

Questions to ask Professional Advisors Assisting with Estate Planning

Whether you are a family member concerned about your loved one's future, or the person who might benefit from this planning, here are some questions you may wish to ask when choosing a legal professional to confirm their knowledge of disability benefits, law and estate planning.

1. Generally speaking, what is the best way to provide for the long-term financial security for my family member with disability?

Most experienced professionals will mention the RDSP and a Discretionary Trust (also known as a Henson Trust). However, they will probably want to ask more questions before giving a conclusive answer. For instance, if the amount of money available is small, it could be more advantageous for the person to receive the money directly than for it to go into a Discretionary Trust. Also, the benefits of an RDSP can depend on the person's age and the beneficiary must be under 60 to open an RDSP.

2. How can I ensure that my estate plans are carried out?

The most important point here is choosing reliable people to act as executors and trustees. The unique role of trustees in a Discretionary Trust may come up in the discussion – because they have absolute discretion over the use of trust funds, it is especially important that they be completely honest and able to put the other person's interests ahead of their own.

3. How can we ensure that that eligibility for social assistance benefits is not affected in my estate plan?

Professionals should advise you that property held in certain types of trusts is not considered an asset and so does not count toward the limit. Funds could also be put into an exempt asset such as an RDSP or a principal residence, which do not count toward the limit.

4. What is a Discretionary Trust (also known as a Henson Trust)?

If the lawyer can't tell you 3 or 4 things about Discretionary Trust in a few short sentences, he or she doesn't know disability law and regulations. Choose another lawyer.

5. Who should I choose as a trustee?

A response should mention that anyone you choose needs to be able to serve the interests of the beneficiary and should not have any conflict of interest. He or she should be willing to undertake the work, and should have enough time to devote to it.

In choosing a trustee, specialized knowledge might be a consideration. It is often a good idea to have one trustee who knows you well, such as a friend or family member, and another trustee with expertise in finances or investing.

6. What is the role of my trustee?

A response should mention that trustees have several duties including determining beneficiary's needs, record-keeping, keeping the assets invested, preparing tax returns etc.

7. Should I be concerned about potential conflicts of interest with regards to my trustee?

The main point here is that conflicts should be avoided. If one of the trustees will inherit the remaining money from the trust in the event of your death, or if a sibling is the sole trustee and then also one of the ultimate beneficiaries, (or his or her children are ultimate beneficiaries), the lawyer should inform you that you've created a potential conflict of interest.

8. How do I minimize taxes on the proceeds of my estate?

In addition to charitable donations, it is possible in certain circumstances to arrange for a tax-deferred rollover of assets to a beneficiary.

9. What is a Qualified Disability Trust?

A Qualified Disability Trust (QDT), is a testamentary trust which pays graduated tax rates on the income the trust earns. This means tax rate increases as the taxable amount increases. The beneficiary of the trust must be eligible for and hold the Disability Tax Credit (DTC). A beneficiary of more than one testamentary trust who holds the DTC can only choose one of the trusts to be a QDT each year.

10. What is a Lifetime Benefit Trust?

A lifetime benefit trust (LBT) is a testamentary trust designed for beneficiaries (a spouse, a child, or a grandchild of the deceased individual) who are financially dependent and live with a cognitive disability. It offers a unique tax savings opportunity. By establishing a LBT in their will, a settlor's RRSP or RRIF assets can flow into the trust as a tax-free rollover.

11. Are there any rollover opportunities available with regards to proceeds in my retirement savings plans?

A professional should be aware that tax-free rollovers to an RDSP, RRSP or Lifetime Benefit Trust for the benefit of your relative with a disability may be an option.

12. Is the Disability Tax Credit Certificate a necessary component of my plan?

Yes.

13. If so, why is it important?

Aside from reducing the income tax you pay; the DTC is also necessary to qualify for other credits and benefits. Most importantly, the DTC is necessary for you to be eligible to open a Registered Disability Savings Plan (RDSP) and claim the federal government contributions. In addition, the DTC is necessary for several other credits and benefits, such as the disability supplement to the working income tax benefit, the age extension for the child care expense deduction, and the Canada child disability benefit. Starting in 2016, a beneficiary of a trust who is eligible for the DTC will have reduced trust tax rates.

14. Should I name my family member with a disability as the beneficiary of my life insurance policy?

That answer should be that if you do, after you die, the proceeds are paid to your family member or placed into any trust he or she might have on a tax-free basis and without probate fees.

15. Is it advisable to leave my principal residence and/or other real property to my family member with a disability?

A professional may mention the possibility of the home being held in trust. Issues such as who will pay maintenance costs and what types of supports the person may need to live in the home should also be considered.

16. What if I or my family member with a disability requires support with managing property and consenting to personal care decisions?

A response should mention that in BC, you can choose someone to provide support to you with certain types of decisions. This is a type of supported decision-making: you are still the one making the decision, with support from the other person. To bring this about, you would sign a document known as a Section 7 Representation Agreement.

17. What is a Microboard and how does it factor into my estate plan?

A Microboard (sometimes known as an aroha or a self-directed support organization) is a small not-for-profit corporation formed specifically to support an individual with a disability. Creating a Microboard to support your family member during your lifetime can help ensure continuity after you are gone. Some micro boards also work with the person to receive and manage outside funding.