

## Discretionary Trusts (*ref 03*)

- 1.** A Discretionary Trust is a way of managing assets.
- 2.** They are used for long-term financial planning for disabled children. The main characteristic of a discretionary trust is that the assets don't count for welfare benefit purposes nor affect Social Services responsibilities for funding care. This is because the assets once put into the discretionary trust do not belong to the beneficiary or settlor (donor relatives).
- 3.** Trustees by definition have discretion as to how the fund is used. This means that it possible for them to not use the funds in the way you intended. This is the risk.
- 4.** The appointment of trustees is therefore crucial. There should be between two and four trustees.
- 5.** Experience suggests not all trustees should be relatives although they can be. It is a good idea to have some trustees able to manage money.
- 6.** The intended beneficiaries must not be the only beneficiary. It is common to name a class of beneficiaries. For example all people with autism living in Wales.
- 7.** Ways of ensuring the family's wishes are followed include writing a letter to proposed trustees setting out your wishes and asking if they are willing to follow them. Such a letter has no legal force. Lodge the trust deed with social services or another independent agencies for example local Mencap Society or similar interest group. Involve the beneficiary in the selection or trustees and ensure they know who the trustees are if possible.
- 8.** A trust deed is a few pieces of paper that sets out the trust purpose, beneficiaries, the trustees' names, how they should be appointed in future, how the expenses can be reimbursed etc.
- 9.** A trust is often created in a will but if set up now allows other people to pay into it.
- 10.** Consider putting the family home into the trust if continuing to live at home is part of long term planning. This will protect the asset better than for example direct inheritance.
- 11.** Use an expert solicitor to draw up a trust deed. Mencap may be able to suggest a suitable solicitor. The Law Society is another possibility.

If you require further information or have other queries contact Housing Options.

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