Managing the assets of a friend or family member with a disability can be very challenging. It can be difficult enough dealing with it on a day-to-day basis but the worry of what will happen to them once you are not around to help them can add to an already high level of stress.

One possible solution is to set up a trust.

**WHAT IS A TRUST?**

A trust is an instrument that is used to hold assets. The assets are owned by the trust and managed by people called trustees. The people benefitting from the trust can either be specific named people, or classes of people, for example ‘my children’. It can either be created to come into effect on someone’s death, usually set out in a person’s Will or it can be created and put into effect during their lifetime.

**WHO CAN BE A TRUSTEE?**

Anyone who is over 18 with full mental capacity can be a trustee but you should choose someone you believe will act in the best interest of the trust and the beneficiaries. Beneficiaries themselves can be trustees but you should be aware of the fact that sometimes trustees may have to make difficult decisions and if the trustees are also the beneficiaries then this can potentially cause a conflict. You should also think carefully about the fact that your trustees may be entrusted with managing a significant amount of money and so you want to choose someone who has the ability to make sound financial decisions and who has no prior financial difficulties such as previously having been declared bankrupt.
Types of Trust

There are many different types of trust and which one you need will depend on what you want to achieve, who you want to benefit and when.

A discretionary trust is where the class of people are specified in the trust instrument and as the name suggests, the trustees have the discretion to decide whether they wish to pay out capital money and/or income and to whom they wish to pay it to out of the class. There is no guarantee that even if you are included in the specified class of beneficiaries, that you will receive any money as this is entirely at the discretion of the trustees.

An interest in possession trust on the other hand gives a specified person a right to the income on the capital and sometimes the possibility of the capital itself but after that person has passed away, the trust assets can then be left to another beneficiary or set of beneficiaries and the trust can be wound up. **WARNING - Any assets in this type of trust are taken into account if the beneficiary receives benefits which are Means Tested and could affect the outcome of the benefit claim.**

People make trusts for different reasons. Sometimes they are used to reduce tax liabilities, but they are also often used to provide for disabled beneficiaries as the person setting up the trust can have peace of mind knowing that the assets are managed by independent trustees. The independent trustees can manage the trust assets wisely and ensure that the disabled person is adequately provided for in circumstances that the disabled beneficiary is unable to manage their own finances.

Why Should I Use a Trust?

If the disabled person is unable to work and is reliant on means tested benefits then this will come with strict requirements about how much money they are allowed to have in savings. If they exceed this limit, they will stop being eligible to receive their benefits. If the trust assets are placed in trust for them, then they will not be taken into account by the DWP and therefore shouldn’t affect their entitlement to benefits.

The money will be controlled by the Trustees which means that there are safeguards against the trust assets being irresponsibly used. This could be through the disabled person’s own behaviour or from them being taken advantage of by others. Any decisions about how trust assets are used or released must be agreed by the Trustees and therefore should be invested and spent wisely. This can also be useful in ensuring that there is money available to the beneficiary for one off expenses such as repair works to the property or even holidays that cannot be funded out of their regular income which can assist in giving the disabled person a higher quality of life than they would otherwise have.

What Trust Should I Use?

As indicated above, which trust you use depends on what you want to achieve. A discretionary trust has the benefit of being flexible and may also assist in maximising entitlement to benefits as because there is no guarantee that any particular beneficiary will receive money under the trust, there is no effect on benefits. There may, however, be tax implications to a discretionary trust that aren’t present with an interest in possession trust.

There are specific disabled person’s trusts which have significant tax benefits to them, however there are strict requirements to be met in order to qualify for these trusts.
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