

TRUSTS AND SPECIAL NEEDS

Guardians are the day to day carers, Trustees are the financial managers and Executors are the managers of your will.

Parents may choose the same people to act as **Guardians, Trustees & Executors**.

It is of utmost importance that the chosen person will put your child's best interests first.

The Trustees are obliged to use the trust funds for the benefit of the children.

In a discretionary trust, Trustees will have an absolute discretion as how much, when and who is paid.

If a number of children are in the trust the trustees can chose to benefit one child over another.

Children

A discretionary trust established by a Will can be very useful in providing for children in the future.

It is especially helpful in providing for children with special needs, disabilities, mental health issues or persons suffering from addiction as it allows for the safe management of their inheritance.

We would advise that a Trust Will be accompanied by a **Letter of Wishes**. This sets out what parents would like to happen with the trust fund. This is a very individual letter from the parent to the Trustees. It may include, for example, how the trust fund should be divided or at what age the children should benefit.

Beneficiaries with Disabilities

A discretionary trust may be the optimum method for providing for vulnerable children or children with disabilities.

It enables Parents to ensure that there will have sufficient resources to manage the changing needs of the child.

The discretionary trust structure offers flexibility consistent with a “wait and see” approach by the Trustee.

CAT (Capital Acquisitions tax) & DTT (Discretionary Trust Tax)

There are two taxes that should be considered – CAT & DTT.

CAT is payable if a child receives a payment over a certain threshold.

DTT is payable by trustees as a once off and annual levy on the funds in the trust.

Under section 82(4) of the CATCA 2003 a payment out by a trustee for a **minor** child with a disability to pay for normal support, maintenance or education may be exempt from CAT tax.

Under Section 84 payments for medical care of a child with a disability are exempt from CAT

Under section 17(1)(d) there is also an exemption from DTT where a discretionary trust is established for a person who is incapable of managing their affairs

It is not an automatic exemption. An application to Revenue would be required when the trust is established together with a medical certificate to confirm that the child is unable to manage their own affairs.

DTT arises when the youngest child turns 21. It may be possible to mitigate it by paying out to older children in advance of this event.

Important things to Remember

1. Choose Guardians that you believe are capable of looking after your children. It is always advisable to **agree** this **with the Guardians** before appointing them. Choose Trustees that you are satisfied can manage the Accounting side of your Estate.
2. A Discretionary Trust is a good way to provide for minor children, children with special needs or children with disability
3. A Discretionary Trust gives the Trustees an absolute discretion in applying and apportioning the funds i.e.: they could use all the funds for the benefit of one beneficiary.
4. If you are making a Trust Will providing we strongly advise that you leave a **Letter of Wishes**.

FOR MORE INFORMATION

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