide may be included in a general power of attorney or a separate Pet Power of Attorney. When using a Pet Power of Attorney, there are a few additional matters that need to be addressed, either to grant the limited agent the full range of authority needed or to prevent any potential conflicts between a limited and general agent:

Access to Money:

Provide the limited agent access to money! This term is frequently missing from Pet Powers of Attorney and its absence renders many of the pet powers virtually useless. When the agent lacks access to funds to pay for animal-related goods and services it is impossible to adequately provide for the principal's pets no matter how thoroughly the other terms are drafted. Possible options to address this potential problem include granting the Pet Power of Attorney agent the authority to:

- (1) Contract for and agree to pay for services on behalf of the pet owner;
- (2) Access and spend from a specific financial account (the limited agent can be named as a power of attorney on the account);
- (3) Charge the pet owner's credit card (provide the agent access to the card); and/or
- (4) Request funds from a GPOA agent or Pet Trust trustee (include corresponding instructions for the GPOA agent or trustee to pay funds).

Access to Property:

Grant the Pet Power of Attorney agent authority to access and use the pet owner's home, farm, vehicle, or trailer (and keys and alarm codes) to remove, transport, or care for animals as may be appropriate under the circumstances.

Prevent Conflicts Between Agents:

Address and prevent any potential conflicts between the Pet Power of Attorney agent and the general power of attorney agent by either:

- (a) Stating that the authority of the Pet Power of Attorney agent is superior to and supersedes the authority of the GPOA agent with respect to pets; or
- (b) Prohibiting the GPOA agent's exercise of any authority regarding pets except as specifically directed (such as providing money for pet care or access to the animal owner's home or property).

Confirm Durability of Powers:

State that the Pet Power of Attorney is durable even though this is the default rule in Ohio.⁹⁰ Non-attorney animal service providers are likely to use Google to conduct legal research and may not understand Ohio law on this issue.

Whenever we are drafting pet-related power of attorney terms we need to be deliberate and thorough. The law provides minimal protection for pets and animals can't protect themselves. This level of care is even more important when creating a limited Pet Power of Attorney. A limited agent has only those powers that are expressly granted – if a power isn't explicitly granted to a limited agent, it isn't included.

SELECT A “PET-FRIENDLY” AGENT:

When selecting a power of attorney agent who will be responsible for determining or providing pet care, it is important to select an “animal person”. An ideal agent for pets likes and cares about animals in general or the particular animal at issue, has experience caring for similar animals (or the willingness and ability to learn), and shares the owner's values and standards regarding animal care. The agent should also possess the standard qualifications, including being trustworthy, responsible, and reasonable.

Many possible harms can be prevented by choosing an agent who will diligently and conscientiously carry out a principal's pet plan. Selecting the right fiduciary is almost as important as the words and pet-related terms in the power of attorney document. A pet plan is only as protective as the people charged with carrying it out. In addition, an agent with ulterior motives could use a pet to manipulate and control a vulnerable principal. The link between animal abuse and human abuse, manipulation, and financial exploitation is well documented.⁹¹

As a result of the recent increases in pet ownership and our cultural acceptance of pets as members of the family, it is easier than it used to be for animal owners to identify relatives or friends who could serve as competent and effective general power of attorney agents. Yet sometimes, the person who is the best choice to manage the rest of a principal's personal business is not a good option to care for pets. If this is the case, designating a separate agent to provide for animals under a Pet Power of Attorney may be a better alternative.

TERMINATING AGENT AUTHORITY FOR PET-RELATED CAUSE:

Many possible harms can be prevented by selecting an appropriate agent for pets. Yet, power of attorney agent misconduct isn't a particularly rare occurrence. We need to prepare for

⁹⁰ O.R.C. 1337.24.

⁹¹ Lockwood, Randall, PhD., “Making the Connection between Animal Cruelty and Abuse and Neglect of Vulnerable Adults”, The Latham Letter, Winter 2002, available for download at <https://nationallinkcoalition.org/wp-content/uploads/2013/01/ElderAbuse-Lockwood-.pdf> (last visited August 18, 2025); See also, <https://nationallinkcoalition.org/what-is-the-link/adult-protection-and-the-link> and <https://www.sheriffs.org/animal-cruelty-and-elder-abuse>.

the possibility of pet-related breaches. Animals are incapable of filing claims on their own behalf and lack the legal standing to do so, even with human assistance.⁹² If a power of attorney agent breaches pet-related terms and the principal lacks capacity to revoke the power of attorney, another human will need to seek judicial relief to protect the principal and the pet. That person will need to establish legal standing.

“Standing” is defined as a party’s right to make a legal claim or seek judicial enforcement of a duty or right.⁹³ Standing is a jurisdictional requirement.⁹⁴ Before a court can consider the merits of a claim, the person seeking relief must establish legal standing.⁹⁵ Traditional common law standing requires a plaintiff or petitioner to have a personal stake in the outcome of the controversy.⁹⁶ In Ohio, standing may also be conferred by a specific statutory grant of authority to seek judicial review.⁹⁷

The persons who are authorized to petition a court to construe a power of attorney or review the agent’s conduct and grant appropriate relief are listed in R.C. 1337.36(A) and include another fiduciary, a spouse, parents, descendants, presumptive heirs, beneficiaries, government agencies, caregivers, and others who demonstrate sufficient interest in the principal’s welfare. The relief a court may grant includes removing the offending agent or terminating the agent’s authority. R.C. 1337.36(A) is intended to confer statutory standing.⁹⁸ If a pet is specifically bequeathed in the owner’s will, the pet beneficiary will be able to demonstrate the requisite standing to bring claims for pet-related agent misconduct. A thorough analysis of legal standing is outside the scope of these materials, but it can be difficult to establish standing to bring animal-related claims when an actual interest in the outcome cannot be established.⁹⁹

Where standing to bring claims for the review of power of agent conduct and judicial relief can be established, courts may be reluctant to remove or terminate the authority of a general power of attorney agent for pet-related cause. Historically, probate courts have not been particularly protective of pets. Although this is slowly changing over time, pet-related agent misconduct may still go unaddressed unless it is particularly egregious.

We can prepare to address any pet-related agent misconduct at the power of attorney drafting stage. Under R.C. 1337.30(C), a principal may state within the power of attorney the events or circumstances that will trigger the termination of an agent’s authority. The terms of a pet owner’s power of attorney may provide for the automatic termination of agent authority for

⁹² See, *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018) (a monkey lacks standing to sue for copyright infringement for publication of the monkey’s “selfies” photographs); *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2004) (the world’s cetaceans lack standing to bring suit in their own name under the Endangered Species Act, the Marine Mammal Protection Act, the National Environmental Protection Act, and the Administrative Procedure Act because they are not people or legal entities authorized under law to sue).

⁹³ *Ohio Pyro, Inc. v. Ohio Dep’t of Commerce*, 2007-Ohio-5024, ¶ 27.

⁹⁴ *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 179 (1973).

⁹⁵ *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469 (1999).

⁹⁶ *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 7, citing *Cliffon v. Blanchester*, 2012-Ohio 780, *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176 (1973).

⁹⁷ *Middletown v. Ferguson*, 25 Ohio St.3d 71 (1986).

⁹⁸ Official Comment to Section 116 of the Uniform Power of Attorney Act (2006).

⁹⁹ For a discussion of standing, see Martin, Laura J., Proactive Planning to Pave the Way for Pet Trust Enforcement, Volume 35, Issue 1, Probate Law Journal of Ohio, p. 21 (September/October 2024).

any pet-related cause, including failure to adequately care for a pet or engaging in any prohibited activity. If judicial intervention is necessary, a court is more likely to remove an agent or terminate an agent's authority for pet-related cause if such termination is expressly provided for within the power of attorney that granted the agent authority in the first place. The principal granting the authority has the absolute right to determine the scope of the power, including under what circumstances it is no longer in effect.

Terminating a general power of attorney agent's authority for pet-related cause is a somewhat drastic measure and many pet owners may not want to add this extra layer of protection. For those who do, however, automatic termination of authority is the best deterrent and remedy we have available against pet-related agent misconduct.

Sadly, the threat of potential monetary damages is unlikely to deter fiduciary misconduct related to pets. In Ohio, damages for loss of or to a pet are limited to the animal's fair market value plus any direct economic losses, such as veterinary expenses.¹⁰⁰ Under current Ohio law, damages are not awardable for an animal's sentimental worth or for the emotional loss of a pet.¹⁰¹ Most of the animals we plan for in powers of attorney have little or even zero economic value. Punitive damages may be recoverable for breach of fiduciary duty if malice can be proven.¹⁰² Though, in Ohio punitive damages are capped at two times the amount of compensatory damages (and two times zero still equals zero).¹⁰³ As a result, total damages for loss of or harm to most pets will be marginal at best. None of the damages cases decided in Ohio to date involve claims for breach of fiduciary duty that caused loss of or harm to an animal and it remains to be seen if that might alter our courts' analysis. This is currently an evolving area of law nationwide.

Example Agent Termination Clause #1: *In addition to any other grounds for the termination, removal or replacement of my Agent set forth herein or in Chapter 1337 of the Ohio Revised Code, the authority of my Agent will terminate automatically and immediately if my Agent commits any act with respect to my Animals that is prohibited herein; if my Agent neglects, abuses, or fails to adequately care for and maintain any of my Animals; or if my Agent fails materially or repeatedly to follow the instructions and directions for my Animals contained herein, whether such failure is through act or omission. If my Agent's authority is so terminated, a successor agent is hereby appointed pursuant to Section ____.*

Example Agent Termination Clause #2: *All of my Agent's powers and authorities granted herein will terminate and my Agent's fiduciary appointment will terminate immediately, with or without court order, upon any of the following:*

(1) The occurrence of any event set forth in O.R.C. § 1337.30(B);

¹⁰⁰ See, *Saratte v. Schroeder*, 2009-Ohio-1176 (4th Dist., 2009); *Pacher v. Invisible Fence of Dayton*, 2003-Ohio-5333 (2nd Dist., 2003); *Rego v. Madalinski*, 2016-Ohio-7339 (6th Dist., 2016); *Keller v. Chism*, 2019-Ohio-1714 (11th Dist., 2019).

¹⁰¹ See, *McDonald v. Ohio State Univ. Veterinary Hosp.*, 67 Ohio Misc.2d 40, 42, 644 N.E.2d 750, 752 (Ohio Court of Claims, 1994).

¹⁰² *Schafer v. RMS Realty*, 138 Ohio App.3d 244, 302 (2nd Dist., 2000), citing *Dunn v. Zimmerman*, 69 Ohio St.3d 304 (1994).

¹⁰³ R.C. 2315.21(D)(2)(a).

- (2) *My Agent participates in, or knowingly or recklessly permits, any prohibited act or activity set forth herein;*
- (3) *My Agent materially fails to appropriately care for and maintain or fails to adequately provide for any of my Animals in accordance with the guidance, instructions and standards of care set forth herein and my expectations; or*
- (4) *My Agent repeatedly or willfully acts in a manner that is contrary to the wellbeing and best interests of my Animals.*

Any of the following persons may give my Agent and any third parties notice, in writing, of the termination of my Agent and my Agent's authority under the terms of this Section ____, and my Agent's termination will be effective immediately upon receipt of any such notice: (a) any person nominated as an agent or successor agent herein; (b) a court of competent jurisdiction; or (c) _____.

PAYING ATTORNEY FEES FOR PET-RELATED LITIGATION:

Animals cannot file suit to protect their own interests.¹⁰⁴ A person must file or defend any litigation to protect an animal. From a pet planning standpoint, we have historically been most concerned that a disgruntled family member would attempt to disrupt a pet plan through litigation – potential beneficiaries and heirs are not always pleased when a prospective inheritance is used to support pets. With the evolution in how our society perceives pets, we also need to consider the very real possibility that family members or others may want to bring litigation in effort to protect the pet from a wrongdoing agent.

Not only must a person file or defend any litigation involving pets, a person must also pay the costs of such litigation. There are some provisions under Ohio law that provide for equitable attorney fee shifting but they may prove inadequate with respect to animal-related litigation. Interested parties will understandably be reluctant to personally bear the costs of litigation to protect a pet from a rouge agent. A quality agent may likewise be put off by the prospect of personally paying to defend against unreasonable accusations. We can provide a partial solution to this dilemma within the power of attorney terms.

The terms of a pet owner's power of attorney may expressly identify the situations and circumstances under which the principal's resources should be used to pay attorney fees for litigation related to pets. When drafting attorney fee shifting terms, it is challenging to strike the right balance between defending an upstanding agent from costly litigation and providing means for an interested party to bring litigation against a wayward agent for pet-related cause. It may not be appropriate in all cases, but attorney fee shifting provisions can be a powerful means of protecting a pet that cannot protect itself in a courtroom.

¹⁰⁴ See, *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018) (a monkey lacks standing to sue for copyright infringement for publication of the monkey's "selfies" photographs); *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2004) (the world's cetaceans lack standing to bring suit in their own name under the Endangered Species Act, the Marine Mammal Protection Act, the National Environmental Protection Act, and the Administrative Procedure Act because they are not people or legal entities authorized under law to sue).

Example Attorney Fee Shifting Clause for Pet Power of Attorney:

My Agent may bring or defend litigation at my expense as may be necessary or appropriate to: (a) validate, defend, uphold, or enforce this Pet Power of Attorney and the powers and authorities granted to my Agent herein; (b) defend my Agent against unsubstantiated allegations of breach of fiduciary duty or other misconduct; (c) protect, provide for, or defend my interest with respect to my Animals; (d) care for, maintain, and provide for my Animals as set forth within the terms of this Pet Power of Attorney; or (e) carry out the terms of this Pet Power of Attorney and fulfill my known reasonable expectations. Notwithstanding the foregoing, if allegations of breach of fiduciary duty or other material misconduct against my Agent are substantiated, my Agent will bear the costs of his or her own defense.

If any person described in O.R.C. § 1337.36(A) petitions a court to review my Agent's conduct and grant appropriate relief, and such action is taken in good faith and with reasonable or probable cause to believe that my Agent has breached his or her fiduciary duty or materially breached the terms of this Pet Power of Attorney, such cause of action may be brought and maintained at my expense.

In determining who has standing to petition a court for judicial relief under O.R.C. § 1337.36(A)(8), it should be presumed that I have a significant personal interest and stake in the care, maintenance and wellbeing of my Animals and that anything which adversely affects them or is contrary to my intentions and expectations as set forth herein adversely affects me and is detrimental to my physical, mental and emotional welfare.

MISCELLANEOUS PET-RELATED POWER OF ATTORNEY TERMS:

There are a few additional terms that deserve special attention when creating and using powers of attorney for pet owners.

Agent Compensation:

Under R.C. 1337.32, an agent is entitled to “compensation that is reasonable under the circumstances” unless the power of attorney otherwise provides. It is a big responsibility to provide or oversee the day-to-day care of a pet (or multiple pets). Living animals are not “set and forget” – they are a daily obligation. Suitable agent compensation is important, especially if a non-family member is serving as agent. An agent is more likely to be diligent about pet-related responsibilities if they are adequately compensated.

Example Agent Compensation #1: *My Agent shall be reimbursed for all reasonable expenses incurred by my Agent in the exercise of the powers and authorities and fulfillment of the duties set forth herein. My Agent may also be reasonably compensated for his or her services hereunder based on actual the time and degree of knowledge or expertise involved.*

Example Agent Compensation #2: *My Agent shall be reimbursed for all reasonable expenses incurred by my Agent in the exercise of the powers and authorities and fulfillment of the duties set forth herein and shall be compensated for his or her pet-related services*

hereunder at a rate of \$25.00 per hour, adjusted annually for inflation from the date of execution hereof using the Consumer Price Index.

Delegating Authority:

An agent who is responsible for animals may need to delegate his or her authority to another. This is especially true if someone other than the agent will be caring for an animal on a daily basis, but also if the agent needs to temporarily leave the animal in another's care. Under R.C. 1337.42(A)(5), an agent may delegate authority granted under the power of attorney only if delegation is expressly authorized within the power of attorney terms.

Example Agent Delegation Authority #1: *My agent may delegate any of the "pet powers" granted to my agent herein as my agent may consider reasonable and appropriate under the circumstances.*

Example Agent Delegation Authority #2: *My Agent may delegate any of my Agent's powers and authorities granted herein to determine and provide maintenance and care, veterinary treatment, grooming, exercise, training, and transportation for any of my Animals to a primary day-to-day caregiver of the Animal or another third party as may be reasonable and appropriate.*

Agent Self-Dealing:

Self-dealing by an agent is voidable and may be considered a breach of fiduciary duty if not expressly authorized in the power of attorney.¹⁰⁵ An agent owes the principal a duty of loyalty and may not transfer the principal's property to himself or herself unless the power of attorney expressly and unambiguously grants the authority to do so.¹⁰⁶ Fiduciary self-dealing is barred unless expressly authorized even when it may be in the best interest of the principal or a pet.

There are many circumstances where pet-related self-dealing may be consistent with a principal's expectations. For example, an agent may be a potential successor pet owner if the principal becomes permanently unable to care for or continue living with a pet. A professional groomer or trainer serving as an agent may be expected to provide these services and may have been selected for their expertise. If an agent is charged with managing a breeding animal, the agent may be entitled to pick-of-the-litter in exchange for their services. Whatever the circumstances, any agent self-dealing an animal owner wants to permit needs to be expressly authorized within the power of attorney terms.

Example Self-Dealing Authority: *My Agent may engage in acts that are or could be considered self-dealing provided that such acts result in direct or indirect benefit to me and are fair to me, are otherwise expressly authorized herein, further the purposes and intent of the pet-related authorities granted to my Agent, are consistent with my past practices, or are reasonable, appropriate or necessary for the maintenance and care of my Pets. Without limiting this general authority to self-deal, my Agent may transfer ownership*

¹⁰⁵ *Tewksbury v. Tewksbury*, 2011-Ohio-3358 (4th Dist.).

¹⁰⁶ *Scott v. Lyons*, 2009 2009-Ohio-1141 (11th Dist.).

of any of my Pets to himself or herself if I am permanently unable to care for them and may compensate himself or herself for grooming my Pets at the fair market rate for such services.

IN SUMMARY:

Most pets are considered companions rather than assets and it is difficult to apply laws and standards governing other types of property to pets. Yet, with careful and deliberate drafting, a power of attorney can become a valuable pet planning tool. Most of our estate planning clients have or plan to create a power of attorney. It is relatively easy to add Pet Planning terms to a document our clients are already using.

Powers of attorney offer a relatively simple and inexpensive means to maintain valuable human-animal relationships for the benefit of both parties and to provide for and protect pets throughout the owner's lifetime. We can grant and customize agent "pet powers" authorities, impose duties to care for pets, provide standards and instructions, prohibit objectionable activities, direct payment of pet-related expenses, provide for the immediate termination of an agent for pet-related cause, and more.

While a power of attorney may not be as protective for pets as a trust, it is a more practical planning option for most owners. The relative simplicity and lower cost of a power of attorney make it an accessible planning option for most pet owners, thereby allowing and encouraging more people to provide for and protect a pet's future along with their own.

"Man's supremacy over the lower animals meant not that the former should prey upon the latter, but that the higher should protect the lower . . ."

- Mohandas Gandhi