

Personal trusts

Table of contents

General information	3
The PGT as trustee of a personal trust	3
Creating a personal trust	4
How the PGT manages a personal trust	4
Requesting funds from a personal trust	5
Impact of payments from a personal trust on disability benefits	6
Contact the PGT	8

General information

Personal trust

A personal trust is a legal instrument written in a document that sets out how assets are protected and controlled for the benefit of beneficiaries. An asset is something that a person owns. It could be real property, jewellery or a stock, including cash. A personal trust is agreed between the following 3 parties:

- 1. The settlor:** The person or company who sets up the personal trust and instructions about who benefits from the personal trust and how the assets are to be managed. The settlor also contributes assets to the personal trust
- 2. The beneficiary:** The person who benefits from the personal trust
- 3. The trustee:** The person or company who manages the personal trust on behalf of the beneficiary

There are 2 types of personal trusts:

- 1.** A testamentary trust which is created in a will. It can also be created by a court order, in relation to a deceased person's will
 - A will is a legal document left by someone who has died. It lets the court know what to do with that person's estate
 - An estate is all money, assets and property owned by a person
- 2.** An inter-vivos trust which takes effect during a settlor's lifetime. Inter-vivos is a Latin phrase which means "while alive"

The trust document should clearly outline:

- The intention of the settlor to create a trust
- The property or assets to be held in trust
- The beneficiaries' names
- Who should receive the remaining balance of the trust if the beneficiary dies

Duration of a personal trust

A personal trust lasts for the period of time outlined in the document or until there are no funds remaining.

The PGT as trustee of a personal trust

Many people appoint a family member or trust company as trustee. A trustee is a person or company who manages a trust on behalf of the trust's beneficiary. When these options are not suitable, we may agree to act as trustee of a personal trust. Personal trust administrators in our Estate and Personal Trust Services division carry out this service. The criteria we consider before accepting the role of trustee of a personal trust are:

- Whether the beneficiary is a minor
- If the beneficiary is incapable or vulnerable
- Whether no other party is willing or able to act as trustee
- If the proposed terms of the trust are reasonable and in line with our criteria
- The value of the trust
- Please note that, depending on the outcome of our consideration, we may not accept the role of trustee for a personal trust

The PGT is guided by:

- [The Trustee Act](#)
- The instructions in the personal trust document and
- Decisions of the court

Like all trustees, the primary duty of the PGT is to follow the terms of the personal trust document and decisions of the court.

A personal trust document can only be created through a court order or a will. The trust document must clearly outline:

- The intention of the settlor to create a trust
- The property or assets to be held in trust

- The beneficiaries' names
- Who should receive the remaining balance of the trust if the beneficiary dies

Fees

The PGT charges fees for personal trust services. All fees charged by the PGT are set by the B.C. government in the [Public Guardian and Trustee Fees Regulation](#). For more information, see the [Fees](#) section of our website.

Creating a personal trust

Things to consider when creating a personal trust:

1. The role of the trustee

A trustee is the person or company appointed to carry out the instructions set out in the personal trust. The duty of a trustee is to follow the terms of the trust.

2. Responsibilities of the trustee

The trustee makes important decisions about managing assets. These might include buying and selling property or making investments. The trustee is also responsible for filing taxes, managing properties and assessing fund requests. Other responsibilities of the trustee include:

- Financial accountability to the personal trust and to the beneficiary
- Working within the [Trustee Act](#)
- Maintaining confidentiality

3. The confidentiality requirements for a trustee

The trustee may need to provide information about the trust to people or agencies other than the beneficiaries and their legal representatives. A legal representative is a person or organization appointed by a legal document to act on behalf of someone else. These persons or agencies can include:

- Canada Revenue Agency
- Courts
- The Public Guardian and Trustee (PGT)
- Financial institutions
- A third party, such as a bank
- Residual and contingent beneficiaries

To make informed decisions, it is important that the trustee has information about each beneficiary.

4. Ownership of assets and funds in a trust

Once a personal trust is created, the settlor no longer owns the assets and funds outlined in the agreement. The assets and funds are held by the trust and managed and administered according to the terms of the trust.

How the PGT manages a personal trust

The Public Guardian and Trustee (PGT) manages the assets and funds in a personal trust according to the terms of the trust. If the terms of the trust set out any discretion for the PGT, the PGT exercises that discretion according to the Trustee Act.

The even hand rule

The even hand rule requires a trustee to weigh the rights and interests of all of the beneficiaries equally when following the terms of the personal trust. The rule applies, unless the trust document specifically says the rule does not apply.

Holding assets

The PGT as trustee establishes a separate account for each trust where money is to be held. Our guidelines for holding assets are as follows:

- An account is established under the name of the estate and personal trust. The PGT as trustee has the sole signing authority for the trust account
- PGT uses established financial institutions for accounts and investments

- Funds above \$50,000.00 may be invested and are reviewed on a regular basis

Record keeping

Before the PGT accepts the role of trustee for a personal trust, we require documentation such as financial statements, accounts, and tax documents. Once we review the documents and accept the role of trustee, we manage assets and funds held on behalf of the beneficiary. For this reason, we keep all financial statements detailing income earned by the trust and a record of all expenses from the income or capital of the trust. These financial statements are available to the beneficiaries of the trust, or their legal representatives.

- Income is money that the capital earns through interest or investments
- Capital is the original assets of a trust

Requesting funds from a personal trust

If a trust sets up non-discretionary distribution, beneficiaries receive funds on the schedule set out in the trust. If the trust allows for distribution upon request then an adult beneficiary of a personal trust, who can manage their own personal finances, can request funds from the trust.

Some adult or child beneficiaries have a legal representative, a person or organization appointed by a legal document (e.g. power of attorney, representation agreement) to act on behalf of the adult or child beneficiaries.

- Power of attorney (POA) is a legal document that allows adults to name another person (the attorney) to manage their financial and legal affairs if they cannot do so on their own. The adult and the attorney must be capable when the POA is created
- Representation agreement (RA) is a legal document that allows adults to name another person to manage their finances or make health care decisions if they cannot do so on their own. The adult and the person they name (the

representative) must be capable when the RA is created.

For these beneficiaries, their legal representative can request funds on their behalf. Adults who do not have a legal representative may need help to make requests from a trust. This help may come from a family member, such as a sibling or spouse, or other caregiver, with the beneficiary's consent, if possible.

Any request for funds is evaluated by the trustee and the trustee may not approve all requests. See Distribution of funds from a personal trust for more information on the types of distribution.

Requesting funds when the PGT is both legal representative and trustee of a personal trust

Sometimes the Public Guardian and Trustee (PGT) is both the legal representative of an adult, and the trustee of a personal trust where the adult is listed as a beneficiary. In this case, requests for funds should be directed to the adult's case manager.

The case manager reviews the request to determine whether it is appropriate. If the request is appropriate, the case manager forwards it to the beneficiary's personal trust administrator in our Estate and Personal Trust Services division.

The personal trust administrator then considers the following:

- The terms of the personal trust
- The beneficiary's current circumstances
- Impact on other beneficiaries
- The financial ability of the personal trust to fulfil the request
- The distribution of the assets and funds over time
- Potential impact on other benefits, for example disability benefits
- Potential tax consequences for the beneficiary or the personal trust
- Other resources that may be available to the beneficiary, such as publicly funded sources or the beneficiary's own personal funds

If the beneficiary of a personal trust does not have a PGT case manager, then requests for funds should be directed to the personal trust administrator.

Distribution of funds from a personal trust

A personal trust is very different from a bank account. The funds and assets are held by the trust and managed and administered according to the terms of the trust.

The PGT as trustee of a personal trust keeps in mind the best interest of the trust and the beneficiaries, as well as the even hand rule if it applies.

Types of authority to distribute funds:

- 1. Non-discretionary distribution:** Non-discretionary distributions are outlined by the settlor in the trust document. They could include income earned from interest, capital, or an amount specified by the settlor. The PGT is bound by the terms of the trust and has no discretion to change these amounts
- 2. Discretionary distribution:** Not all trusts allow discretionary distribution. If allowed in the terms of the trust, discretionary distributions may be allowed for special requests and expenses such as vacations, medical equipment, education, physiotherapy, etc. When the PGT as trustee has discretion, we consider the following:
 - The terms of the personal trust
 - The beneficiary's current circumstances
 - Impact on other beneficiaries
 - The financial ability of the personal trust to fulfil the request
 - The distribution of the assets and funds over time
 - Potential impact on other benefits, for example disability benefits
 - Potential tax consequences for the beneficiary or the personal trust
 - Other resources that may be available to the beneficiary, such as publicly funded sources or the beneficiary's own personal funds

Receiving funds from a personal trust

An adult beneficiary of a personal trust who can manage their own personal finances can receive funds directly from the personal trust.

The PGT as trustee of a personal trust may release money from the trust to third parties, but only in the following circumstances:

- To people providing goods or services to the beneficiary
- To a legal representative of the beneficiary (a beneficiary is the person who benefits from the personal trust)
- When required by law
- For reasonable expenses of the trust

Impact of payments from a personal trust on disability benefits

Sometimes, payments from a personal trust can impact the beneficiary's disability benefits. The effect of payments from a trust on disability benefits depends on:

- Whether the trustee has discretion on how to spend the funds from the personal trust
- Provincial, federal or other policies that apply specifically to the beneficiary's disability benefit

It is important to contact the administrator of your disability benefit to find out how your benefit may be affected if you receive personal trust funds. A disability benefit plan administrator is the person who is responsible for providing you with information about your disability benefit plan.

Contact the Public Guardian and Trustee

Estate and Personal Trust Services

700-808 West Hastings Street
Vancouver, B.C. V6C 3L3

Phone	604-660-4444
Fax	604-660-0964
Email	estates@trustee.bc.ca
Website	www.trustee.bc.ca

Toll free calling

Toll free calling is available through Service BC.
After dialing 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 B.C.	1-800-663-7867

PGT hours of operation

Monday to Friday 8:30am to 4:30pm