

RESPITE TIP



ESTATE PLANNING AND WILLS

What is a will?

A will is a document saying where you want your possessions and property (your estate) to go after your death. A will is important for everyone to have, but it is very important when you have a child with a disability. A will is part of the planning for the care and support of your child when you are gone. You must be 18 years of age to make a will; it must be in writing (handwritten, typed or print), signed by you **and properly witnessed by two people**. If you do not have a legal will at your death, the courts will decide how to distribute your estate. Since your wishes would not be known, your funds and property might not go where you want them to. In order for your voice to be heard, you should have a legal will.

For good legal advice, you should contact a lawyer. If you do not have a lawyer, you can get help finding one through the Legal Information Society of Nova Scotia's Lawyer Referral Service. For more information, go to: <http://www.legalinfo.org/lawyers/lawyer-referral-service.html> or call 1.800.665.9779 (toll free) or 455.3135 in HRM.

What is the best way to arrange funds for your family member with a disability?

Can you leave funds directly to your child in your will? Yes, but it may not be in their best interest. If a person receives government disability benefits, they are often restricted from receiving funds saved for the future. In other words, if funds were left to them directly in a will, they could have their disability benefits reduced or stopped because their income increases. For this reason, many families choose to set up an Absolute Discretionary Trust (also known as a Henson Trust) in their will.

Absolute Discretionary Trust Fund, or Henson Trust

Funds for the future care of your child can go into an Absolute Discretionary Fund. The funds will not be left directly to your child. The funds will not be part of the child's income so the disability benefits will not be threatened. You must choose someone as a trustee or trustees to look after (or administer) the funds. The trustee(s) must be named in the will.

It is very important to carefully choose a reliable person to administer the trust. The trustee has complete decision making power over the trust. Families will often appoint two trustees instead of only one, to protect the rights of the family member.

A trustee can be a friend, a relative or any person you can rely on to do the job. If you do not have or know anyone able to be a trustee, the trustee can also be a trust company or a lawyer. Your lawyer can help you to find a trustee if you do not have someone in mind.

When selecting a trustee or trustees, look for a person who:

- Is reliable and trustworthy
- Understands the disability and the needs of the family member
- Understands the length of time they will be involved in the trust. A trust usually lasts for the lifespan of the child.

Registered Disability Savings Plan (RDSP)

The RDSP is another way families can plan for the future. The advantage of an RDSP over a trust which is set up through a will is that the planning for the family member can be done during the lifetime of the parent/guardian/caregiver. Funds can be deposited into the plan at any time, up to the time the child turns 60. The lifetime financial contribution to the plan is \$200,000.00, but there is no annual limit to deposits. Contributions are not tax-deductable. Anyone can contribute to the plan, including the Canadian government. For more information about the RDSP and details on the Canada Disability Savings Bond and the Canada Disability Savings Grant, please go to: <http://www.esdc.gc.ca/eng/disability/savings/index.shtml>.

Henson Trust

The term Henson Trust comes from Leonard Henson who set up an absolute discretionary fund for his disabled daughter. The structure was challenged by the Ontario Government, but was eventually upheld. Although not all provinces recognize the Henson Trust structure, it is legal in Nova Scotia.

For more information on Estate planning and Henson Trusts, see the following links:

<http://www.specialneedsplanning.ca/tools.html>

<http://www.wheredoesallmymoneygo.com/the-henson-trust-an-important-estate-planning-tool-for-families-that-include-a-disabled-person/>

<https://sites.google.com/site/mmorgancoole/protectingyourchild%27sfuturewiththehenson>

PLAN (Planned Lifetime Advocacy Network) Canada offers lots of information on the RDSP, including tele-seminars. For more information go to:

<http://plan.ca/advocacy/registered-disability-savings-plan/>

<http://plan.ca/learning/registered-disability-savings-planning-information-session/>

<http://us1.campaign-archive2.com/?u=20f0313837e30459dd0cb63f4&id=51c81b9146>

<http://www.rdsp.com/>

This Respite Tip has been brought to you by the Nova Scotia Partnership on Respite, Family Health, and Well-Being. Information on the Respite Partnership and this and other Respite Tips can be found at: <http://disability.novascotia.ca/content/nova-scotia-respite-partnership>

Respite, WE deserve it!



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