

Information for Persons with Disabilities Who Are Beneficiaries of a Trust

What is a trust?

A trust is a legal relationship between three parties: the *settlor* sets up the trust, contributes assets to it, sets out instructions on who will benefit from the assets and how the assets are to be used or managed; the *trustee* is appointed to control and manage the assets in the trust; and the *beneficiary* is a person who can benefit in different ways from the assets owned by the trust.

The trustee is required to manage the trust property according to the instructions in the trust document and must use that property solely for the benefit of the beneficiaries. A third party is not entitled to benefit from the trust unless specifically provided for in the trust document. The trust can be created in someone's will (a "testamentary trust") or a trust document made by a person that takes effect during their lifetime (an "inter vivos" trust).

The document that creates the trust describes the nature and scope of benefits available to each beneficiary and outlines the duties and powers of the trustee. General responsibilities and powers of a trustee are also found in the *Trustee Act*.

How does a trustee decide when to provide a benefit?

A "non discretionary" trust requires the trustee to make certain payments to the beneficiaries.

A "discretionary" trust gives the trustee discretion about whether funds should be paid to a beneficiary.

When a trustee has discretion, he/she must consider the following when deciding whether to provide a benefit to any particular beneficiary:

- the specific terms of the trust;
- the beneficiary's current situation;
- whether the beneficiary is receiving other benefits that may be affected;
- the financial ability of the trust to support the benefit;
- any possible income tax consequences to the trust and the beneficiary; and
- any potential impact on other beneficiaries.

One important general principle of trust administration is the "even hand rule", which requires the trustee to weigh the rights and interests of all the beneficiaries of the trust and act impartially. Some trust documents specifically exclude the even hand rule.

Are disability benefits affected if someone is the beneficiary of a Trust?

Provincial Disability Benefits

The impact of payments from a trust or provincial disability benefits depends on provincial policy and whether the trustee has discretion on how to expend the funds. If the trust is discretionary, benefits under BC's Employment and Assistance for Persons with Disabilities Act usually will not be affected, provided the provincial guidelines are followed. If the trustee does not have discretion, then provincial disability benefits may be affected. Beneficiaries need to contact their local provincial administration office to find out how their benefits may be affected by the existence of a particular trust.

Other Disability Benefits

For other types of disability benefits (for example, federal disability benefits, insurance benefits, private long term disability benefits), there may be restrictions placed on what the beneficiary can receive from the trust. Please contact the source/administrator of the disability benefit to find out how their benefits may be affected.

What are the confidentiality requirements for a trustee?

In a private trust established for the benefit of family or friends of the settlor, the trustee may be required to disclose the existence of the trust and any information relating to the trust to persons other than the beneficiaries and their legal representatives. The trustee may be required to disclose information to agencies such as the Canada Revenue Agency, the Supreme Court of BC or the Public Guardian and Trustee (PGT). The trustee may also have to provide some information to a financial institution when opening an account or the trustee may need to prove to a third party such as a lender, that the trustee has authority to carry out certain transactions. It is important that all information concerning each beneficiary be available to the trustee so that the trustee may make informed decisions.

For more information about the PGT, please visit our website at www.trustee.bc.ca or contact us.

Contact the Public Guardian and Trustee

Estate and Personal Trust Services

700–808 West Hastings Street
Vancouver, BC V6C 3L3

PHONE **604 660 4444**
FAX **604 660 0964**
EMAIL **estates@trustee.bc.ca**

Toll free calling

Toll free calling is available through Service BC. After dialling the appropriate number for your area (see below) request to be transferred to the Public Guardian and Trustee.

VANCOUVER	604 660 2421
VICTORIA	250 387 6121
OTHER AREAS IN BC	1 800 663 7867
EMAIL	mail@trustee.bc.ca
WEBSITE	www.trustee.bc.ca

PGT Hours of operation Monday to Friday 8:30am to 4:30pm

Important Note:

This publication was prepared in response to frequently asked questions from persons with disabilities and their caregivers. It provides general information and is not a substitute for legal advice from a lawyer. For assistance in obtaining legal advice, call the Canadian Bar Association's Lawyer Referral Service at 604.687.3221 or 1.800.663.1919 (toll free outside the Lower Mainland).