*Financial protection for people with a disability

Using trusts to manage the finances of people suffering from a disability

Caring for any person with a disability brings many challenges and, aside from the day-to-day concerns, many carers worry about what will happen to the person for whom they are caring when they are no longer around. So how can financial provision be made for a disabled person whilst at the same time providing a level of protection to ensure that the disabled person's finances are managed well in the future? The solution may be to consider the use of a trust. In this briefing note we look at the advantages of using a trust and consider the types of trust that could be used.

What is a trust?

A trust is a legal structure where the ownership of defined assets is placed with trustees. The trustees manage the assets for a specified person or class of persons who, under the terms of the document creating the trust, are either entitled to, or can hope to benefit, from the trust. A trust can be created by Will or by drawing up a trust deed during lifetime.

There are several different types of trust. These include discretionary trusts, where there is a specified class of beneficiaries and the trustees have discretion over payment of income and/or capital, and interest in possession ("IiP") trusts which give the stated beneficiary the right to receive the income from the trust assets and sometimes the possibility of receiving capital.

Trusts are sometimes used to reduce tax liabilities, but are also frequently used as a form of protection as the trustees manage the trust assets on behalf of the beneficiary, whose entitlement to the asset is limited. As such trusts can be an ideal way of benefitting a disabled person who perhaps lacks the capability to manage assets or who may be vulnerable to financial exploitation.

What are the advantages of using a trust?

If a disabled person is unable to work they may be reliant on means tested benefits. Many benefits are not payable if the claimant has savings of £16,000 or over. Most carers of a disabled person would be reluctant for a gift of capital, whether given on death or during lifetime, to result in the beneficiary's entitlement to state assistance being reduced or removed. If, however, the financial provision is placed in a trust then the trust assets will not be taken into account in assessing the beneficiary's entitlement to benefits and the capital is preserved.

A trust can also ensure that the money is protected from dissipation, perhaps because of the disabled person's own behaviour, or because they are vulnerable to exploitation from others. The trustees retain control over the capital and are under a duty to ensure that it is invested wisely.

The issue of control of the money is a vital one and where a trust can be very helpful. For example, the trust could ensure that there is always a fund available for "extras" such as holidays or other large items of expenditure which the beneficiary could not otherwise afford. Such a fund can also be useful for a beneficiary who is generally able to work, but who might have gaps in their earning capacity due to their disability, to maintain their usual standard of living during the non-working periods.

Which type of trust might be best?

This will be dependent on a particular family's circumstances and what it is wished to achieve by using a trust. A discretionary trust has the advantage of inherent flexibility and may also help to maximise entitlements to Welfare Benefits, whilst an IiP trust may, in some circumstances, be easier to run and can be more tax efficient but any income entitlement would be subject to financial assessment.

The type of trust structure will also be determined by the amount of money that is likely to be put into the trust. For example, a lifetime gift to most forms of trust which is greater than the inheritance tax ("IHT") nil rate band (ie the amount that can be given without any liability to IHT) will trigger an immediate charge to IHT at 20%. Similarly, if a standard discretionary trust is incorporated into a Will, and the amount in the trust exceeds the value of the nil rate band at the ten yearly anniversaries of the trust's creation, then a charge to IHT will arise at a current maximum rate of 6%.

A way around this problem may be to use a recognised disabled person's trust qualifying for special tax treatment. This will also need careful consideration as to qualify as a disabled person's trust the trust has to meet a number of technical requirements, as does the beneficiary benefitting under it.

If you are interested in using a trust to make financial provision for a disabled person we can guide you through the process, and ensure that the most appropriate type of trust is chosen, taking into account both tax and all other relevant factors.

Further information

For further information on this or on any other Private Capital matter you may have, please contact us via:

See key contacts

Disclaimer: This briefing is intended to highlight issues only for the purposes of general interest and is not intended to be a comprehensive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content. Last updated: June 2015. Ref: 16982-1

Clarke Willmott LLP is a limited liability partnership registered in England and Wales with registration number OC344818. It is authorised and regulated by the Solicitors Regulation Authority (SRA number 510689), whose rules can be found at http://www.sra.org.uk/handbook/. Its registered office and principal place of business is 138 Edmund Street, Birmingham, West Midlands, B3 2ES. Any reference to a 'partner' is to a member of Clarke Willmott LLP or an employee who is a lawyer with equivalent standing and qualifications and is not a reference to a partner in a partnership.