

## NY CLS EPTL § 7-8.1

Current through 2019 released Chapters 1-752

***New York Consolidated Laws Service > Estates, Powers And Trusts Law (Arts. 1 — 14) > Article 7 Trusts (Pts. 1 — 8) > Part 8 Honorary Trusts for Pets (§ 7-8.1)***

### **§ 7-8.1. Trusts for pets**

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(a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive.

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

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

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

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

### **History**

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Formerly § 7-6.1, add, L 1996, ch 159, § 1; renumbered § 7-8.1, L 2003, ch 630, § 3, eff March 28, 2004; L 2010, ch 70, § 1, eff May 5, 2010.

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## 2009 N.Y. A.N. 5985

Enacted, May 5, 2010

### Reporter

2010 N.Y. ALS 70; 2010 N.Y. LAWS 70; 2009 N.Y. A.N. 5985

NEW YORK ADVANCE LEGISLATIVE SERVICE > NEW YORK 232ND ANNUAL LEGISLATIVE SESSION 2009-2010 Regular Sessions > CHAPTER 70 > ASSEMBLY BILL 5985

## Notice

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Deleted: ~~Red text with a strikethrough~~

## Synopsis

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

## Text

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THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

### Section 1.

The section heading and subdivisions (a) and (b) of section 7-8.1 of the estates, powers and trusts law, as added by chapter 159 of the laws of 1996, such section as renumbered by chapter 630 of the laws of 2003, are amended to read as follows:

~~Honorary trusts~~ **TRUSTS** for pets

- (a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when ~~no~~ **THE** living animal ~~is covered by the trust, or at the end of twenty-one years, whichever occurs earlier~~ **BENEFICIARY OR BENEFICIARIES OF SUCH TRUST ARE NO LONGER ALIVE**.
- (b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of ~~a~~ **ALL** covered ~~animal~~ **ANIMALS**.

**Section 2.**

This act shall take effect immediately.

**History**

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Enacted May 5, 2010

**Sponsor**

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Introduced by M. of A. GLICK, GOTTFRIED -- Multi-Sponsored by -- M. of A. SWEENEY -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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**Helmsley's Pet Trust Raises Issues For Owners of All Income Levels;  
Outside Counsel**

New York Law Journal

May 28, 2009 Thursday

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**New York Law Journal**

**Section:** Pg. p.4, col.1; Vol. 241; No. 101

**Length:** 1251 words

**Byline:** Frances Carlisle

**Body**

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After Leona Helmsley died, the news was full of stories about the \$12 million trust for her little dog, named Trouble. That was good because it brought attention to the existence of trusts to care for pets, but bad because it appeared that pet trusts were only for the very rich, and rather foolish. But the use of trusts for the care of pets is an appropriate estate planning tool for any pet owner, even one of modest means.

Almost all states have enacted pet trust statutes authorizing the creation of trusts for pets.<sup>1</sup> The New York Legislature passed its pet trust statute in 1996 to permit persons to create enforceable trusts for the care of domestic or pet animals.<sup>2</sup> And the Uniform Probate Code and the Uniform Trust Code each have sections authorizing pet trusts.<sup>3</sup>

Attorneys who do estate planning can benefit from a review of Mrs. Helmsley's plan for the care of Trouble.

**Funding a Pet Trust**

Leona Helmsley left \$12 million in her will to an inter vivos pet trust that she created pursuant to the New York pet trust statute. Her inter vivos pet trust provides for the lifetime care of Trouble, and after the dog's death, the trust remainder passes to the Leona M. and Harry B. Helmsley Charitable Trust.

All of the assets in pet trusts are subject to estate tax, as there is no charitable deduction for any property in a pet trust that passes to a charitable organization or trust.<sup>4</sup> The executors of Mrs. Helmsley's estate wisely petitioned the Surrogate's Court for permission to reduce the amount passing to the pet trust to \$2 million, in order to substantially reduce estate taxes. The executors petitioned the court under section (d) of the New York pet trust statute, which provides that the court can reduce the amount passing to a pet trust if it determines that the amount substantially

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<sup>1</sup> All states and the District of Columbia have pet trust statutes, except for the following: Connecticut, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Oklahoma, Vermont, West Virginia (Some of these states have bills authorizing pet trusts pending in their legislatures).

<sup>2</sup> New York Estates, Powers and Trusts Law 7-8.1.

<sup>3</sup> Uniform Probate Code 2-907; Uniform Trust Code 408.

<sup>4</sup> H.R. 1796, Federal Charitable Remainder Pet Trust bill, was introduced in Congress in 2001, but never enacted.

## Helmsley's Pet Trust Raises Issues For Owners of All Income Levels; Outside Counsel

exceeds the amount required for the intended use. The excess passes to the remainderman of the trust. The court ordered the decrease to \$2 million.

In general, when providing for the care of an animal, a pet owner should leave only a reasonable amount for that care. In most cases, \$2 million would be substantially more than is needed to care for one dog. But special circumstances existed for Trouble, related to the media blitz about the \$12 million pet trust. After the publicity, it was reported that more than 40 death and dognapping threats were received, and that the dog was in such danger that she was taken out of her Connecticut home and flown under an assumed name to a secret location. Round-the-clock security is needed for the dog, which costs between \$100,000 and \$200,000 a year, and that amount is much more than any other expense for the care of the dog. Since security costs are so high, \$2 million is a reasonable amount to fund the trust for Trouble.

More commonly, a large amount may be needed to fund a pet trust if the pet owner has many animals and wants the animals to live together in the family home with a caretaker. This solves the difficult problem of finding homes where all of the animals would live. The residence is placed into the trust, along with enough liquid assets to maintain the residence and to pay a caretaker, as well as of the costs of animal care, such as food and veterinary bills. Some pet owners direct that the residence be sold, but that a less expensive residence be purchased or leased by the trustee where the animals and a caretaker would live together.

Putting a residence in the trust in some cases may be the only way to properly care for the animals according to the pet owner's intent that the animals remain together in familiar surroundings. Similarly, with large animals, such as horses and farm animals, a pet owner may want to put a farm into the trust, and hire a caretaker to live on the property. This may be the best way to assure the proper care of these animals during their lives. There are no cases to date on whether putting a residence or farm into a pet trust would be considered excess funding.

### **Place Pet in the Trust**

In her will, Mrs. Helmsley bequeathed Trouble to her brother, who then did not want the dog.<sup>5</sup> A person who is bequeathed an animal under a will does not have to accept such bequest, but if he does, he becomes the new owner of that animal and has all the rights of ownership, including the right to take the animal to a veterinarian to be euthanized. As these risks exist, it is wise for a pet owner to bequeath the animal to the pet trust, as the trustee has a fiduciary duty to safeguard property in the trust. Animals are property under the law, and so can be part of a trust, along with other forms of property.

### **Pet Burial**

Mrs. Helmsley's will provides that when Trouble dies, her remains are to be buried next to Mrs. Helmsley's remains in the Helmsley Mausoleum at Woodlawn Cemetery. However, animal remains cannot be buried in human cemeteries. Although rare, some pet owners want to have their remains buried with their pet's remains. They can do this by purchasing plots at a pet cemetery, such as the Hartsdale pet cemetery, where there are even elaborate mausoleums. While this is not a plan that most people want, and wouldn't have worked for Mrs. Helmsley, who wanted to be buried next to her husband, Harry, it is an option for certain people who want to be buried with a beloved pet.

### **Types of Trusts**

A pet trust can be an inter vivos trust, created during the life of the pet owner. Or it can be a testamentary trust under a will, effective after death.

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<sup>5</sup> It is reported that the dog is doing well with a caretaker who was a family friend. See also: "Remember the Family Pet in Estate Planning" by Frances Carlisle, NYLJ, July 16, 2004, "Drafting Trusts for Animals," by Frances Carlisle and Paul Franken, NYLJ, Nov. 13, 1997.

## Helmsley's Pet Trust Raises Issues For Owners of All Income Levels; Outside Counsel

An inter vivos trust has the advantage of being immediately available for the care of an animal if the pet owner becomes incapacitated. The inter vivos trust has the disadvantages of being more expensive to create, and in some cases, of not being adequately funded (or not funded at all) at the time of death of the pet owner. If the pet owner wants an inter vivos trust, it is wise to have back-up funding of the pet trust in the will, to avoid the risk of having an unfunded, and thus useless, trust at the time of death. Mrs. Helmsley's pet trust was an inter vivos trust, but was funded from her will.

A testamentary pet trust is funded under the will. The disadvantage of a testamentary trust is that it will not be in effect during periods of disability, so pet owners should execute a power of attorney appointing an attorney-in-fact to handle their financial matters, (including a specific provision authorizing the payment of the costs of care of the pet owner's animals) to be used if the pet owner becomes incapacitated. There should also be a plan for the care of the pet during the period from death to the admission of the will to probate.

FRANCES CARLISLE is a trusts and estates attorney practicing in New York City.

**Load-Date:** August 12, 2011

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Cited

As of: January 10, 2020 4:33 PM Z

## Matter of Abels

Surrogate's Court of New York, Westchester County

June 27, 2014

2007-515/A

### Reporter

44 Misc. 3d 485 \*; 988 N.Y.S.2d 458 \*\*; 2014 N.Y. Misc. LEXIS 2840 \*\*\*; 2014 NY Slip Op 24172 \*\*\*\*; 2014 WL 2931056

### Outcome

Prayers for relief denied.

[\*\*\*\*1] In the Matter of Richard M. Copland, Petitioner, as Executor of the Estate of Lenore Lewis Abels, Deceased.

**Counsel:** [\*\*\*\*1] *Steinberg & Cavaliere LLP* and *Stern Keiser & Panken LLP*, White Plains, for Richard Copland, petitioner.

### Core Terms

pet, cats, animals, charitable, alleges, amended petition, remainder, wishes

*McCullough Goldberger & Staudt, LLP*, White Plains, for Michael Maino, co-executor.

### Case Summary

*Rosentrach & Beaver*, Mamaroneck, and *Sall & Geist*, White Plains, for Eugenia Chodnicka, beneficiary.

### Overview

**HOLDINGS:** [1]-The surrogate's court could not sanction the premature termination of a testamentary pet trust because the decedent gave very specific instructions as to how she wanted her cats to be cared for, which included a housekeeper, the decedent's home, a salary and bonus to the housekeeper, maintenance for the home and a stipend for the cats, the primary object of the decedent's bounty was her cats (and not the animal-oriented charities), the face of the instrument made plain that she knew that choice was available to her, she painstakingly planned out the care for her pets and set forth that the charities were to take only on the death of her last cat, and the co-executor's petition to reduce the amount of money to be transferred to a testamentary pet trust under EPTL 7-8.1(d) was largely speculative.

*Rabinowitz Boudin Standard Krinsky & Lieberman, P.C.*, New York City, for People for the Ethical Treatment of Animals, charitable beneficiary.

*Gordon Herlands Randolph & Cox, LLP*, New York City, for Bide-A-Wee Home Association, charitable beneficiary.

*Edward J. Walsh, Jr.*, Rockville Centre, for Doris Day Animal League, charitable beneficiary.

*Eric T. Schneiderman, Attorney General, New York City (Lisa Barbieri of counsel), for ultimate charitable beneficiaries.*

*Patricia Collins, Madison, Connecticut, trustee pro se.*

**Judges:** Anthony A. Scarpino, J. HON. ANTHONY A. SCARPINO, JR., Westchester County Surrogate.

**Opinion by:** Anthony A. Scarpino

## Opinion

[\*486] [\*\*459] Anthony A. Scarpino, S.

In this miscellaneous proceeding, Richard M. Copland (Copland), as co-executor of the estate of Lenore Lewis Abels (the decedent), petitions the court for a decree in accordance with EPTL 7-8.1 (d) reducing the amount of money to be transferred from the estate to the trustees of a testamentary pet trust established under the decedent's will. Issue has been joined, and a stipulation [\*\*\*2] was entered into between the interested parties which provides that discovery is waived, and the matter is to be submitted on the pleadings.

The decedent was married to Joel Abels (Joel), and they lived at 22 Normandy Lane, New Rochelle, New York (the home). They had a daughter who predeceased them on August 8, 2000 at the age of 46 years.

On February 16, 2003, the decedent executed an instrument which provided \$115,000 in cash bequests to various charities for the care of animals and the rest of her assets in trust for Joel. If Joel did not survive her, all of her property (with the exception of the home) was to be sold and distributed to her named trustees to be used as follows: \$35,000 in salary and a \$5,000 bonus per year to Eugenia Chodnicka (Eugenia) (who was the decedent's housekeeper); funds were allotted for

Eugenia to maintain the home and care for her cats;<sup>1</sup> and when the last cat died, the home and its contents were to be sold, and the remainder distributed to 33 animal oriented charities in the percentages set forth in the instrument plus a \$50,000 bonus to Eugenia. On that same day, Joel executed an instrument, which other than certain different general bequests, contained [\*\*\*3] the [\*487] same pet trust with remainder to charities if the decedent should predecease him.

On January 24, 2007 Joel died. Sixteen days later, the decedent died. On August 13, 2007 letters testamentary and letters of trusteeship issued in Joel's estate to Copland and co-fiduciary Michael Maino (Maino) (collectively, the co-executors), and on October 15, 2007 letters testamentary and letters of trusteeship issued in the decedent's estate to Copland and Maino. An inventory of assets filed in 2007 reflected assets in the decedent's estate totaling \$4,761,346.<sup>2</sup>

Copland filed this proceeding and then an amended petition. His amended petition requests that the court (1) reduce the amount to be transferred to the trustees to either \$440,000 or \$1,000,000 minus \$628,000 (the amount already expended) for an amount of \$372,000 and (2) permit the sale of the home. In support of his amended petition, Copland [\*\*460] asserts that the co-executors have been fulfilling the terms of the trust with estate funds because funds have never been transferred to the trust for the life beneficiaries. [\*\*\*4] As to the decedent's cats, he alleges that Gindy is seven years old and can be expected to live another 5 to 11 years, and Poke-A-Dot is nine years old and can be expected to live another three to nine years. Copland also states that the home needs significant repairs, the taxes and upkeep on the home are very expensive, and Eugenia has indicated a willingness to leave the home and have the co-executors find and pay for a suitable new place for her and the cats to live.

In response to the amended petition, Maino filed an amended answer, containing a host of extraneous information and then generally admitting most of the allegations and requesting that the court grant the relief requested by Copland.

<sup>1</sup> Copland alleges that, of the several cats which belonged to the decedent at the time of her death, only two remain.

<sup>2</sup> In his petition, Copland alleges that the value of the estate at the decedent's death was \$3,600,000 and that the home is worth about \$300,000 to \$500,000. On the inventory of assets, the home was valued at \$1,000,000.

People for the Ethical Treatment of Animals (PETA), Bide-A-Wee Home Association, Fund for Animals and Doris Day Animal League, several of the charitable trust remainder beneficiaries, filed an answer which denied knowledge or information sufficient to form a belief as [\*\*\*5] to the bulk of the allegations in the petition and asserted an "affirmative defense" which stated that, while the petition alleges that the estate assets exceed \$3.6 million, it fails to set forth the liabilities and assets on hand, making it impossible to determine what would remain in the [\*488] estate should the proposed reduction be granted and that the co-executors have failed to file state and federal tax returns. The pleading further prays that the court make a determination in the proceeding.

Eugenia filed an answer generally denying the allegations in the petition. She also asserted various "affirmative defenses" which included that the petition is based on misinformation that an agreement is in place for Eugenia to relocate with the decedent's cats and the co-executors, having failed to timely file tax returns, are now hoping to reduce the pet trust so that the taxing authorities might consider a charitable deduction, thus perhaps minimizing tax liability. The answer further requests that the court deny the petition.

As a preliminary matter, in every proceeding before this court, the clear expression of the decedent's intent is to be given effect (see *Wager v Wager*, 96 NY 164 [1884]). [\*\*\*6]

EPTL 7-8.1 (a) authorizes the establishment of a trust for the care of a pet animal and the use of principal or income to be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by the court. The McKinney's Commentary to the statute provides that, prior to its enactment, New Yorkers had to provide for their pets in less ideal ways which would not always insure that their wishes would be carried out regarding their animals. For example, a pet owner could give money to a person with an unenforceable request that he care for the pet, he could make a gift to a person contingent on his care of the pet, or he could give the pet and money to a humane society (Margaret Valentine Turano, Practice Commentaries, McKinney's Cons Laws of NY, EPTL 7-8.1). The statute also provides that a court may reduce the amount of the property transferred to a pet trust if the court determines that the amount substantially exceeds the amount required for the intended use (EPTL 7-8.1 [d]).

Copland argues that the pet trust can be reduced if the home is sold, and Eugenia moved to a less expensive residence. Copland arrives at a sum certain by approximating the life expectancy of the cats and Eugenia's monthly [\*\*\*7] costs to [\*\*461] take care of them.<sup>3</sup> He urges that this would be beneficial because the remainder of the trust would then be accelerated, the estate could possibly qualify for a charitable trust exemption, potentially [\*489] reducing estate tax liability, and dispositions could be made to the 33 charitable remainder beneficiaries rather than when the last cat dies. He further argues that the reduction is necessary to meet the decedent's wishes to benefit the charities as well as her cats.

In actuality, Copland's prayer casts aside the decedent's wishes. The decedent gave very specific instructions as to how she wanted her cats to be cared for. That care included Eugenia, her home, a salary and bonus to Eugenia, maintenance for the home and a stipend for the cats.<sup>4</sup>

Furthermore, after the decedent's daughter and her husband predeceased her, her instrument makes clear that the primary object of her bounty became her cats (and not the charities). If she had wanted to dispose of her assets to give more money to the charities right away, she could have. Indeed, she gave \$115,000 in cash bequests to the charities (including \$25,000 to PETA). The face of the instrument makes plain that she knew that choice was available to her. She also could have chosen a less expensive option for the care of her pets. But she did not. Instead, as evidenced by article FIFTH of her will, she painstakingly planned out the care for her pets and set forth that the charities were to take only on the death of her last cat. Again, if she intended to benefit the charities over her pets, and create a charitable deduction, the instrument would have been drafted differently.<sup>5</sup>

<sup>3</sup> In a conference before the court, there was also a suggestion made that Eugenia could return to Poland (her homeland) with the cats.

<sup>4</sup> One commentator has noted that planners often recommend that testators place their residences and farms in trust to properly care for the animals and to insure a vehicle for their intention that the "animals remain together in familiar surroundings" (see Frances Carlisle, *Helmsley's Pet Trust Raises Issues for Owners of All Income Levels*, NYLJ, May 28, 2009 at 4, col 3). [\*\*\*8]

<sup>5</sup> This same commentator has said that the "primary concern of a client when creating a pet trust is usually the animals and

44 Misc. 3d 485, \*489; 988 N.Y.S.2d 458, \*\*461; 2014 N.Y. Misc. LEXIS 2840, \*\*\*8; 2014 NY Slip Op 24172, \*\*\*\*1

In essence, Copland is asking for this court to rewrite the decedent's will. The court may not override the expressed intention of a testator (see *Matter of Knapp*, 41 Misc 3d 1202[A], 977 NYS2d 667, 2013 NY Slip Op 51556[U] [Sur Ct, NY County 2013]; *Matter of Kastin*, NYLJ, 2013 NYLJ LEXIS 4505, Aug. 1, 2013 at 30 [Sur Ct, NY County 2013]). Similarly, the very purpose of the statute was to provide certainty to a pet owner regarding the care of her animals. Given the existence of the statute and the facts present, the court could not sanction the premature termination of this trust.

[\*490] Additionally, Copland's petition is largely speculative. There is no guarantee that Copland is correct in his estimates as to the life span of the cats<sup>6</sup> or his assessment as to the cost of alternative living arrangements for Eugenia and the cats, there has been no determination made on the accuracy of the assets and liabilities in this estate, and there is no guarantee that the IRS will agree that the estate will qualify for a charitable deduction.

Indeed, Copland offers no authority for the proposition that the IRS would offer a charitable estate tax deduction based [\*\*\*10] on [\*\*462] the facts present here where (1) the estate is seven years delinquent in filing a return and (2) there has been a de facto formation of the trust since the life beneficiaries have been receiving benefits for seven years.

*Matter of Helmsley* (31 Misc 3d 1233[A], 930 NYS2d 177, 2009 NY Slip Op 52802[U] [Sur Ct, NY County 2009]), cited by Copland, had a very different set of facts and is distinguishable. In *Helmsley*, the pet trust was reduced from \$12 million to \$2 million because the trust was overfunded for the carrying out of the decedent's wishes. Unlike Copland's prayer for relief here, the petitioner in *Matter of Helmsley* did not seek to alter Mrs. Helmsley's wishes and arrangements for her dog, Trouble. Simply put, Mrs. Helmsley had made a disposition to the trust greater than what was required to carry out her intentions.

This matter is more akin to *Matter of Duke* (NYLJ, 1997 NYLJ LEXIS 990, Aug. 6, 1997 at 24, col 6 [Sur Ct, NY County 1997]), which was decided prior to the enactment of EPTL 7-8.1, which fact makes the case at

bar even stronger against the reduction. In *Duke*, the court upheld the validity of a trust under Ms. Duke's will for the benefit of her dog against a challenge by the Doris Duke Charitable Foundation, the residuary beneficiary of the estate, to invalidate it. In doing so, the court [\*\*\*11] stated:

"In reaching the foregoing conclusion, the [c]ourt is cognizant of the tax and non-tax savings that would accrue to the Doris Duke Charitable Foundation if the trust were held to be invalid; the willingness of the Doris Duke Foundation for the Preservation of Endangered Wildlife and the Doris Duke Foundation for the Preservation of New Jersey Farmland and Farm Animals to care for the dog; and the possibility of future litigation arising with respect to [\*491] the trust. These factors, however, cannot justify invalidating an otherwise proper disposition." (*Duke*, 1997 NYLJ LEXIS 990 at 25, col 1; see generally *Matter of Kastin* [refusing to apply anti-lapse statute and thus disinheriting children of predeceased sibling where decedent's intent from plain language of instrument was clear, and objective was to identify and honor testamentary intent, and not further societal benefit].)

Based on the above, the prayers for relief requested in the amended petition are denied in their entirety.

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not the remainderman" (see Frances Carlisle, *Remember the Family Pet in Estate Planning*, NYLJ, July 16, 2004 at 5, col 3), [\*\*\*9]

<sup>6</sup>If the cats live longer, there may be increased financial burdens on Eugenia which the decedent did not contemplate.