

Trusts for Disabled Persons

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At Cleaver Fulton Rankin we have expertise in advising clients in relation to estate planning using trusts either set up during their lifetime or by will. In recent years the use of trusts has been regarded as synonymous with tax planning, but an equally important aspect of their use is the protection which they offer, particularly for vulnerable beneficiaries, such as a disabled person.

A “disabled person” for the purposes of the Finance Act 2006 is a person who is incapable, by reason of mental disorder of administering his property or managing his affairs, is in receipt of an attendance allowance, is in receipt of a disability living allowance, or who would be eligible for such benefits.

If these conditions are met then certain types of trusts established for the benefit of the disabled person receive favourable treatment for tax purposes. It should be noted that in some circumstances a trust can be created by the disabled person themselves if they already meet the criteria set out above or if the disabled person has a condition which is expected to lead to those criteria being met. Broadly, the type of trust used will fall into one of two categories as follows:

1. Interest in Possession Trust

In an interest in possession trust the disabled person will be entitled to any income produced by the trust fund, and the trustees (the persons who administer the trust) may also have power to advance capital to the disabled person should it be required.

2. Discretionary Trust

A discretionary trust allows the trustees to decide how best to provide for the disabled beneficiary and will be able to make payments of income and/or capital. The trust will usually provide for other potential beneficiaries such as siblings or children. The trust must provide that if capital is appointed out of the trust, not less than 50% is used for the benefit of the disabled beneficiary. The main advantage of a discretionary trust is that, since the disabled person has no absolute right to the income or capital of the trust, their interest should not affect their entitlement to means-tested benefits. Rather than provide for an income stream to the disabled beneficiary, the trustees can make payments on their behalf and thus preserve any benefit entitlements.

It will be appreciated that the creation of a disabled person’s trust is often a complicated process and it is essential to obtain specialist legal and financial advice before doing so. However, there are real benefits to such trusts and they can provide peace of mind to those concerned about their own future and those of their loved ones.

Should you wish to consider preparing trusts of this kind, or to discuss Estate Planning issues generally, then please contact Alastair Rankin, Michael Graham or Naomi Gaston who will be pleased to advise you.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.