

Disability Assistance and Trusts



Ministry of
Social Development
and Social Innovation

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Disability Assistance and Trusts

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, mobility aids or home support workers. People who have these or other disability-related costs (and their families) may want to create resources to pay for these costs now and in the future, while still maintaining eligibility for disability assistance.

BC Employment and Assistance (BCEA) legislation provides that a person receiving disability assistance can have assets held in a trust, under certain conditions, without those assets affecting eligibility for assistance.

This booklet explains:

- » what a trust is
- » what the different kinds of trusts are
- » who can set up a trust for you
- » how having a trust affects your disability assistance
- » how you can use the money in your trust without affecting your disability assistance

This booklet is designed to address trusts for people with disabilities receiving disability assistance. However, there are similar provisions for trusts for persons living in special care facilities who receive regular assistance.

Assets, Income and Eligibility

The BCEA program is an income and asset tested program. You must generally use income and assets available to you before relying on assistance.

Some assets are not deducted from assistance. The ministry allows you to keep assets under the general asset exemption. For example, if you have the Persons with Disabilities (PWD) designation, then you have a general asset exemption of \$100,000. If you are a couple and both adults have the PWD designation, your family's general asset exemption is \$200,000.

In addition to the general asset limit, some particular assets are simply exempt, like your own home, car or any assets held in a qualifying trust.

Generally, income you receive is deducted from your income assistance cheque. Income that is not deducted is called exempt income. Most, if not all, payments from trust are considered exempt income for PWDs (and certain other recipients of assistance). The ministry does not limit the amount of money that can be paid out of a trust.

What is a Trust?

A trust is a legal relationship where someone (the trustee) holds the legal interest in (legally owns) money or other assets for someone else's benefit (that person is called the "beneficiary"). The legal relationship is often, but not always, described in a written agreement or in a will. There can be more than one trustee and multiple beneficiaries, or there may be only one of each.

Please keep in mind that your employment and assistance worker is not a lawyer. He or she cannot advise you how or whether to transfer funds into a trust. You should obtain independent legal advice if you wish to create a trust or if you need more information about trusts that is specific to your situation.

Types of Trusts

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 under BCEA legislation.

1. *Discretionary trusts*

If you are the beneficiary of this type of trust, it means you 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 decide whether to give you funds, or to spend funds on your behalf.

Unless the beneficiary has a legal capability to access the capital held in it, the value of the capital contributed to or held in a discretionary trust is not included in the asset calculation for determining eligibility under BCEA legislation. As a result, there is no limit to the amount of money that can be contributed or held for you in a discretionary trust.

If you have a discretionary trust arrangement under which you are still able to access the capital unilaterally (for example, if you have a right to collapse the trust, become sole trustee, or make payments as trustee without consulting a co-trustee), your trust will be treated the same as a non-discretionary trust.

However, there may be an eligibility concern if more than \$200,000 is contributed and you had control over the funds before they were placed in the discretionary trust. The concern would arise if the purpose of you contributing that money to the trust was solely to reduce assets in order to be eligible for assistance. On the other

hand, a purely discretionary trust exceeding \$200,000 and set up primarily for another purpose, such as preservation of the asset to assist with disability related costs over the long term, does not create this concern.

2. *Non-discretionary trusts*

A non-discretionary trust is a trust in which the trustee does not have total authority over how money is paid out. The beneficiary may have some control, or the trustee may be required to make certain payments.

A non-discretionary trust is considered an asset by the Ministry of Social Development and Social Innovation (the ministry). It will be considered an exempt asset so long as the amount of money contributed to the trust does not exceed \$200,000.

Non-discretionary trusts that have received more than \$200,000 in contributions will be considered an asset and the amount exceeding \$200,000 will not be exempt unless special approval is obtained from the minister. The minister can only approve an amount over \$200,000 if satisfied that your lifetime disability-related costs will exceed \$200,000.

Please contact the ministry for more information about receiving special approval.

How is a Trust Set Up?

A trust is set up by transferring property to someone to hold for the benefit of another person. This person can be the person transferring the property, someone else, or can include multiple people. A person can also set up a trust by declaring that property they hold is held for the benefit of another person. Although not strictly required, it is a good idea to document the trust terms in writing.

Three common ways of setting up a trust are:

1. If you hold an asset and wish to create a trust, you can see a professional such as a lawyer to create a trust. You can choose someone to be the trustee or to be a co-trustee with you to manage the trust, and those involved in the trust can sign a trust document showing all the terms under which the property has been transferred into trust.
2. Someone else can set up a trust, naming themselves or someone else as the trustee, and naming you as the beneficiary. For example, your parents could set up a trust and hold money in trust for you to help you with your disability.
3. Someone can create a trust in their will. The trust becomes effective when that person dies; thus, a separate trust agreement is not needed to put this trust into effect.

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 person's last will and testament. It is important to note that the trust document itself is not enough to create a trust. The legal title to the asset in trust must be transferred to the trustee to make the trust effective. There must also be certainty that the person purporting to create the trust intended to do so, and it must be clear what is in trust, and who is entitled to the benefit of the property held in the trust.

Reporting and Record Keeping

All trusts must be reported if they involve a person who is an applicant for or recipient of assistance. The report must include any documents setting out the terms of the trust, and documents showing who controls the funds in trust. Usually the current value of the trust, as well as the value of all contributions made to the trust while on assistance, or during the two years prior to receiving assistance, will be required. The ministry can assist you in determining what documents to submit for review.

You must also advise the ministry if you hold property as trustee for someone else, although the assets you are holding in trust purely for the benefit of another person should not affect your own eligibility. You may be required to submit documentation outlining the arrangement, for review.

Your trust documents and supporting information will be sent to the ministry's Legislation, Litigation and Appeals Branch (LLAB) for a decision regarding whether the property in the trust is to be considered an asset for the purpose of determining eligibility. The decision is made with the benefit of legal advice from B.C. government lawyers.

***Note that the ministry cannot make a decision about a proposed or draft trust, even if a trust document has been prepared. The ministry can only advise how a trust will be treated if it has actually been put in place, with property transferred to the trustee.**

Tracking Trust Use

Clients are required to report all trust changes and activity that may affect their eligibility on their monthly report.

Each year the ministry needs the following information about the trust from the beneficiary or trustee:

- » how much money was paid from the trust
- » whether any new money was deposited to the trust
- » whether there were any changes to the trustees

Please note: The ministry has the authority to ask for information regarding a trust at any time, and trustees must keep accounts and be prepared to produce documentation on request regarding activity in the trust.

Questions and Answers

The following answers some questions 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 disability assistance recipient.

2. *Who decides how a trust is to be treated under BCEA legislation?*

Ministry staff send information about new trusts to the LLAB office in Victoria. LLAB staff work with lawyers to review the trust information and determine whether the trust is valid, and whether the trust is to be considered an asset. If it is an asset, a decision is made whether it is exempt or non-exempt. Ministry staff then determine whether or how the trust affects your eligibility for assistance.

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. You have three months from the date you receive the money to put the money in trust. Depending on the source, the money may be considered to be your income in the month it is received. However, note that if the money is a gift or inheritance, it will be exempt from treatment as income and will not be deducted from your disability assistance cheque. It will be exempt as an asset for three months as long as you intend to contribute the money to a trust. If you have not contributed the money to a trust after three months, it will be considered to be your asset and the asset exemption will be applied (\$100,000 for a single person with the PWD designation or \$200,000 for a couple where both have the PWD designation). If you are making reasonable efforts to put the money in trust and need more time, you may apply to extend the three-month exemption period.

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

The ministry will recognize any valid trust, but we recommend getting legal advice. A lawyer is the best person to help you set up a trust. Trust law is very complicated, and a lawyer can assist you in setting up a trust that custom fits your situation.

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

It depends on the trust. You cannot add money to a testamentary trust; a new trust would need to be created. However, if the terms of an inter vivos trust provide for it, you can add to what is already held in the trust. For non-discretionary trusts, the total amount of contributions to the trust cannot exceed \$200,000 unless you have received special approval to exceed this amount. There is no such limit with a discretionary trust. Although the total amount contributed to all trusts may be limited for the purposes of determining eligibility, the number of different trusts you can have is not limited.

6. *Will my trust affect my income tax return?*

It may. You should talk to someone at Canada Revenue Agency, a lawyer or a financial consultant to find out how your trust will be handled on your income tax return. The ministry cannot provide advice about income tax matters.

7. *Can I request a reconsideration or appeal a decision the ministry makes about my trust?*

Yes. Any decision that the ministry makes that affects your disability assistance eligibility or the amount you can receive is open to reconsideration and appeal.

8. *Can I talk to people at the ministry about how to set up a trust?*

No. The ministry does not provide advice regarding how (or whether) to set up a trust. We recommend that people get their own legal advice when setting up a trust. A community advocate may be a good resource to help in seeking this advice.

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

It depends on how your RRSP was set up. The ministry can review your RRSP documents to see if the RRSP is a valid trust or is considered an exempt asset under BCEA legislation. The documentation you obtain from your financial institution or investment advisor will need to show whether the RRSP was set up with a declaration of trust. Your information will be sent for review by LLAB before a decision is made about the RRSP.

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

No. Ministry policy says that a person will not be disqualified from receiving disability 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 the ministry or for fees for services that are covered but which exceed the maximum allowable amount.

For More Information

We hope this booklet has helped you to understand trusts as they relate to disability assistance. Please call the Ministry of Social Development and Social Innovation toll free at 1-866-866-0800 if you have questions.

Detailed policy for trusts can be found at:

http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/trusts/

The BC Employment and Assistance Rate Tables—

Assets can be found at: **www.sdsi.gov.bc.ca/mhr/assets.htm**