



Special Disability Trusts

What is a Special Disability Trust?

A Special Disability Trust (**SDT**) is a trust established by parents and immediate family members for the future care and accommodation needs of a person with a severe disability.

There can be significant advantages to giving to disabled beneficiaries in this way. As well as having a trustee in place to manage the trust for the benefit of the beneficiary, generous social security provisions can assist to preserve the beneficiary's pension entitlement, despite sizable gifts being given to them through the SDT.

There are various criteria and rules which must be met and complied with in order to successfully establish and qualify for a SDT.

Who Qualifies for a Special Disability Trust?

To be eligible, the proposed beneficiary must have what is referred to as a 'severe disability'. A person is considered to have a severe disability for the purposes of a SDT where they meet one of the following three definitions:

Definition 1:

A person who has reached 16 years of age and **all** of the following apply:

- whose level of impairment would qualify the person for Disability Support Pension or who is already receiving a Department of Veterans' Affairs (DVA) Invalidity Service Pension or DVA Invalidity Income Support Supplement
- who has a disability that would, if the person had a sole carer, qualify the carer for Carer Payment or Carer Allowance
- who has a disability and is unable to work more than seven hours a week in the open labour market.

Definition 2:

A person who has reached 16 years of age and all of the following apply:

- whose level of impairment would qualify the person for Disability Support Pension or who is already receiving a DVA Invalidity Service Pension or DVA Invalidity Income Support Supplement
- who is living in an institution, hostel or group home where care is provided for people with disabilities and funding is provided under an agreement between the Commonwealth, states and territories
- who has a disability and is unable to work more than seven hours a week in the open labour market.

Definition 3:

A child younger than 16 who both:

- is a person with a severe disability or a severe medical condition
- has a carer who has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for that person.

The child must also have had a treating health professional certify in writing that, because of that disability or condition either:

- the person will need personal care for 6 months or more
- the personal care is required to be provided by a specified number of persons.

Can I set up a Special Disability Trust for a child?

Children under sixteen years of age may also be eligible to be the recipient of a SDT. There are special rules which apply to setting up these Trusts for children.

What can the Special Disability Trust funds be used for?

The funds are intended to meet the reasonable care and accommodation needs of the disabled person. This includes dental and medical expenses and maintenance expenses of any property that is held in the SDT.

The income and capital can be used to pay for the reasonable care and accommodation costs incurred by, or on behalf of, the beneficiary, including the costs to facilitate the achievement of this outcome.

There are specific rules that relate to what reasonable care and accommodation needs are and it is important that these rules are adhered to by the trustees of the SDT.

In addition, up to \$13,000 (from 2022 – 2023) each year may be used towards discretionary items. This discretionary amount is indexed each July.

What are the main characteristics of a Special Disability Trust?

A SDT must meet the following requirements:

- have only one beneficiary (that is, the person the trust is established for the benefit of);
- the beneficiary must meet all the relevant eligibility criteria;
- the main purpose must be to provide for the accommodation and care needs of the beneficiary;
- have a SDT deed that contains all the necessary clauses to meet the legal requirements of a SDT Deed;
- have an independent trustee, or alternatively have more than one trustee;
 - the trustee manages the day to day running of the SDT and makes decisions affecting the operations, including making investment decisions aimed at increasing the value of the assets and distributing capital or income of the SDT in accordance with the rules governing it;
 - trustees, among other things, must be fully acquainted with the terms of the SDT and their responsibilities, know what the assets and liabilities of the trust are, keep proper accounts and, prepare and submit tax returns annually;
- comply with various investment restrictions;
- provide annual financial statements to Centrelink/Department of Veteran Affairs; and
- conduct independent audits whenever required.

What are the benefits of a Special Disability Trust?

If used correctly, SDTs allow:

- a gifting concession of up to \$500,000 combined for eligible family members of the principal beneficiary; and
- an assets test assessment exemption of up to \$724,750 (2022-2023 financial year and indexed 1 July each year) to the principal beneficiary and subject to circumstances, a residence.

How do I set up a Special Disability Trust?

SDTs can be created by a Deed which is activated immediately, or they can be incorporated into the terms of your Will. This means that when you die, the SDT will be activated and the share of your estate that you would like to benefit the disabled person will form part of their SDT.

How can Life Legal Help?

Life Legal can help you make a Special Disability Trust that is activated immediately, or one that is incorporated into the terms of your Will.

If you would like further information, please visit www.lifelegal.com.au or call us for a free 15 minute discussion.

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