



Trusts and Estate Planning

Planning for the future, especially when a family member has a disability, is a critical aspect of securing their wellbeing. Duncan Legal outlines 10 factors to consider for peace of mind regarding Trusts and Estate Planning.

1 Protective Trusts

Basically, a trust is a relationship between people who hold different interests in an asset.

A Protective Trust is a legal structure that enables the management and protection of assets for the benefit of a person with a disability.

The trustee takes on the legal ownership, decision making, responsibility for rates, taxes, maintenance and distributing income from the assets. The beneficiary receives income from, use and enjoyment of assets.

There are two main types of Trusts that aim to ensure the person with a disability gets what they need when you're not there:

- i) **All Needs Protective Trust.** Offers flexibility and requires a single trustee. It allows application of assets for various purposes such as holidays, maintenance and education.
- ii) **Special Disability Trust.** Specifically for individuals with a severe disability. It has fewer options but can hold valuable assets, offering unlimited spending on essential care and accommodation. However, discretionary expenses are limited. Eligibility requires a Centrelink assessment and involves two trustees or a trustee company.

2 Who to Appoint?

Think carefully about who you trust to manage things for your family member with a disability when you're gone. Selecting executors, trustees or attorneys requires trust and careful consideration. Close friends, family members, trustee companies or professional colleagues can be considered for these roles.

3 Trustee Decision Making and Beneficiary Input

People with disabilities have the right to be part of decisions that affect them. It's essential that they have a say in what happens with their money and their life.

The inclusion of a clause in your Will inviting beneficiary participation can facilitate their involvement in decisions aligning with their interests and capacity.

4 Pensions and Government Benefits

If someone with a disability receives a pension from the government, inheriting money might affect their eligibility to continue to receive that income stream. It may be important to plan very carefully if means- tested pension or government benefits need to be maintained after your death.

Often an accountant, actuary or financial planner can prepare financial projections to help you decide whether the inheritance you leave will be enough to self-fund your beneficiary with a disability or not.

5 Splits Between Beneficiaries

It can be hard to decide how to split your money among your family members, especially if one person needs more help because of their disability.

This decision requires careful consideration of financial needs and impacts on existing pension entitlements. It's a good idea to talk about this with your family so there are no surprises.

6 Personal Asset Accumulation and Bequests

Challenges can arise when a person with a cognitive disability accumulates wealth personally. Such persons may not be able to make a Will, and may also be vulnerable to being scammed by the unscrupulous.

Challenges also arise when a person with a disability receives a personal bequest that affect their pension entitlements. Advance arrangements can be made to anticipate and, if needs be, avoid these difficult situations arising.

7 Preservation of Main Residence?

What happens to the family home when you're not here anymore? There are things to consider, like taxes, accommodation funds and how long someone can stay in the house.

It's smart to get advice from a specialist when reviewing this step to ensure your family is cared for.

8 Asset Protection Strategies

There are ways to protect the assets you intend for a person with a disability from being eroded as a consequence of bankruptcy or family disagreements after you're gone. Strategies like moving assets to trust structures within your lifetime can keep those assets out of the Estate after your death.

Making superannuation nominations payable directly to a person can also put assets out of reach of any challenge to your estate.

9 Powers of Attorney

Making a Will is only half of your Estate Planning equation. The other, more important half is to appoint Enduring Powers of Attorney (POA).

POA are documents in which you appoint a substitute decision maker. These documents come into play if you lose capacity to make decisions for yourself.

If you have a dependent child with a disability, that substitute decision maker needs to be given authority to make decisions for your dependent with a disability in addition to yourself.

10 Superannuation

Superannuation doesn't automatically form part of your Estate. If you want to provide for a beneficiary with a disability through superannuation, you have to make a nomination that specifically directs it to be paid there.

If you have made complex estate planning arrangements in your Will, consider making a superannuation nomination that is binding and non-lapsing, and that directs 100% of your death benefits into your estate. Your Will can then ensure that the money is applied tax effectively among your beneficiaries, and that any share for a disabled beneficiary lands in a trust for them.

For self-managed super funds, you can set up a cascading nomination that provides for a number of scenarios, and in some instances it may be possible to establish a tax-free income stream to your child with a disability.

Planning for the future when someone in your family has a disability can be complicated. It's a good idea to talk to an expert, like a lawyer or financial planner, who understands your family's situation. It is important to check these plans every 3–5 years because things might change.

Disclaimer

The information in this resource is general in nature and does not constitute advice. Down Syndrome Australia will not be held responsible for any decisions made as a result of using this information. The contents of the resource do not constitute legal advice and should not be relied on as such.

Last updated June 2025.



1300 344 954



Level 8, 805/220 Collins Street, Melbourne VIC 3000



info@downsyndrome.org.au



www.downsyndrome.org.au



Down Syndrome
Australia