



Special Disability Trusts

For those of you with a child or relative with special needs, such as a severe disability, ensuring there are protective measures in place for them when you're no longer there to care for them is going to be one of the most important considerations on your mind. At Estate First Lawyers, we can help to give you peace of mind knowing that your loved ones will be cared for when you are no longer there to do so.

What is a Special Disability Trust?

You may wish to consider establishing a Special Disability Trust for your child or relative with a severe disability. A Special Disability Trust is a trust regulated by the Commonwealth government and must meet the particular requirements as set out by the government. Most importantly, to be eligible to be a beneficiary, the beneficiary must meet the definition of having a 'severe disability' as set out under the relevant legislation.

What are the key advantages?

One key advantage of a Special Disability Trust is that the assets held in the trust (up to a

certain threshold) are exempt for the purposes of assessing the beneficiary's government support pension entitlements (such as their entitlements to the Disability Support pension).

The amount of assets the trust can hold without affecting the beneficiary's government support pension entitlements is set by the Commonwealth Government and indexed annually according to CPI. For the 2020/21 financial year the threshold amount is \$694,000. The Special Disability Trust can also hold additional funds over and above the threshold amount, but any assets over and above the threshold amount will be assessed when determining the beneficiary's government support pension entitlements. This means that the pension they are receiving may be reduced.

Assets that can be held in the Special Disability Trust include cash, investments (such as shares), and real property. Importantly, the principal place of residence of the severely disabled beneficiary can be owned by the Trust without being counted towards the threshold of assets that the trust can hold.

What are the disadvantages?

The assets of a Special Disability Trust can only be applied for certain purposes, which can be quite restrictive. These include payment of any reasonable care and accommodation costs incurred by, or on behalf of, the beneficiary. A Special Disability Trust can also be used to pay for the beneficiary's medical expenses including private health fund membership and dental treatment.

There is only a relatively small amount of discretionary spending allowed each year to meet additional costs such as costs relating to the beneficiary's health, wellbeing, recreation, independence and social inclusion.

Who will control the Special Disability Trust?

It is also important to consider who you wish to control the Special Disability Trust for the benefit of the disabled beneficiary. At law, a Special Disability Trust must have either two individual Trustees (both of whom must be Australian Residents) or one 'arm's length' professional trustee (such as a Trustee corporation or an Australian Legal Practitioner).

At Estate First Lawyers, we can talk you through your options in this regard to work out a suitable appointment that protects the needs and interests of the disabled beneficiary.

When can I establish a Special Disability Trust?

You can establish a Special Disability Trust during your lifetime. If you are in receipt of the aged care pension, there may be gifting concessions

available to you. We can advise you further regarding this.

You can also establish a Special Disability Trust for a beneficiary under your Will which will only come into existence after your death. Where your intended beneficiary meets the eligibility requirements for a Special Disability Trust, we recommend including both a **Protective Trust** and a Special Disability Trust in your Will, with special clauses to allow your Executors to decide how much each trust should receive so that any government support pension entitlements can be preserved while simultaneously keeping flexibility of the trust and tax considerations in mind.

This is a sensitive and complex area where you need the full attention of a senior estate planning lawyer to talk you through the issues. At our first consultation we will advise you of your options and help you structure the best solution for your situation so that you can have peace of mind that you have provided properly for your vulnerable loved one. We will also provide you with a written fixed fee quote at our meeting. Please contact us on 1300 132 567 or email us at [**info@estatefirst.com.au**](mailto:info@estatefirst.com.au) to discuss how we can help you with this.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation.

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