



Heritage Law*

Heritage Law Disabled Beneficiary Estate Planning Package

Fees:

Single: \$2,250

Couple: \$2,500

Documents:

Power of Attorney, Representation Agreement, Will with Discretionary Trust, Nomination of Committee, Living Will, and Important Personal Information Summary

Basic Estate Planning:

There are three documents everyone should have:

1. A Power of Attorney
2. A Representation Agreement
3. A Will

A **Power of Attorney** is a legal document where you can appoint someone (the attorney) to manage your financial and legal affairs in the event you were unable to do so yourself, for example due to illness, injury or travel. An **Enduring Power of Attorney** remains valid even if the person giving it loses mental capacity. It must be signed before the person loses capacity.

A **Representation Agreement** (which is a combined advance health care directive, personal directive and living will) allows you to designate someone you trust to make health and personal care decisions for you should you not be able to make such decisions yourself. If you have any particular health care wishes, you can include them in a Representation Agreement.

A **Will** sets out who you would like to administer your estate, to receive your assets and to be the guardians of your minor children in the event you died. This allows the writer of the will to make these decisions themselves rather than default to the legislative provisions that apply when a person dies without a will. A Will with a discretionary trust provides that all or a portion of your estate assets may be placed into a trust when you die. This trust allows your estate assets to be managed by someone for the benefit of a disabled beneficiary and may also prevent the disabled person from losing their entitlement to government benefits.

Additional Documents:

A **Nomination of Committee** designates the person that you would want to be your "legal guardian" in the situation where you are no longer mentally capable of making decisions for yourself. According to the *Patients Property Act*, if you have nominated someone to be your committee, the Court must appoint that person to be the "guardian" of your person and your property unless good reason can be shown to the Court why that person should not be appointed. This is a back up document to a Power of Attorney and a Representation Agreement.

A **Living Will** or Health Care Directive generally covers instructions related to refusing life support. Although Living Wills have limited legal effect in BC, there is a requirement for health care providers to follow your pre-expressed wishes in emergency situations. Your Representative (appointed in your Representation Agreement) can confirm that you have not changed your mind and can help ensure the circumstances at hand are the ones you anticipated. A Living Will is a back up document to a Representation Agreement.

An **Important Personal Information Summary** document is a central place to organize key personal and property information.

Specialized Estate Planning for a Disabled Beneficiary: A Discretionary Trust Will

A testamentary trust is a trust that is provided for in a will and takes effect after the death of the person who makes the will. A discretionary trust is a trust where the beneficiary doesn't have control over the money in the trust. A trustee or trustees are appointed to look after the money and the trustees make all of the spending decisions. The trustees can be family members, friends, professional advisors or corporate trustees.

Not only will a discretionary trust for a disabled beneficiary in a will allow for the assets to be managed on the beneficiary's behalf by a trustee of your choosing, it will also reduce the likelihood that the disabled beneficiary will lose access to government services or benefits. Because the beneficiary of a discretionary trust has no right to demand any of the income or capital of the trust, the person is not considered to own any of the trust property or to be entitled to any of the trust income.

Only the amounts actually distributed out of such a trust to a disabled person will be included in the disabled person's assets and income in determining whether the disabled person is entitled to government services and benefits. There is no limit to the amount of money that can be held inside a discretionary trust.

Allowable Assets for People Receiving Disability Benefits

Asset Limit:

If a beneficiary is designated as a Person With a Disability (PWD) pursuant to the *Employment and Assistance for Persons With Disabilities Act* and is receiving disability benefits, they are allowed to have a certain amount of assets in their name before they become ineligible for benefits. For example, if a beneficiary is a single person with no dependants, their assets cannot exceed \$3,000. Benefits can be discontinued or clawed back if the asset limit is exceeded.

Asset Limit Exemptions:

The following list includes items which a Person With a Disability can own and not exceed their asset limit:

- Up to \$3,000 for a single person with no dependants;
- Up to \$5,000 for a person with a dependant;
- A \$400 earning exemption per family per month;
- Clothing and necessary household equipment;
- One motor vehicle;
- A primary residence;
- Money received from a mortgage or the sale of the residence as long as the money is used to buy a new home or to pay rent on a place of residence;
- Tax credits and income tax refunds;
- Government settlements for example: compensation for thalidomide victims, Hepatitis C victims, etc.;
- Assets in a non-discretionary trust of up to \$100,000 (A non-discretionary trust, which exceeds the \$100,000 limit, is considered to be an asset); and
- An unlimited amount of assets in a discretionary trust (this is not considered to be an asset because the beneficiary has no ownership over the assets).

All of the current asset exemptions are listed under Section 10 of the *Employment and Assistance Regulations*, which accompanies the *Employment and Assistance for Persons With Disabilities Act* (British Columbia). An electronic copy of the regulations is available under “Statutes and Regulations” at: www.bclaws.ca.

Items a Trust Can Pay For:

Money can be spent on the following items without a deduction to the PWD beneficiary’s monthly disability benefits:

- Purchasing a home for the beneficiary;
- Purchasing a car for the beneficiary;
- Medical aids or supplies;
- Education or training;

- Home renovations required to make the residence more accessible for the beneficiary ;
- Home maintenance and repairs; and
- Home support and caregiver services.

There is no limit to the amount of money that can be spent on the above items. In addition, there is an annual limit of \$5,484 which can be spent on any goods or services that will help the beneficiary live more independently. If the trustees are unsure if an intended expenditure falls within the independent living category, they can check with the Ministry of Employment and Income Assistance before spending the trust money on it. However, the trustees have the final say as to how the money in the trust is disbursed even if it means that the beneficiary's disability benefits may be reduced to account for moneys received from the trust.

Other Benefits of a Discretionary Trust Created in a Will: Creditors and Family Law Claims

The creation of a discretionary trust may also provide some insulation from claims, including from potential creditors or claims that might arise in a marital property settlement.