BMO NESBITT BURNS

TRUST PLANNING FOR THE DISABLED

Is there a person in your family who is disabled? A trust can provide financial security for a person who is not capable of managing their own money. In some provinces, it can also preserve the right to provincial disability benefits.

The nature of the disability and the person's needs can determine the best way to set up the trust.

Is the person completely unable to take care of himself or herself both physically and financially? Is the person in an institution, or nursing home? If so, it is likely that the person also receives financial assistance from the province and may have few additional financial needs because lifestyle is limited by the disability. In this case, a discretionary trust, sometimes called a "Henson" trust,can be used. This trust provides a "back-up" source of funds in case additional support is required, but the value of the fund will not be included in the person's assets in determining eligibility for provincial benefits. This strategy may not work to preserve the right to provincial benefits in all provinces.

Generally a Henson trust provides a great deal of discretion to distribute or withhold capital and income, and usually has other beneficiaries in addition to the disabled person. These terms are essential to achieve the protection of benefits, but also make the choice of trustee very important.

If the person suffers from a less debilitating disability, or an intermittent one as in the case of mental illness, their financial needs or lifestyle may be far greater than what can be supported by government benefits. In this case, a trust may still be desirable to provide financial security and protect the person from themselves or others. However, the more restrictive terms often found in a Henson type trust may not be necessary. More generous language in the trust document can spell out the purpose of the trust for the person to maintain a particular lifestyle, or a certain guaranteed income can be specified.

Often a Henson type discretionary trust is created even if provincial benefits are not being received, just in case the person qualifies in the future. The trust can leave the decision up to the trustees to be more generous if this is appropriate even if benefits will be discontinued.

A trust created in your Will may be preferred. The trust will be entitled to the marginal tax rates, and the 21 year rule that triggers capital gains in a trust will be delayed until 21 years after death. The trust can be funded with insurance to provide additional financial security.

Contact your Investment Advisor for more information on insurance solutions, or for assistance in finding an estate planning professional.

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