

# Disability Assistance and Trusts



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## **Disability Assistance and Trusts**

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This booklet is designed to address trusts for persons with disabilities receiving Disability Assistance. However, there are similar provisions for trusts for persons living in special care facilities.

### **Trusts**

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Many people with disabilities find they have extra costs because of their disability. Some of these costs might include changes to their home to accommodate their disability-related needs, mobility aids, or money for home support workers. People who have these costs, and their family, may want to save money to pay for these costs now and in the future.

### **Do you have extra costs because of your disability?**

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Do you or your family want to save money for these costs, but you aren't sure if you can because of BC Employment and Assistance legislation?

If you answered “yes” to any of these questions, please read this booklet. The booklet explains:

- what a trust is;
- how having a trust affects your Disability Assistance;
- what the different kinds of trusts are;

- who can set up a trust for you; and,
- how you can use the money in your trust without affecting your Disability Assistance.

## **What is a Trust?**

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A trust is a legal relationship created under an agreement or will where someone (the trustee) holds money or other assets for someone else (the beneficiary).

## **What about Disability Assistance?**

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Disability Assistance is part of the Ministry of Housing and Social Development's (MHSD's) BC Employment and Assistance program. BC Employment and Assistance legislation says that a person receiving Disability Assistance or living in a special care facility can have a trust. Having a trust will not affect the beneficiary's Disability Assistance, as long as the beneficiary's use of the trust follows what is set out in the legislation (what the money can be used for).

Under BC Employment and Assistance legislation, you are allowed to have a certain amount of valuable items without having any money deducted from your cheque. These items are called assets and include things like cash, property, clothing and other possessions. Some assets, like your house or car, are completely exempt

and you do not have any money deducted from your Disability Assistance cheque for their value.

Other assets, like cash and bank accounts, are exempt up to a certain amount of value. For example, as a single person, the asset exemption is \$3,000. You can have assets worth \$3,000 without having any deduction to your cheque.

Income can also be exempt or not. This means that some money you receive will be deducted from your Disability Assistance cheque and some won't. Income that is not deducted is called exempt income.

Your employment and assistance worker will assist you to understand exempt income and assets and how trusts work.

Although some trusts do not end up being assets, until Legal and Legislative Services Branch has had a trust reviewed by lawyers it is not known whether or not the ministry will determine it is an asset, therefore, all trusts must be reported.

Trust interest is to be included in the aggregate value of the trust and must be reported.

## **Types of Trusts**

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There are two basic types of trusts: discretionary and non-discretionary trusts. People who receive Disability Assistance need to understand the difference between these two trusts because they are treated differently with respect to whether they are considered an asset under BC Employment and Assistance legislation.

### **1. Discretionary trusts**

The first type of trust is called a discretionary trust. If you are the beneficiary of this type of trust, it means that you, as beneficiary, have no control over the money held in the trust or how it is spent. The trustee, who knows you and your needs, has complete authority to make these decisions on your behalf.

A discretionary trust is not considered an asset under BC Employment and Assistance legislation. As a result, there is no limit to the amount of money that can be held for you in a discretionary trust.

### **2. Non-discretionary trusts**

The second type of trust is a non-discretionary trust. The beneficiary of a non-discretionary trust has at least some control over the trust and how it is spent.

Since the beneficiary has some control over the trust, a non-discretionary trust is considered an asset by MHSD. But, it will be considered an exempt asset if the beneficiary is:

- a person with a disability or a resident of a special care facility, and
- the lifetime value of the capital of the trust does not exceed \$100,000.

If the lifetime value of the capital of the non-discretionary trust is more than \$100,000 the amount above \$100,000 will be considered an asset and will not be exempt unless special approval from the Minister of MHSD is obtained. Please contact your employment and assistance worker for more information about receiving special approval.

For example:

If you are either a person with a disability or a resident of a special care facility and you have a non-discretionary trust with a lifetime value of \$125,000, this will be considered an asset by MHSD. But, \$100,000 of the value of the trust would be considered an exempt asset. The remaining \$25,000 that exceeds the \$100,000 lifetime limit under BC Employment and Assistance legislation would not be considered



exempt and would be an asset in excess unless special approval from the Minister of MHSD is obtained.

The way the money is spent can also affect your assistance. Keep in mind that this is the case for both kinds of trusts. This is explained in the section “How Disbursements Work.”

## **How is a Trust Set Up?**

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There are generally three ways for a trust to be set up:

1. You can set up a trust for yourself, with the help of a professional such as a lawyer. However, if you receive Disability Assistance, you can't be both the trust's only beneficiary and its only trustee. You can: choose someone to be the trustee or to be a co-trustee with you to manage the trust, or you can name a co-beneficiary of the trust.
2. Someone else can set up a trust, naming you as the beneficiary. For example, your parent could set up a trust for you to help you with your disability.
3. Someone who wants to set up a trust for you can do this by creating a trust right in their will. The trust is only created when the person dies, and the trustee named in the will may get a lawyer to help with any needed arrangements. A separate trust

agreement is not needed. There is no trust before the person dies.

The first two kinds of trusts are called inter-vivos trusts because the creator of the trust is still alive. The third kind of trust is a testamentary trust, because it is created through a will after the person dies.

## **How Disbursements Work**

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The way money is spent from your trust may affect your Disability Assistance. BC Employment and Assistance legislation allows you to spend money from your trust on certain disability-related expenses without affecting your assistance.

Your Disability Assistance will not be reduced if disbursements from your trust are spent on any of the following things:

- devices or medical aids that improve your health or well-being;
- caregiver or other such disability-related services;
- education or training;
- necessary maintenance on your home; or
- renovations or changes to your home that make it easier for you to live there because of your disability.

There is no limit on the amount that can be spent from your trust on these disability-related items.

You can also receive up to \$5,484 from your trust each year to help you live more independently.

If you spend money on non-disability-related items, or if you spend more than \$5,484 in a year on items or services considered necessary to promote your independence, that money will be considered unearned income and will be deducted from your next Disability Assistance cheque.

Questions 7 and 8 on the following pages talk about disbursements. There is a simple chart showing how you can record your expenses and disbursements for reporting to MHSD.

If you are not sure if something you want to use trust money for will be exempt from being considered unearned income, contact your employment and assistance worker or community advocate.

## Questions and Answers

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Here are some questions and answers that will explain more about trusts and people who receive Disability Assistance.

1. **If I already receive Disability Assistance, and then a trust is set up for me, can the trust be exempted as an asset?**

Yes. You can set up a trust before or after becoming a BC Employment and Assistance recipient. The order makes no difference to the way the trust is treated under BC Employment and Assistance legislation.

2. **Who decides if a trust is valid under BC Employment and Assistance legislation?**

A trust has to be considered a valid trust for it to be exempt under BC Employment and Assistance legislation. MHSD staff send information on new trusts to a ministry office in Victoria called the Legislation and Legal Services Branch (LLSB). LLSB staff work with lawyers to review the trust information and determine whether the trust is valid and, if it is a discretionary trust or a non-discretionary trust. MHSD staff will then make the decision about the type of trust, and about which exemptions apply to that trust.

3. If I receive a large amount of money one time, such as money from an inheritance, can this money be put into a trust?

Yes, but the money should be put into a trust immediately. If the money is not put in a trust within a reasonable period of time, it will be considered unearned income when it is received and will be deducted from your Disability Assistance. Then, if you keep the money without creating a trust, it will be considered an asset and the asset exemption will be applied (\$3,000 for a single person or \$5,000 for a couple) to determine if a certain amount of the asset is considered exempt.

4. Can I be the beneficiary and the trustee of a trust?

You cannot be the only trustee if you are also the only beneficiary. Someone else must be the trustee or you can share the trustee job with another person, or there must be another beneficiary.

5. Will the ministry accept trusts that have not been set up by a lawyer or with the help of a lawyer?

We do not recommend this. A lawyer is the best person to help you set up a trust. Trust law is very complicated. Lawyers should have experience in

setting up trusts so that your trust can be set up in the best way for you. Ultimately, the executed (signed) trust, or the trust created in a will after the person dies, will need to be reviewed by MHSD.

**6. Can money be added to my trust after it has been set up?**

It depends on the trust. You generally cannot add money to a testamentary trust. A new trust would need to be created. However, with an inter-vivos trust, you can usually add lump sums of money. For non-discretionary trusts, the total amount of the trust can not exceed \$100,000 unless you have received special approval to exceed this amount. There is no such limit with a discretionary trust.

**7. If I receive Disability Assistance and I have a trust, what kind of information does MHSD need from me?**

MHSD needs to know how money from a trust is spent to decide if this money should be exempt from being considered unearned income. As noted earlier in this booklet, the money must be spent on certain disability-related costs to be exempt.

So, each year, MHSD needs the following information about the trust:

- how much money was disbursed from the trust;
- what this money was used for; and
- if any new money was deposited to the trust (if money can be added to the trust)

If the money was spent on exempt items (like those described under “How Disbursements Work”), then your Disability Assistance will stay the same.

**Please note:** MHSD has the right to ask for information on your trust at any time.

**8. Is there a special way I should provide information on my trust to MHSD?**

Yes. The best way to show MHSD how your trust is being used is to put the information in a simple table. The table shows when disbursements were made, what they were spent on, and what deposits were made.

A table would look something like this:

Column A	Column B	Column C	Column D	Column E	Column F
Date	Capital	Disbursement	Expenditure	Explanation of Expenditure or Deposit	Trust Balance
Capital of trust on April 26, 1996, or capital of trust on date created if after April 26, 1996					\$35,000
April 7, 2000		(\$1,000)	\$500	Monthly homemaker services	\$34,000
April 18, 2000			\$500	Education/ Tuition fees	\$34,000
June 15, 2000		(\$300)	\$300	Home repair	\$33,700
Oct 8, 2000	\$500			Inheritance from Uncle Joe Smith	\$34,200
Total Disbursements		(\$1,300)			
Total Expenditures			\$1,300		
Total Deposits	\$500				

*Column A:* the date of the disbursement or deposit.

*Column B:* the dollar value of the money deposited to the trust.

*Column C:* the amount of the disbursement.



*Column D:* the amount that was spent on a disability-related cost.

*Column E:* a description of how money was spent or where money for the deposit came from.

*Column F:* the amount of money left in the trust after each deposit or disbursement.

When you give this table to MHSD, you must also provide proof for all the information. For example, you must provide proof for all disbursements, receipts for expenditures, deposit receipts and proof of the amount of money in the account from your bank.

**Please note:** All the money taken out of the trust (Column C) must be spent on disability-related costs (Column D) in order to be considered exempt. Any amount not spent on these costs will be considered unearned income and will be deducted from your Disability Assistance cheque.

## 9. Will my trust affect my income tax return?

The income tax laws change quite often. You should talk to someone at the Canada Revenue Agency, a lawyer, or a financial consultant to find out how your trust will be handled on your income tax return. MHSD does not handle income tax matters.

**10. Can I request a reconsideration or appeal a decision MHSD makes about my trust?**

Yes. Any decision that MHSD makes that affects your Disability Assistance eligibility or the amount you can receive from Disability Assistance is open to reconsideration and appeal. So, decisions that MHSD makes about whether or not a trust is valid or whether a disbursement is exempt, can be reconsidered and appealed.

**11. Can I talk to people at MHSD about how to set up a trust?**

No. MHSD does not provide advice on how to set up a trust. We ask people to talk to a lawyer or a community advocate for advice when setting up a trust.

**12. Will the money in my Registered Retirement Savings Plan (RRSP) be treated like a trust by MHSD?**

It depends on how your RRSP was set up. MHSD can review your RRSP documents to see if the RRSP is a valid trust or is considered an exempt asset under BC Employment and Assistance legislation. Your employment and assistance worker can send the information to LLSB for review before making a decision about the RRSP.

13. Can MHSD make me use money from my trust to pay for something that would usually be paid for by MHSD? For example, can MHSD ask me to pay for a health expense out of my trust that MHSD usually pays for under Schedule C of the BC Employment and Assistance legislation?

No. MHSD policy says that a person will not be disqualified from receiving assistance just because the person has a trust. The amount the person can spend on disability costs from a trust is meant to pay for things that are not covered by MHSD or for fees for services that are covered but which exceed the maximum allowable amount.

We hope this booklet has helped you to understand trusts.

## **For More Information**

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Contact the Ministry of Housing and Social Development by calling toll free:

➤ **1 866 866-0800**

Or visit the ministry website at:

➤ **[www.hsd.gov.bc.ca](http://www.hsd.gov.bc.ca)**



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