

# Disability Assistance and Trusts



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# Disability Assistance and Trusts

Many people with disabilities have extra costs because of their disability. These costs might include changes to their home, 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 them now and in the future, while maintaining their eligibility for disability assistance.

BC Employment and Assistance (BCEA) legislation provides that a person receiving disability assistance may have assets held in a trust, if certain conditions are met. In that case, those assets will not affect their 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 people receiving income assistance living in special care facilities.

## Assets, Income and Eligibility

The BCEA program is income and asset tested. You must generally use income and assets available to you before receiving assistance. However, the legislation provides that if you receive an asset, or have an asset prior to applying for assistance, you generally can contribute it to a trust or Registered Disability Savings Plan (RDSP) without facing a penalty.

The value of some assets are not deducted from assistance. The Ministry of Social Development and Poverty Reduction (the ministry) allows you to keep a certain amount of assets under the general asset exemption. For example, if you have the Persons with Disabilities (PWD) designation, 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 assets are simply exempt, like your own home, car or RDSP. Assets placed in a trust receive special consideration.

Generally, income you receive is deducted from your assistance. Income that is not deducted is called exempt income. Disbursements from a trust are considered exempt income for recipients of disability assistance and certain recipients of income assistance. In other words, 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 (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.

One of the challenging things about trusts is that the roles of various individuals involved in the trust may overlap. For example, in certain circumstances, a beneficiary may also be a trustee or co-trustee. This overlap can affect how the trust's value is assessed. Please keep in mind that your Employment and Assistance Worker is not a lawyer. They cannot advise you how or whether to transfer funds or other assets into a trust. You should obtain independent legal advice if you wish to create a trust or if you need more information specific to your situation.

## How is a Trust Set Up?

A trust is set up either when a person declares that property they own is being held for the benefit of another person, or a person transfers that property to someone else to hold for another person's benefit. 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 creating the trust intended to do so; it must be clear what is in trust, and who is entitled to the benefit of the property held in trust. 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. 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.

## Types of Trusts

There are two basic types: discretionary trusts and non-discretionary trusts. People who receive disability assistance need to understand the difference between these two types of trusts because, effectively, they are treated differently under BCEA legislation

### 1. Discretionary trusts

As a beneficiary of this type of trust, you have no control over the money or other assets held in the trust. The trustee, who knows you and your needs, has complete authority (discretion) to decide whether to give you funds, or to spend funds on your behalf.

Any payments made from the trust for disability related costs, acquiring your place of residence or contributing to a registered education savings plan or registered disability savings plan, are considered exempt income. These disbursements will not be deducted from your assistance. Disability-related costs are defined in the regulations and include costs to promote independence.

If however you are both a beneficiary and also a trustee, you may have some control over the asset through your role as trustee. If you have total control as a trustee, it does not matter that you have no control as beneficiary—the ministry will treat your discretionary

trust according to the legislation for a non-discretionary trust (see below). Similarly, if the trust terms, or the law, provide you with an ability to take the asset out of the discretionary trust, the ministry will treat your trust as a non-discretionary trust.

In other words, if you have a right to collapse the trust, become sole trustee, or make payments as trustee without consulting a co-trustee, then your trust will be treated the same as a non-discretionary trust.

Subject to these three exceptions, your interest in the value contributed to your discretionary trust will be nominal, meaning your discretionary trust is effectively an exempt asset under the BCEA legislation, no matter how much is in the trust.

## 2. Non-discretionary trusts

A non-discretionary trust is a trust where the trustee does not have total control over the assets held in trust. The beneficiary may be able to direct the trustee regarding disbursements, or the trust may require the trustee to make certain disbursements. A non-discretionary trust is considered an asset by 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 contribution 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. Disability-related costs are defined in the regulations and include costs to promote independence.

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

## 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 property held in trust. The ministry requires a report on:

- » The trust itself
- » The current value held in trust
- » All contributions made to the trust since its creation

The ministry can help determine what documents to submit for review.

You must also advise the ministry if you hold property as trustee for someone else. The assets you are holding in trust solely 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 trust liaison. It will be determined if the property in the trust is considered an asset for the purposes of determining eligibility. The decision is made by the ministry 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 make a decision about a completed trust.**

## Tracking Trust Use

On an annual basis, or as changes occur, 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 contributions were made to the trust
- » Whether there were any changes to the trustees
- » Whether there were any changes to the terms of the trust

Please note: The ministry has the authority to ask for information regarding a trust at any time. Trustees must keep accounts and be prepared to produce documents related to the trust upon request.

## Questions and Answers

The following answers some questions about trusts and people who receive disability assistance.

**1. If a trust is set up for me while I'm on disability assistance, 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 ministry's trust liaison. The trust liaison works with lawyers to review the trust information. With the benefit of this advice, the ministry determines whether the trust is valid, and whether the trust affects 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 contribute the money to a trust. Depending on the source, the money may be considered your income in the month it is received. However, 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. It will be exempt as an asset for three months if 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. 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 terms of the trust arrangement. For example, if it is a testamentary trust, you may not be able to make contributions and may require a new trust arrangement. 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 without impacting your eligibility for assistance, unless you have received ministry approval. There is no such limit with a discretionary trust. Although the amount of contributions you have made into trust may impact your eligibility, the number of trusts you can have is not limited.

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

It may. You should speak with 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 independent 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 set up under a trust agreement. You will need your financial institution or investment advisor to provide documentation showing whether the RRSP was set up with a declaration of trust. Your information will be sent for review by the ministry's trust liaison who will make a decision whether your RRSP is considered an exempt asset.

**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-related costs from a trust is meant to pay for things that are not covered by the ministry, or for fees that exceed the covered 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 Poverty Reduction toll free at 1-866-866-0800 if you have questions.

Detailed policy for trusts can be found at: <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/trusts>

The assets and exemptions rate tables can be found at: <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/assets-and-exemptions>

