

Disabled Children

Financially speaking, parents of disabled children will be concerned with making sure that they are well looked after.

Often, if your child is mentally disabled they will be unable to make the relevant financial decisions themselves. Likewise, physically disabled children under the age of 18 will also require someone to make sensible financial decisions on their behalf.

Specialist advice is essential, so speak to us before making a Will when there is a disabled beneficiary. Without help and advice it is too easy to make a Will resulting in:

- Benefits from the Benefits Agency being stopped
- Entitlement to Local Authority funding being stopped
- A Receiver from the Court of Protection having to be appointed to manage the affairs of the family member, which may result in delays and expensive fees. The Receiver may not act as either the family or their relative would wish.
- Where reasonable provision is not made in a Will for a dependant family member who is receiving Local Authority funding, a claim can be made upon the estate of the deceased under the Inheritance (Provision for Family Dependents) Act 1975. The costs of such actions come directly out of the estate.
- The estate being subject to a much harsher tax treatment.

Including a Trust in your Will can ensure that you make provision for luxuries and extras that you want your family member to have e.g. holidays, or particular equipment to enhance their way of life. By setting up a trust in your Will, the future security of your disabled child who is unable to look after their own affairs, is protected.

What is a Trust?

A Trust is a legal arrangement whereby assets, money, investments, property are managed by one or more persons (trustees) for the benefit of the beneficiary, governed by a set of rules (trust deed). The Trust deed will establish the obligations of the trustees and how they are to benefit the beneficiaries.

There are three types of trusts used for disabled beneficiaries:

Life Interest Trusts – Also known as Interest in Possession Trusts. These are used to give one or more beneficiaries the right to receive an income from the trust's property during their lifetime, after which the income passes to other persons or charities.

Any property or funds held in trust for a family member who cannot manage their own affairs will not be treated as a capital resource when entitlement to state benefit is assessed. However, the income received from the trust will be taken into account if the beneficiary is receiving means tested benefits or Local Authority funding.

Protective Trusts – Under a protective trust, money or property is administered by trustees who are instructed that the income from it is paid to the beneficiary for life or a fixed period. Traditionally used by parents who fear that their child may be unable to deal with any inheritance wisely.

Discretionary Trusts – The most widely used form of trust for the more severely disabled and those with learning difficulties. Assets put into a Discretionary Trust do not 'belong' to the 'object' of the Trust (usually a son or daughter) who is intended to benefit. This means that the capital held in the Trust is not taken into account when assessing entitlement to state benefits such as Income Support or Local Authority obligations to pay for care.

A Discretionary Trust in your Will covers matters such as:

- The purpose of the Trust
- Who the beneficiaries are
- Who the trustees are
- How new trustees, if needed in the future because a trustee dies or no longer wants to do the job, are to be appointed
- How trustees fees and expenses are to be met
- What powers, duties and discretion trustees have including investing, making of payments and buying or selling property
- What happens to funds held in the Trust after the prime beneficiary dies

It is important that the trustees have discretion, both to satisfy the legal requirements of a Discretionary Trust and to allow them to adjust to changing circumstances and future legislation.

Discretionary Trusts are set up for a number of potential beneficiaries, not identifying too closely the family member who is unable to deal with their own affairs. Trustees can also be given power to add suitable people as beneficiaries to the Trust.

To sum up, under a Discretionary Trust, unlike other forms of Trust:

- The relative has no absolute right to either the capital or investment income of the Trust.
- Trustees have discretion about what payments are made.
- The principal beneficiary will not be the only possible beneficiary.

Trustees of Discretionary Trusts

When you draw up a Trust to protect the future security of a disabled beneficiary who cannot manage their own affairs, you need to appoint trustees. You can appoint up to four trustees and two should be regarded as the minimum.

Trustees should be aware of the needs of the disabled beneficiary and be capable of administering the trust. Ideally one trustee should be a family member and the other should be someone who has experience of financial matters. You could appoint an accountant or solicitor who will charge for their services from the trust fund. It is important the Trust fund contains sufficient capital for any professional charges to be paid.

It is worth remembering that in some cases, there can be potentially conflicting financial interests. This can arise where relatives are appointed as trustees who will also benefit from the residue of the Trust upon the death of the disabled beneficiary.

Funeral arrangements of a disabled son or daughter is not a subject we like to consider. However, you know that it is best that such decisions are made by those who love and know your son or daughter. If you are establishing a Trust, you can include your wishes to be carried out by the Trustees and give the Trustees specific powers to pay funeral expenses out of the Trust.

A Letter of Wishes to trustees is not legally binding, but it is a very useful method to explain to the trustees why you set up the trust and what you want it to achieve. You can give fuller explanations and reasons as to why certain clauses or restrictions have been made. The letter should be kept with your Will.

None of us wants to consider how our children will manage when we die. It is a considerably greater concern when our son or daughter is disabled and not able to manage their own affairs. It is imperative that the best possible arrangements are made for them so that their future life can be enhanced and the quality of their lives can be maintained.

Contact us for an appointment to put in place the arrangements you want for your disabled child.

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