



Protective Trusts in Wills

Being a parent or carer is a big job. If you have a child or relative who has special needs, the job is even bigger. Your role in their lives is critical and we find that our clients in this situation are anxious to ensure that protective measures are put in place for their special needs.

Putting a protective trust in your Will can greatly benefit people who cannot adequately look after their financial affairs. A protective trust in your Will may be appropriate where a beneficiary is vulnerable, for one of the following reasons:

- + they are severely disabled
- + they have a disability, although not severe, which impacts on their ability to look after their affairs (for instance, autism, Aspergers, etc)
- + they have an addiction (e.g. gambling, drugs)
- + they are bankrupt, or are in danger of becoming bankrupt
- + they are otherwise vulnerable (e.g. spendthrifts, easily influenced, etc.)

Where you have placed a testamentary trust with protective provisions in your Will for the benefit of a vulnerable beneficiary, the inheritance you leave to them will be held within the protective trust established in your Will. The control of the trust will pass to the person or entity that you nominated, such as a relative, or an independent Trustee Company. The Trustee is required to manage the trust for the benefit of that beneficiary to ensure that the funds are used for their care and maintenance and managed well. The protective trust provides a legally structured entity which is designed to protect the interests of the vulnerable beneficiary after your death.

You also have the power in your Will to specify who the residue of the trust fund proceeds go to after the vulnerable beneficiary passes away.

For more information on Testamentary Trusts, see our Fact Sheet on **Testamentary Trusts in Wills**.

If you have a severely disabled child or relative, we will also discuss the option of establishing a **Special Disability Trust**. One key advantage of this trust is that assets held by it up to a certain threshold are exempt from the Centrelink income

and assets tests for the purposes of assessing the beneficiary's government support pension entitlements. The trust is governed by various government rules and regulations however, which need to be discussed with you to ascertain whether the trust is suitable for your beneficiary's situation. These trusts are more restrictive in terms of how money is spent in them and also the control of such trusts, given that they are regulated by the Commonwealth government.

Both types of trusts can be included in your Will, with special clauses to allow your Executors to decide which trust should receive the inheritance and how much each trust should receive so that any disability pension can be preserved while also keeping flexibility of the trust and tax considerations in mind.

This is a sensitive and complex area where you need the full attention of a senior estate planning lawyer to talk you through the issues.

Estate First specialise in the area of protective trusts and special disability trusts and can fully advise you of your options and structure the best solution for your situation. Please contact us on 1300 132 567 or email us at info@estatefirst.com.au to discuss how we can help you with this or any other of your estate planning needs.