GUIDE TO TRUSTS FOR VULNERABLE PEOPLE

If you want to make provision in your Will for a vulnerable person (for example, someone with a learning disability or dementia) or someone who is in receipt of means-tested benefits, it is often better to set up a trust in your Will for that person's benefit, rather than leaving assets directly to them.

WHAT IS A TRUST?

A trust is a vehicle which divides the responsibility for the management of an asset from the right to use or benefit from that asset: 'trustees' manage the assets, and 'beneficiaries' benefit from them. Setting up a trust in your Will ensures that you can make proper provision for a vulnerable person, and can take steps to ensure that their assets (and means-tested benefits) are protected and managed as you would wish.

THE ROLE OF A TRUSTEE

Trustees make the decisions relating to a trust's administration and to the management of the assets held within it: this may include, for example, making decisions about how monies are to be invested, and – depending on the terms of the trust – how assets should be used to support the beneficiaries.

WHAT SORT OF TRUST DO I NEED?

Where a vulnerable person is concerned, there are three types of trust which could be suitable:

Life Interest Trust

This trust ensures that a vulnerable person has a right to a continuing income or use of an asset during his or her lifetime. As trustees cannot be forced to make capital payments to the beneficiary, they can protect a vulnerable person from financial exploitation, and the local authority cannot require capital from the trust to be used to meet fees or living expenses.

However, the individual's income entitlement may impact upon his or her rights to receive means-tested benefits.

Discretionary Trust

A discretionary trust has a large number of potential beneficiaries but it is left entirely up to the trustees to decide to whom or for whose benefit – if anyone – income or capital payments are made. As a discretionary beneficiary has no right to receive anything from the trust, all of the assets held within it and its income will normally be disregarded when calculating a beneficiary's right to receive means-tested benefits.

Disabled Trust

A disabled trust is a type of discretionary trust, which is set up for the benefit of a 'disabled person' - someone who is incapable of looking after their own affairs by reason of a mental disorder or is in receipt of an Attendance Allowance or a Disability Living Allowance.

The disabled person will be named as one of the potential beneficiaries of the trust, but has no right to receive capital or income from the trust, or to have capital or income used for their benefit. The trust will, however, stipulate that if any distributions are made during the disabled person's lifetime, at least half of that money must be paid to or used for the benefit of the disabled person.

The advantage of a disabled trust is that the disabled beneficiary's rights to means tested benefits should not be affected and the person setting up the trust has the comfort of knowing that the trustees cannot choose simply to transfer all trust assets to another beneficiary during the disabled person's lifetime.

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