

Benefits Series

Wills and Trusts

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Please see our website for up-to-date information: www.downs-syndrome.org.uk

If you have concerns, please ring the DSA's Benefits Adviser: Helen Wild

Mon & Thurs 10am-4pm Tues & Weds 10am-12.30pm | Telephone: 0333 1212 300

Making Provision

As a parent or carer, you may have concerns about what will happen when you are no longer around to manage someone's financial affairs.

Planning will give you peace of mind and protect benefit entitlement being impacted in the future.

A will instructs what happens to your money, property, and possessions after your death. If you already have a will, it is a good idea to check it every few years and have it updated (called a codicil).

This is a short overview and in no way intended to replace professional legal advice.

Looking for a solicitor

We would advise that you have your will written up by a solicitor who is familiar with trust law. When looking for a solicitor, check that they are STEP qualified (Society of Trust and Estate Practitioners). Ask if they have any experience acting for parents who have a child with a learning disability. We have provided a link on the last page with contact details to help search for legal help.

It is worth paying for good advice. A solicitor should be able to give you a price over the phone and tell you how long it will take to draw up the will and trust fund. If they cannot, do not use them.

The regulatory body is very strict, so if you are told it will take 3 weeks and it has taken 5, then you should not be billed for it. Do not pay up front fees and make sure you are happy with the work before you pay. Take a list of your assets to the initial meeting as it will save a lot of time.

Assets are items of property that you own, and which hold value.

IT IS ADVISABLE TO REVIEW YOUR WILL AND TRUST FUND EVERY 2-3 YEARS

Situations to be aware of

Listed below are some things that parents routinely do and which can have undesired consequences:

1. Writing a will but excluding your child who has Down's syndrome. Many parents think that they can leave the money with their other children and that they can look after them. However, if there is no provision, social services can bring a claim against the estate (because provision has not been made). This means court fees and legal fees would need to be paid. It may result in the need for an application to the Court of Protection for a Deputy to be appointed to manage their inheritance and this may result in decisions that you would not have chosen for your child.

2. Leaving extra money to another sibling with the proviso that they look after their brother/sister with it. If this sibling went bankrupt, the money would be taken away. If they divorced, the money would be considered in a divorce settlement.

3. Leaving property to your child who has Down's syndrome– you need to look at how the property will be cared for and maintained as it can lead to a deputyship order costing over £2000.

4. Setting up a discretionary trust fund without direction – you need a letter of wishes detailing how the fund is to be run and what the beneficiaries likes, and dislikes are.

5. Not telling relatives that there is a trust fund set up. If they know about it, grandparents or other friends/relatives could then alter their own will to have money sent directly to the trust fund rather than the person themselves (if your child is on means tested benefits it can affect benefit if the money is paid to them directly). It doesn't cost much to add this into a will.

6. Leaving money directly to someone on means tested benefit. Their benefit may stop if it is above the prescribed limit of £16,000 or reduced if it is an amount between £6,000- £15,999. They will then have to use their inheritance to live on and pay rent. Once it has run down to below £16000, they will have to re-apply for all the means tested benefits, keep DWP and housing benefit informed of the decreasing capital so they can increase the benefits and find someone to help them complete and understand the forms.

Setting up a Trust Fund

A Trust fund is designed to hold and manage assets on someone else's behalf. It can include money, property, and assets. The Trustees will manage the money on the persons behalf, abiding by your letter of wishes in which you instruct them as to how it should be used.

You can set up a trust fund as part of your will and leave money in it for your child's provision. You can set up a pilot trust by placing just £10 in it whilst you are alive. There is no minimum or maximum amount of money that can be placed in the Trust but there

needs to be enough to ensure the running of it is financially viable. Your lawyer will be able to advise you further.

Money left by other relatives can go directly into the Trust (they will have to state this in their will). You can name as many people as you want to be beneficiaries of the trust fund. In your will, you can make gifts and money gifts to friend and families. Once the gifts have been given, the funeral bill and utility bills taken, you are left with the residue which will form the basis of the trust fund.

The best kind of trust fund to set up is the discretionary trust fund or the disabled person's trust fund. The disabled person's trust fund is like the discretionary trust. If inheritance tax will be an issue, then look at the disabled person's trust fund, if not, the discretionary trust fund is fine to set up. **Please check with your solicitor first.**

Requirements of the Trust Fund

The discretionary trust fund requires a minimum of two trustees to run it and more than one beneficiary. You can name a charity as a second beneficiary if you have no one else to name in the trust. However, the more beneficiaries you have, the better. The trustees can be lay people, professionals -such as a solicitor or an accountant or a trust company.

If you have no one to operate the trust and need a third party, banks can be expensive and currently charge 4% of the total value of the estate. There are other companies, for example charitable trusts, who charge less than half this amount and are also aware of the needs of people with learning difficulties.

Duties of the trustees

Trustees are accountable for the running of the trust. They have a duty to invest the money with a professional, independent financial adviser and should not invest the money themselves. If they chose to invest the money themselves and lost a portion of it, they are liable for the loss and the trust would pursue them for the monies lost. If it was lost through an independent financial adviser, the trustees would not have to repay the money.

The trustees exercise their discretion and decide how the money is spent. In the case of someone on means tested benefit, the trust pays for goods directly; this way it never passes to the beneficiary in a way that affects their benefit.

Set up correctly, the trust will not affect any benefits that your son or daughter receives. Along with the Discretionary trust fund you will need two letters of wishes.

Letter of Wishes

The first letter of wishes lists the order of beneficiaries, so you would place the person you most want it to benefit first. On their demise the money would pass to the second in line and so on.

The second letter states the likes and dislikes of the person and how the money or asset should be used. It is important to complete this 2nd list because the trustees who run the fund may not know the beneficiary very well (or at all if it is a trust company). In this second letter of wishes you can include information about their likes and dislikes, for

example, if they like to go to a weekly football match or if they like to visit certain places etc.

Contacts

The Law society will be able to help you find suitable solicitors in your area. They can be contacted on 0207 320 5650.

The Society of Trust and Estate practitioners can be contacted on 0203 752 3700

Chartered Institute of Legal Executives (CILEX) can be contacted on 01234 841 000

The Down's Syndrome Association

The Down's Syndrome Association provides information and support on all aspects of living with Down's syndrome. We also work to champion the rights of people with Down's syndrome, by campaigning for change and challenging discrimination. A wide range of Down's Syndrome Association publications can be downloaded free of charge from our website.

Contact us

Down's Syndrome
Association
Langdon Down Centre
2a Langdon Park
Teddington
Middlesex
TW11 9PS

t. 0333 1212 300

e. info@downs-syndrome.org.uk

w. downs-syndrome.org.uk

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