

Wills, Trusts & Estate Planning Webinar Overview

Wills & Estate Planning

- A Will is a document that outlines what you want to have happen to your belongings when you pass away. It doesn't become binding until that time and you can change it as many times as you want while you are alive.
- At age 18, your son or daughter may qualify for provincial disability assistance from the Ministry of Social Development. To qualify, a person must have less than \$100,000 in liquid assets. They may own a motor vehicle of any value as well as their own principal residence.
- Proper planning will ensure that your son or daughter will remain eligible to receive disability assistance.
- A Will Allows You To:
 - Appoint an **Executor** (someone you trust to manage your affairs)
 - Appoint a **Guardian** for any minor children
 - Distribute your estate in the amounts and to the persons you wish
 - Set up **Trust(s)** to address special or unique situations, including assisting a person living with a disability

Trusts

- Funds held in trust are generally seen as an acceptable means of providing for your son or daughter with a disability.
- A trust is a relationship in which one person – the **settlor** gives money to a second person – the **trustee** for the benefit of a third person – the **beneficiary**. The assets in the trust can only be used for the benefit of the beneficiary.
- In a **Discretionary Trust**, the trustee has complete discretion, or control, over how the money is used for the benefit of the beneficiary. These types of trusts may hold any amount of money and the beneficiary will not be cut off from BC disability benefits.
- In a **Non-discretionary Trust**, the trustee does not have complete control on how the money is spent. For a beneficiary on disability benefits, these types of trusts are restricted to no more than **\$200,000** unless the Ministry of Social Development grants special permission.
- In a **testamentary trust**, the trust is created as a result of the settlor's death, while in a living or **inter-vivos trust**, the trust is created while the settlor is still alive.
- People with disabilities who receive a large cash gift or an injury settlement from ICBC often set up a non-discretionary trust to be able to remain on disability benefits after receiving that

money. These types of trusts are always living trusts, because the person setting up the trust is still alive.

- All trusts must pay tax on the income that the assets in the trust generate:
 - In living trusts, and some testamentary trusts, the income earned is taxed at the highest rate.
 - A testamentary trust less than 36 months old is taxed at the graduated rate.
- A **Qualified Disability Trust (QDT)** is a testamentary trust where the beneficiary holds a Disability Tax Credit from the Canada Revenue Agency. This type of trust is also taxed at the graduated rate. A person may only choose one QDT per year.
- A **Lifetime Benefit Trust (LBT)** is a testamentary trust designed specifically for beneficiaries (a spouse, child or grandchild) who are “cognitively impaired” and financially dependent on the person setting up the LBT. Proceeds of a Registered Retirement Savings Plan (RRSP) or Registered Retirement Income Fund (RRIF) can be transferred into the trust as a tax-free rollover.

Trusteeship

- When selecting your trustee(s), keep in mind that you may have as few as one trustee, or as many as you want. You may decide to have one or more people with different skill sets to be the trustee(s).
- Make sure that you ask your potential trustee before you appoint them; a trustee cannot be forced to act as such just because they have been named in a trust.
- The trustee has several important responsibilities including: determining the beneficiary’s needs; keeping the trust assets invested; doing the trust’s record-keeping; preparing government filings, such as tax returns, etc.
- Here are some important things to keep in mind when designing a trust:
 - Ensure that there is a **residual beneficiary**
 - Consider conflicts of interest
 - Consider the investment powers of the Trustee
 - Ensure that there is a continuity of Trustees
 - Consider the Trustee’s remuneration
- Keep in mind that not all lawyers understand estate planning or disability issues. It is crucial to find a lawyer who understands disability issues as they relate to your estate.
- Here are some sample questions that you can ask a potential lawyer to determine if they are a good fit:
 - *How many trusts have you created in the last 1, 5 or 10 years?* If they’ve done none, it might mean they need to do additional research, which could be costly to you.
 - *What are some things that I need to be concerned about when setting up my will?* They should be able to tell you in clear terms that a trust cannot give any cash to the beneficiary as a stipend from the trust.