

FACTSHEET: WILLS & TRUSTS

Thinking about the future isn't always easy, especially when your child has additional support needs. Somehow making a will never quite seems to make the top of the 'to do' list. It really is important to take that first step sooner rather than later and get good advice about writing a will and setting up a trust.

We answer some of your frequently asked questions here...

Do I need to have a will? What happens if I don't?

It is especially important to write a will if you have a family member with reduced capacity or some other type of disability.

If you don't write a will, your estate will be distributed according to the rules set down in law. This might mean:

- they get less or more than you wanted
- money is paid to them directly, regardless of their ability to manage it
- they lose their means-tested benefits
- the person being in a vulnerable position as others may try to take advantage of them because of their money

How can I avoid these problems?

By writing a will and setting up a trust, you can make sure the person you care about will get the right financial support and protection when you are no longer around.

You can also protect their entitlement to means-tested benefits and local authority funded care.

What is a Trust?

In basic terms, a trust is a legal arrangement where assets are transferred to someone else ('trustees') to be used for particular purposes and to benefit specific people ('beneficiaries').

A trust can be set up during your life or it can be included as part of your will. Your will or trust deed will say...

- Who are to be trustees
- Who are the beneficiaries
- How the money/property is to be managed
- What the money can be used for
- Who gets the money/property when the trust comes to an end

There are different types of trust, for use in different situations, so it is important to get advice about your circumstances.

What is a Discretionary Trust?

As the name suggests, Trustees have discretion about how assets are used, if and when payments are made and to whom.

Discretionary trusts are often suitable for people with impaired or fluctuating capacity; particularly where they are in receipt of means tested benefits and/or community care. This is because money or property held in this type of trust does not affect means tested benefits. It is also disregarded when calculating how much someone should pay towards care services. Even if the person is not receiving any benefits or services just now, remember this could change in the future.

My son has reduced capacity and his grandparents want to leave him some money in their wills. I'm worried this could affect his benefits – what should I do?

You or your parents could set up a 'pilot' trust for your child now. You can do this with a nominal sum, say £10, but it lies dormant until a larger sum of money is received. Your parents, you and other members of your family (or friends) could then also leave money to the trust in their wills.

What can the money held in trust be used for?

The person setting up the trust decides how the assets of the trust can be used. The will or trust deed will say who funds can be spent on and what they can be used for. Normally, it is a good idea for trustees to have wide powers to spend the money on anything that will benefit the beneficiary.

Choosing Trustees?

Choosing the right trustee(s) is crucial:

Trustees have specific legal duties and responsibilities (including maintaining trust accounts & submitting tax returns) and many people prefer not to burden friends and family with these.

Changing circumstances can also result in individual Trustees being unable to fulfil the role due to geographical location, ill health or death.

Organisations like Cairn Trust Management can act as a professional trustee or give your family and friends some support and help in managing a trust.

More Information

There's loads more information on our website www.cairntrusts.co.uk

Alternatively, get in touch with Nicola or Sophie...

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