



C O A S T

FINANCIAL TRUSTS PROGRAM MANUAL

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THE  LAW
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Purpose

This manual has been written to aid non-profit societies in considering whether such a financial trust program would be beneficial to the people they serve and to gauge whether they have the will to build or have the organizational capacity to deliver the program. The manual is a guide to provide hints and strategies that Coast Foundation Society has learned in its experience. With all such materials this manual is for information purposes only and any person or organization that develops a financial trust program should follow pertinent government legislation and the accompanying regulations.

Acknowledgements of Financial Support

Coast Foundation Society gratefully acknowledges the financial support that has been provided by the Law Foundation of British Columbia to develop this manual. The Law Foundation's \$15,000 grant has made possible the development of these materials and other costs such as distribution. It is Coast's desire that clients of non-profits who meet the legal requirements for financial trusts will see the same type of

improvements in their health and quality of life that Coast Financial Trust clients have experienced.

Coast further wishes to thank the Vancouver Foundation for financially supporting the Financial Trusts program over the last few years. The Vancouver Foundation's grant of \$50,000 has allowed Coast to develop best practices, build a talented Advisory Committee and bring the program to a size that it is almost self-sustaining.

These generous private funders have developed partnerships with Coast Foundation to help fulfill the mission of helping people have better mental help.

Further Acknowledgements

- Coast also wishes to thank the clients of the Financial Trust program who have provided invaluable feedback in the development and the operation of this program through individual suggestions and participation in client satisfaction surveys.

Coast wishes to acknowledge the countless volunteer hours of Halldor Bjarnason, Calvin Fong and David Unterman who reviewed this manual

and shared their expertise in its development and improvement. Last but not least Coast wishes to thank Blandyna Skowronska, Trust Coordinator who has worked diligently on this manual as well as in coordinating the program.



Disclaimer

This Manual is written from the point of view and experience of Coast Foundation Society. Any non-profit organization that wishes to establish a similar Trust program is strongly advised to first obtain legal and financial advice and assistance, prior to commencing such a program.

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Introduction

Since 1974, Coast Foundation Society's mandate has been to assist people with mental illnesses lead better lives through its many and varied programs. Then, more than four years ago, Coast Foundation discovered there was a need to create a Financial Trust Program to help its members become more financially independent as well.

In 1998, two clients came to Coast afraid they were in jeopardy of losing their disability benefits for receiving additional sums of money. One was receiving a small inheritance and the other a retroactive payment from the Canada Pension Plan. These two cases became the catalyst for Coast to develop the Financial Trust Program.

People with serious and persistent disabilities, including those with a mental illness, receive basic BC disability benefits of approximately \$906.72 per month. This amount includes shelter allowance and living expenses. Individuals who receive disability benefits are allowed to have a maximum of \$3,000 in liquid assets or \$5,000 in liquid assets if they have a dependent.

This includes monies in bank accounts, savings bonds, RRSP's, etc. If a recipient of disability benefits receives, for example, an inheritance or retroactive CPP payments, their benefits are suspended until their liquid assets fall below the \$3,000 level. As a result of this government policy, people with severe and persistent mental illnesses are

forced to live in chronic poverty that results in poor nutrition and substandard housing conditions.

After some research, Coast became aware that BC law permitted disability benefit recipients to preserve their additional assets by sheltering those funds within trust. By only using the trust to assist in the purchase of specific items such as medication, medical aids, medical services, education and the cost of independent living, these people could keep and spend their additional assets without fear their benefits might be suspended.

Despite the fact that the creation of a trust is a legitimate means by which to shelter additional assets, most clients who receive disability benefits are not informed of this option. Instead, many government Employment Assistance Workers advise clients that spending their money was the only way to re-qualify for disability benefits, presently known as PWD benefits. In their haste to comply, individuals often recklessly spent their money without any type of planning. Their only concern was to re-qualify for disability benefits.

And so, with the help of Van City Credit Union, Coast Foundation Society established the Financial Trust Program as part of its mandate to improve the lives of people with mental illnesses. By establishing and managing trust funds, Coast enhances the economic, social and physical well-being of seriously ill people and helps them improve their quality of life.

With the help of this manual, Coast Foundation hopes other organizations serving people with disabilities will see how important a trust program can be and thus be able to create similar programs for their clients.

What is a Trust?

There are many types of Trusts, but in its simplest form, a Trust is a relationship where one person, the “Trustee”, holds money or other assets for the benefit of another, the “Beneficiary”. The money or other assets in Trust is given to the Trustee by the “Settlor”. To be a little bit more technical, the Settlor creates the Trust by transferring



assets that may include money, property or other possessions to the Trustee under certain terms or conditions for the benefit of a Beneficiary¹.

In general, the Trust is a legal relationship between the Beneficiary and the Trustee. The relationship requires the Trustee to deal with the assets and other properties held in Trust in specific ways and to be disbursed under certain conditions or for particular things².

Testimonial

Some years ago, my mother became incompetent. Despite all the help I could give her, I was forced to have her committed to an appropriate facility. Since the complexities of obtaining and maintaining committee³ were beyond me, the Public Trustee took over. I was on disability benefits at the time. Some seven

¹ Report on the Law and Trust, Ontario Law reform (1984)

² *ibid.* p.4; Waters (1983)

³ A Committee is a person the courts appoint to make a legal decision for a person with a mental disability who is unable to make legal decisions on his/her own

years ago she passed away, intestate. Inasmuch as I was her only living relative, the Public Trustee advised me that I must settle her estate of some \$100,000 plus personal articles in storage. I procrastinated about doing so since I was fearful, being on disability assistance, of the consequences of coming into so much disposable assets.

Each year the Public Trustee's Office sent a stronger and stronger worded letter advising me that I must settle her estate. I remained fearful of losing my benefits and being forced to squander my inheritance. Being a member of Coast, I was informed of the Coast Trust Program. Upon inquiry, I was put in touch with the Trust coordinator. I was referred by her to a solicitor who was also most helpful and considerate. He took care of all the legal complexities in dealing with the Public Trustee, leaving to me only the simple task of signing the appropriate documents.

Once established, the Trust has made my life ever so much easier. I was diagnosed with Obsessive Compulsive Disorder and had lived in the same residence for over twenty-two years. I would not have been able to continue to do so without the Trust. It enables me to cover shelter costs over and above the paltry \$325 allowed by the Ministry. It also covers extra medically required dietary costs, the allowance for which I'm no longer eligible, and which was insufficient in the first place. I have also, through the Trust, been enabled to cover other medical related expenses such as adequate corrective lenses

prescribed by a doctor of Optometry, but not paid for through my Provincial Medical coverage.

The Trust covers many other benefits such as items necessary to maintain my residence and promote my independence that I would otherwise have had to do without. Education is very important to me. Education keeps the mind active and courses that I've taken, paid for through my Trust, help maintain my mental stability, give me great personal pleasure and satisfaction, and may increase my eventual employability. In conclusion, I can only say that my overall standard of living and quality of life has been greatly benefited by the Trust Program.

Reasons for Trust

Trusts can be created for various reasons. A Trust is one of the most flexible estate planning tools available, and in some cases, a practical instrument for managing financial affairs. Trusts can be created, for example, to provide pensions for retired employees, to accomplish various charitable purposes, to ensure that the next generation will not misuse bequeathed property, or to enable property to be held for persons with a disability without affecting their disability benefits. As an example, the Coast Trust program helps clients with the financial management of their property, protection of their disability assistance payments and protection from parasitic third parties – a group which sometimes includes family members and “friends”.

The following letter from one of the Coast’s Trust clients shows how much this program means to people with disabilities:

Having the Trust Account makes me secure knowing that if I become sick and in a manic or psychotic state I will not be able to throw away my saved money, since there is a barrier between me and my savings that prevents impulse spending. The Trust protects my future since I have something to fall back on in hard times. This reduces my stress levels and keeps me out of hospitals. People in the past who knew I had some money have stopped trying to "borrow" from me. I now tell them that it is in a Trust and I cannot get money for them. (Few people have ever paid back money I



lent them) I use the Trust money for my own recovery needs and do not spend it on frivolous items. I buy items that reduce my stress levels, help stabilize me and improve the quality of my life - money that I could not afford to spend if just on a pension alone. I have learned the value of money and having a Trust Account helps keep my finances in order. I am very grateful that Coast Foundation Society offers this type of Trust Account. It is very valuable and beneficial for me and for everyone afflicted with a mental illness since at times our cognitive and management skills are jeopardized: I don't know what state I would be in if I did not have the benefit of a Trust Account.

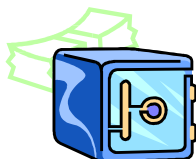
Financial Protection

Maria is mentally ill and also a recipient of disability assistance. A few years ago she received inheritance money. By placing this money in a Trust, she continued to receive government benefits and at the same time she had her inheritance well protected from her drug-addicted daughter who wanted to access it on a daily basis. After Maria established her Trust, the Trustee made sure the money Maria took out of her Trust was used only for her benefit.

Most of Coast's Trust clients can manage their day to day finances and do not need constant financial supervision. They know the value of the money. They respect the

government rules⁴ which regulate the Trust. From time to time, however, they still need some help in dealing with different kinds of financial or legal problems. For example, they may need help keeping their financial records and dealing with government agencies.

There are times when Trust clients need advice on what constitutes acceptable spending. A few Coast Trusts are established with clients who, due to their illnesses, are less financially responsible and need some supervision over their financial affairs; most of the time they have money management problems that are related to their spending habits. These spending habits often get them in trouble with the Ministry of Employment and Assistance and frequently leave them with no money at all. Many of those people recognize their bad habits and desperately want to avoid negative financial outcomes. They believe that a Trust is one of best solutions to protect their money for their future.



Mr. M. has a mental illness and receives disability assistance. He has a tendency to spend all his money for expensive items he does not need and as a result, Mr. M. is often left with no money for a long time. A few years ago Mr. M. received some money from an inheritance. He was worried that his illness would once again affect the way he spent his money. Mr. M. realized he needed some help with financial management and he decided to put his money in a Trust.

⁴ The government rules regarding the Trust will be explained later in the manual

In some cases, PWD benefit recipients get advice from their Employment Assistance Workers that they spend their money and then re-apply for disability benefits. However, before having their disability benefits reinstated, they have to satisfy the Ministry they used their money properly.

After receiving a bequest or other sum of money, some disability benefit recipients decide to get off their disability benefits and use their “windfall” for day-to-day living expenses. Their goal is to reduce their assets to the allowable Ministry limit of \$3000.

Government regulations state recipients can be penalized and remain ineligible for disability benefits for 30 days for each \$2000 of additional assets incorrectly disposed of. In many cases, clients who complied with their Employment Assistance Worker’s inaccurate advice, found themselves cut off from the only financial security they knew and wanted to preserve.

A Trust prevents this situation from occurring and gives the Beneficiary a feeling of financial security, comfort and independence. Many Trust clients admit that if not for the Trust Program, they would not have any money. Disability benefits recipients who have Trusts can afford more health services, better nutrition, increased educational opportunities, or in many cases better quality housing. They can afford to go for vacations or attend important family events. In short, they obtain a higher standard of living.

Financial Security

An income of approximately \$906.72 does not provide people with disability even the most basic necessities to live. Unfortunately any financial contribution from their family or friends for their living expenses is seen by the Ministry of Employment and Assistance Office as unearned income. Some people, being concerned that their disabled relatives are not financially secure, strive to find a means to ensure their future financial stability. Trust Program may be a solution to this problem. It gives parents and other relatives means to ensure proper financial management and long term financial security for a person with a disability.

Currently, for many disability recipients and their families the Trust Program offered by Coast is their only choice with respect to a Trust. Unlike banks and Trust companies, Coast's Trust Program manages Trusts amounts as small as \$10,000. While seeming small, for people who receive only \$906.72 a month an additional \$10,000 can make huge difference in their lives. It allows for medical or dental treatment, or for interesting educational experiences.

Problems with Managing a Trust

Many Trusts for people with disabilities are managed by family or friends. These Trustees act out of loyalty to or affection for the Settlor, but sometimes this scenario does not work very well. Many “volunteer” Trustees don’t have any accounting or business experience, have little knowledge of government rules and legislation, and have problems in dealing with government agencies. This can be compounded by problems in dealing with the Beneficiary’s disability. As a result, many family members acting as Trustees find themselves on an emotional roller coaster.

Ms. K. was appointed a Trustee of her mentally ill brother’s inheritance. Ms. K. had a very close relationship with her brother until her parents passed away and left her in charge of his money. Her brother now accuses her of being dominating and unfair. A previously good relationship between a brother and sister has become very abusive. Ms. K. decided she no longer wanted to be involved in her brother’s finances.

She felt unable to fulfill her parents’ expectations with regard to her brother’s financial future. She found it extremely difficult to be her brother’s Trustee and thus her management of the Trust developed into a power struggle.

This is a common scenario. Good family relations can deteriorate when the money becomes part of the family dynamics. For this reason, a lot of family members do not

want to get involved in the financial affairs of their loved ones. They prefer that others manage the Trusts. In many cases, for the same reason, people with a disability prefer an organization and not their family members to deal with the management of their Trust. They want to find a neutral party to help them.

Finding a Trustee

People wishing to establish a Trust when the contents of the Trust are small face the problem of finding the right Trustee. Given the restrictions imposed by banks and the Office of the Public Guardian and Trustee, it can be a difficult task to achieve. Most private financial institutions will not handle Trusts accounts worth less than \$300,000.00. The Public Guardian and Trustee most of the time will manage assets of those who are declared legally incapacitated. Some turn to lawyers to help manage their Trusts, as they often charge high management fees for every Trust transaction will not allow small Trusts to last for a long time.

Many lawyers and Trust company officers also experience difficulties in dealing with people with disabilities because they often do not understand their clients' needs.

As an example, Mr. R. complained about the lawyer who administrated his Trust fund and said the management fees he had to pay to his Trustee were too high. When asked how often he called his Trustee, Mr. R. admitted he tried to keep in contact with his lawyer on a daily basis. He called him just to talk and to ask him to do a small Trust transaction every second day. While the lawyer never refused Mr. R's requests, he did

not clearly explain that he charged for every small conversation over the phone or small transaction he was asked to do. Mr. R. was clearly unhappy with his Trustee's management. He realized that there was no room for a more relaxed relationship between him and his Trustee and that he needed a Trustee who had some understanding of his illness and his needs. After establishing a Trust with Coast Foundation Society, Mr. R sent this letter to Coast:

Now that my Trust Fund has been setup, things are a lot less complicated for me than when my lawyer was acting as a Trustee. It was very frustrating dealing with the lawyer. He was either out of the office, in court, or in a conference. Also the incredible management fees he was charging me were quickly eating up my assets. He was taking out more money than whatever interest I was receiving. Money was never available when I needed it. If the car insurance was due, I was sometimes kept waiting two months for funds to insure my vehicle even though I gave notice well in advance. It was like being up against a brick wall. Now, everything is changed. I just put in the request for necessary maintenance, dental work, car insurance, car repairs etc. and the cheque is issued a few days later.

For most lawyers and professional Trustees, Trust management is a business that is profit motivated. On the other hand, charitable organizations, such as Coast Foundation Society, see Trust programs as a necessary service for improving people's lives.

In some rare cases, Coast has established Trusts with clients who have some other disability and nowhere else to turn for help, but unfortunately the Coast Trust Program was designed almost exclusively for people with mental illnesses.

In 2001, Ms. J. needed to establish a Trust. She was about to receive a lump sum of money from her insurance company. Because of a brain injury, Ms. J. received disability benefits from the provincial government. Ms. J. was afraid that after she received her insurance money, the Ministry of Human Resources would cut off her disability benefits and that she would have to spend all the money she received for her support and then she would again have to go through the disability benefit application process. In addition, due to her brain injury, she needed some help in financial management. Ms. J. tried to find an organization which would provide services for her types of disability and which could help with her financial problems. Ms. J. was not very successful in her research until she was referred to Coast Foundation Society.

Presently, although Ms. J. has a Trust with Coast, the needs of Ms. J. would be better served if her Trust were with an organization that specializes in helping people with a brain injury. It is important that Trust services for different categories of disabled members of the society be created and delivered by organizations that focus on those specific disabilities.

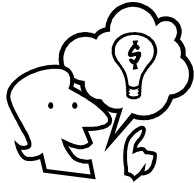
Avoiding Poor Financial Advice

An important reason for setting up a Trust is to prevent improper financial planning for a disabled family member. Coast's experience indicates that due to inadequate information, many legal professionals give inaccurate advice to families who plan for their relatives who receive disability benefits. For example, an annuity-type of investment is one of the most common suggestions given to parents of a disabled person when preparing their will. An annuity is a financial arrangement where a lump sum of money is given to a financial institution. In return, the Beneficiary of the annuity is paid a fixed amount of money each month for their lifetime.

The rationale for purchasing an annuity is the belief that it will provide an ongoing monthly income stream for a person with a disability. It is presumed that as the annuity payments are periodic, the Beneficiary will have an improved standard of living. In addition, because the capital cannot be touched, the annuity is presumed to be good for preventing poor and impulsive spending. While an annuity may be a useful tool for some people, annuity payments may result in the loss or reduction of BC disability benefits.

When the Beneficiary of the annuity is a recipient of disability benefits, the monthly payment from the annuity is treated by the Ministry as unearned income. Hence, it is deducted dollar-for-dollar from the monthly disability assistance cheque. If the monthly

annuity income is high enough, it can result in the provincial disability benefits being suspended indefinitely.



Lawyers or financial advisers who sometimes do not have a clear understanding of the Disability Benefits legislation may offer poor advice to people preparing their wills. As a result, the money that is intended to help secure the future of vulnerable adults is redirected to the government.

In 1975 Ms. T. purchased an annuity from the government for her disabled daughter. Ms. T. saved every penny for her daughter's future. In 2003, Ms. T.'s daughter started receiving a monthly installment of \$200 that was guaranteed for 20 years. Unfortunately, because Ms. T.'s daughter is a disability benefit recipient, her annuity cheque is deducted from her disability benefit. Ms. T. is a person with a very low income and all her life had struggled to save some money in order to secure a better future for her mentally disabled daughter. Now Ms. T. feels that she was ill informed about her choices.

With proper information this kind of situation can be avoided. Being aware and informed about a Trust program will help people make the right decision in preventing vulnerable adults from experiencing financial losses.

Summary

A Trust has a number of benefits to people with disabilities. Among other advantages,

Trusts allow people with disabilities to:

- preserve their disability benefits;
- get assistance with money management;
- maintain good relations with their relatives;
- have the use of additional funds; and
- help to ensure long-term financial security.

Types of Trusts

There are many different types of Trusts. We are only concerned with those Trusts which are intentionally or “expressly” created by a Settlor. As mentioned earlier, these Trusts can be created by a person either through their will (“*testamentary*”), or while the person is still alive (“*inter-vivos*”).

Inter-vivos Trusts and testamentary Trusts can be either “discretionary”, where the Trustee has complete control on how the Trust is administrated or “non-discretionary” Trusts, where the Trustee has certain restrictions on how the Trust is administrated, usually with reference to the Beneficiary or from the Trust agreement itself. Both types of Trusts are legal for sheltering the assets so as to protect one’s eligibility for BC disability benefits.

Testamentary Trusts are created upon the death of the Settlor and accessible to the Beneficiary only after that time. There are some people who would like to avoid the “probate process” and give their disabled relatives access to the Trust monies before their death. These people prefer to put their money into an inter-vivos Trust while they are still alive.

Ms. L. wanted to establish a Trust for her disabled daughter who was on disability benefits due to mental illness. Ms. L. had cancer and was worried that she didn’t have a long time to live. M. L. did not want her daughter go through a

complicated legal process after her death. Ms. L. thought the only thing she could do for her daughter's future was to establish a Trust fund that would help her daughter have a more secure life after she was gone. Ms. L. and her daughter did not have any family or trusted friends willing to take on the Trust challenge.

Inter-vivos Trusts enable people with disabilities to become financially secure and more financially independent while their relatives are still alive.

My mother fell very ill and she was worried that I did not have family to look after my inheritance. She was thinking about the amount of money that I would receive after her death, the cost of a lawyer, and problems with MHR if they discovered that I had some inheritance money. I was also stressed and I could not bear the thought of losing my disability assistance. When I heard about the Trust program, I knew where to go for help and that my mother and I did not have to worry any more. My mother wanted to leave whatever money she had just for me. She did not want me to pay for a lawyer and she did not want my money to be taken by MHR. She wanted to be sure that I was financially well protected. I think she is resting in peace knowing she was able to establish a Trust for me before she died.

Discretionary Trusts

Ms. and Mr. J. are very concerned that due to his mental illness their son is not very good with his money. He spends too much money in a very short time for things he does not need. They would like to protect their son's financial future and setup some financial rules their son must comply with. They do not want their son to have any power over his Trust. They would like their son's financial spending to be monitored by a Trustee. They hope that with the help of a Trustee their son's money will last a long time and will be used only for his benefit. They want to establish a discretionary Trust fund for their son. They want to find an organization that will help them to achieve this goal.

A Discretionary Trust gives the Trustee complete discretion over the Trust. In this type of Trust, the Beneficiary has no control over the Trust or any disbursement from it. The Trustee is the only person entitled to make decisions regarding the Trust. As a Discretionary Trust is not considered an asset, there can be any amount of money within the Trust and it should not affected their eligibility for disability assistance. In many cases; however, the Ministry of Employment and Assistance will refuse to accept the discretionary trust unless the "Ultimate Beneficiary" is appointed. The Ultimate Beneficiary is a person who will inherit the trust once the person for whom the trust was created (Immediate Beneficiary) dies. It is a Settlor who appoints both Immediate and Ultimate Beneficiary.

Non-Discretionary Trusts

Mr. G. is a person with disabilities and a good manager of his money. Most of the time he uses his money to improve his health and well-being. Mr. G. needed to establish a Trust fund because he wanted to apply for the government disability benefits but because he had more than \$ 3.000 dollars in his account, he did not qualify.

According to government policy, in Non-Discretionary Trusts, the Beneficiary can also be one of the Trustees. This means the Beneficiary has a control over the Trust and that both the Beneficiary and the Trustee are responsible for the Trust.

Funds up to \$100,000 held in a Non-Discretionary Trust is an exempt asset and do not affect eligibility for disability assistance. Any amount above \$100,000 held within a Non-Discretionary Trust is not exempt and will likely affect the Beneficiary's eligibility. The Minister has the discretion to increase the \$100,000 limit if there is proof that the Beneficiary will likely have disability related costs during his/her lifetime in excess of this limit.



It is important to note that in its policy on Trusts, the Ministry of Employment and Assistance does not allow recipients of disability benefits to be the only Trustee of Non-Discretionary Trusts. The Ministry requires that there be at least two Trustees, one of

whom may be in receipt of disability benefits. Canadian law is clear that providing a person is mentally competent and 19 years of age, they can be a Trustee.

Parties to the Trust

The Trust can be setup by anybody: a family member, a friend or even the Beneficiary themselves. The Trust involves at least three parties: the Settlor, the Trustee and the Beneficiary⁵. However, the same person can perform several or all of the roles.

The Settlor

Anyone who has the mental capacity to hold and dispose of property is capable of establishing a Trust. The Settlor is the person who transfers property to a Trustee to create a Trust. The Settlor creates the Trust by choosing the Trustee and Beneficiary, transferring the Trust property and setting out the Trustee's powers and duties. Some Settlers will be reluctant to give the Trustee absolute power over the Trust property. In the Trust agreement, a Settlor may clearly specify how the Trustee will manage the Trust. It is worth noting that a Settlor can create a Trust for his or her own benefit, meaning that the Settlor names him or herself as a Beneficiary.

The Settlor is relatively free to define the scope of the Trustee's powers. The way the Trustee exercises the Trust powers depends not only on the terms of the Trust, but on the overall context provided by the Trust agreement, the nature of the Trust property and the changing circumstances of the Beneficiary.

⁵ The Trust can involve more than one Beneficiary, Settlers, and Trustees.

Even though the Settlor can clearly describe how the Trust should be managed and administered by the Trustee, a Settlor should always make sure that the person/organization appointed as the Trustee is trustworthy, honest and has some knowledge of trust management. The Settlor must also make sure that the person or organization named as Trustee is willing to act as such.

The Beneficiary

The Beneficiary is the person for whom the Trust is created. A Beneficiary can also be the Settlor of his /her own Trust. As the Settlor, the Beneficiary can specify the conditions of the Trust and the way in which the Trust is administered. These conditions are very important as the Beneficiary will lose control over his/her assets once they are put in Trust. Note that as long as the Beneficiary receives disability benefits, government regulations specify how trust funds can be used.

The Trustee(s)

A Trustee holds title to the property and is entrusted with the control over it for the Beneficiary. It is very important the Settlor chooses the right Trustee, especially in the case where the Beneficiary is mentally or physically disabled. The Trustee should be a person or organization that has a genuine, continuing interest in the well-being of the Beneficiary. Anyone legally competent, and not bankrupt, can be a Trustee. A Trustee can be an organization, a friend, a relative, a business partner, a spouse, a professional

advisor or a Trust company. Where there is more than one Trustee, the Trustees must act unanimously unless the Trust agreement provides otherwise.

An Alternate Trustee

It is possible to include an Alternate Trustee in a Trust agreement. An Alternate Trustee steps in to manage the Trust when the original Trustee, or one of the original Trustees, cannot or does not want to act. With many of the Coast established Trusts, for example, Coast is one of two Trustees. According to the Trust agreement, in the case where the other Trustee dies, refuse to or becomes unable to act, Coast becomes the sole Trustee. Some Settlers may wish to ensure that in such cases, the Trust agreement includes the appointment of an Alternate Trustee.

Mr. L. created a Non-Discretionary Trust for his daughter. Mr. L. believed his daughter was able to act as one of her own Trustees together with Coast Foundation Society. He was concerned that one day, due to her illness, his daughter might not be able to act as one of her own Trustees so in the Trust agreement Mr. L. included the appointment of an alternate Trustee. If Mr. L.'s daughter is unable to act as her own Trustee, Mr. L.'s other daughter will act as a Trustee for as long as is needed. Mr. L. believes that the interests of his daughter with a mental illness will be much better protected if at least one of the Trustees understands the needs and problems associated with his daughter's illness.

It may be easier to manage Trusts funds if the Trustee has knowledge of the physical and mental needs of the Beneficiary. This information can be gathered most effectively from the family members and/or friends who have genuine interest in the Beneficiary's well-being.

It is essential to choose a Trustee or Alternate Trustee who will not create a conflict of interest. For example, siblings of the Beneficiary may not be the best choice as a Trustee if they are destined to inherit the money after the Beneficiary's death. Their decisions regarding the management of the Trust may be, therefore, seriously influenced by their expectation of future ownership of the funds. This situation may create a serious conflict over the management of the assets of the Trust between the Beneficiary and the Trustee.

The Trustee's Obligations

The Trust involves a special type of relationship, sometimes called a “Fiduciary Relationship”, which requires the Trustee to ALWAYS act in the best interest of the Beneficiary. The primary responsibility of the Trustee is to carry out his or her task with care, attention and honesty. The Trustee has an obligation to hold the property on behalf of the Beneficiary, and to safeguard and deal with it in the Beneficiary's best interest.

The Trustee is obligated to act in strict confidentiality and to exhibit the same diligence and care while dealing with the Trust that an ordinarily prudent person would exercise in conducting business on behalf of another. If the duty of care is breached, and there are losses to the Trust, the Trustee is in breach of duty and liable for those losses.

The Trustee's self-interest cannot take precedence over his/her duty to the Beneficiary. This obligation arises even when the Trustee is also a Beneficiary of the Trust. In this situation, the Trustee would be a Trustee for both himself/herself and the other Beneficiaries. His or her fiduciary obligation remains since as a Trustee he/she is obligated to act in the best interest of all beneficiaries.

In general, the Trustee is required to:

- Maintain complete honesty;
- Only make decisions that are in the best interests of the Beneficiary;

- Act according to the Settlers' wishes; and
- Never profit from the Trust (this doesn't include reasonable compensation as per either the Trust agreement and/or the *Trustee Act*).

It is essential that the Trustee understands the basic motivation for the creation of the Trust. In many cases, the motivation determines how the Trust is administered. For example, most Beneficiaries of Trusts managed by Coast are people with PWD designation who receive disability benefits. As long as they use their Trust according to the rules set by the Ministry, they can utilize both the Trust funds and government benefits. In these circumstances, the Trustee should ensure that a disbursement from the Trust fund will not cause a loss of any government benefits. It is crucial for the Trustee to have an understanding of the rules that apply to Trusts and any ongoing changes to those rules. It is also important the Trustee has a good understanding of the problems encountered by people with their particular type of disability.

The Trustee should have time to manage the Trust and be able to maintain contact with the Beneficiary. The Beneficiary and the Trustee should be able to communicate with each other as often as necessary. This personal contact is an important part of the successful Trust program. This is even more important in a situation where the Beneficiary is a disabled adult who needs more support than normal and in many situations may be easily exploited.

It is certainly more difficult to deal with Trust issues when the personal contact is obstructed by distance, language, lack of understanding of specific illnesses, etc. In such cases the Trustee should do everything possible to minimize those obstacles. For example, Coast is also a Trustee to a number of deaf people. Coast makes sure that the communication problems between Coast and deaf clients are minimized. Every time there is an important issue to be discussed with a deaf Beneficiary, Coast makes sure a sign language interpreter is present during the meeting.

Trustee Resignation and Trustee Appointment

No one can be forced to accept an appointment as a Trustee, or continue to act as a Trustee. Providing the Trustee does not put the Trust property at risk, the Trustee can resign whenever he/she wants, providing the Trust assets are safe. The Trust instrument should provide an express mechanism for Trustee resignation and Trustee appointment. For example, some Trust agreements establish that if one of the Trustees wish to resign or is otherwise unable to continue to act, the other Trustee may appoint a successor to act in his/her place.

In some situations, the appointment of the successor Trustee has to be approved by the Settlor. If the Settlor is also the Beneficiary, this gives the Beneficiary power to choose his or her own Trustee.

If the Settlor is not a Beneficiary, the Settlor should make a provision within the Trust agreement stating what is to happen if he/she dies. For example, the Trust instrument may have a clause that the appointment of a new Trustee requires approval of the Beneficiary or an appointed third party.

Some Trusts agreements have a backup clause stating that where no such approval is possible, the new Trustee will be appointed by the Supreme Court of British Columbia.

There might be many other options with regard to the appointment of a new Trustee which depend on the different circumstances surrounding every case. Appointment of a new Trustee is a very important but complicated issue. Coast strongly suggests that proper legal advice be sought.

Trustee's Powers

A power is an authority or permission to act in a certain way if the Trustee chooses to do so and are usually outlined in the Trust agreement. The extent of discretion that the Trustee exercises is limited by the Trustee Act, common law and the instructions of the Settlor who can stipulate how the property held in Trust is to be used.

The Trustee may be limited in his/her power by the scope of the powers outlined in the Trust Agreement. In Trusts established for people who receive disability benefits, the Trustee should take into consideration the government regulations which specify how and when the Trust can be used⁶. The Trustee(s), however, has the power to decide if the Beneficiary's request for money is reasonable, if the disbursement will benefit the health and well-being of the Beneficiary or if the Beneficiary needs money from the Trust. If the Trustee believes that a particular payment will not benefit the Beneficiary, the Trustee has an obligation to not make the payment.

Mr. J. a Trust client, wanted to take some of his money from his Trust. He decided to give his money to his mother, saying his mother is very sick and that he as a good son needed to help her in her illness. Mr. J. has a history of mismanaging his money and the establishment of the Trust was a means to preserve his assets. The Trustee explained to Mr. J. that his money is supposed

⁶ Employment and Assistance for Persons with Disabilities Act; Employment and Assistance for Persons with Disabilities Regulations.

to be used only for his benefit and well-being and nobody else can benefit from his Trust.

The Trustee should perform his/her duty personally. The Trustee can transfer the power to administer the Trust to an agent only if:

- the Trust agreement authorizes it;
- the duties are not required to be performed personally;
- the delegation is clearly necessary;
- and, if it is a common business practice to delegate the authority.

The Trustee is still, however, ultimately responsible and must properly supervise such agents.

Creation of the Trust



Independent Legal Advice

It is very important that all people who wish to establish a Trust understand important legal and other issues involved in this process. For many people with a disability, the process of creating a Trust is stressful and challenging. In setting up Trusts, the staff at Coast, tries to explain all aspects of the trust to the potential clients and also gives them information that emphasizes other available options.

Coast stresses that besides information that is accessed through Coast, clients should seek independent legal advice. From Coast's perspective, people who want to be a part of a Coast's Trust program should base their decision not only on information given to them by Coast, but also on other independent sources of information. Upon request, Coast has available a list of legal advisors who can provide assistance.

There are situations, however, where people do not want to seek independent legal counsel. Coast still insists that they utilize services independent of Coast. Coast tries very hard to insure that the person wishing to setup a Trust understands its implications as best as they can. It is improper to establish a Trust for a person who does not appreciate its concept and legal consequences.

The First Meeting

It is policy at Coast that the Trust not be established during the first meeting with the client. Instead, during the first meeting, the client receives information regarding the Coast Trust program and its rules. This includes written material such as Trust pamphlets and a sample of a Coast standardized Trust agreement.

If it appears that the client does not understand the Trust issues, Coast will insist that the client come for a next appointment with an advocate or legal representative. Coast will refuse to establish a Trust fund with a client who does not sufficiently understand the Trust issues, its concept, legal consequences and the rules. It is possible that a potential Trust client would have to attend more than two meetings in order to establish a Trust. The clients have to make an informed, conscious decision regarding the establishment of Trust.

The Trust Agreement

A well drafted Trust agreement should outline the important aspects of Trust management and asset entitlement. It must be carefully drafted so all parties to the Trust agreement can determine their respective rights and obligations⁷. Even though each Trust agreement is individualized and reflects the specific needs of the parties; in general, each Trust Agreement for a person with disability should deal with:

⁷ See Appendix A and B

- The identity of the Settlor and his/her intention to create the Trust;
- The identity of the Beneficiary or Beneficiaries;
- The identity of the Trustee, and if an *inter vivos* Trust, evidence of his/her acceptance of the role;
- The property and/or assets used to create the Trust;
- How the Trust income and assets are to be distributed;
- The Trustee's powers;
- The Trustee's privileges, rights and duties;
- An express mechanism for Trustee resignation and appointment;
- The payment of the Trustee and Trustee expenses;
- Ultimate Beneficiary. Some Settlers wish to name an ultimate Beneficiary. An Ultimate Beneficiary is a person who will inherit a Trust asset after death of the Immediate Beneficiary



The Trust agreement should be flexible enough to accommodate legislative and personal changes that might occur in the future. A future government may introduce regulatory changes in the legislation or policy that need to be incorporated into the Trust. People who receive disability benefits under the *Employment and Assistance for Persons with Disabilities Act* and who have established Trusts may be subject to

changes that are introduced to this Act, its regulations and Ministry policy. Those changes may also affect the administration of their Trusts. For example, the present legislation permits Trusts to spend up to \$5,484 per year to promote the independence of the Beneficiary. The BC government, however, may change that rule at any time by eliminating, increasing, or decreasing the limit and/or imposing other restrictions.

Another factor that necessitates flexibility in the Trust agreement is the Beneficiary's age. The Disability Benefit program is for people under the age of 65. Old Age Security comes into effect at age 65. As a result, the government regulations, as they relate to expenditures from Trusts, no longer apply after age 65. While the Trustee is no longer limited by these regulations, he or she is still obligated to act in the best interests of the Beneficiary and use the Trust according to the terms of the Trust agreement.

For most of Mr. K.'s life he has been on disability assistance due to his mental illness. A few years ago he established a Trust fund with Coast Foundation Society. Last year Mr. K. reached his 65th birthday and the Trust disbursements rules established by the B.C. legislation no longer applied to him. While the Trustee still has to use Mr. K.'s Trust money for his benefit and well-being, Mr. K. does not now have to explain to the Ministry how he spends the Trust money.

Each Trust agreement should be drafted individually, but an organization may want to consult its lawyer to draft a general precedent for use as a starting point.

Letter of Wishes



Some Settlers prepare a “Letter of Wishes” which provides non-legally binding guidance to the Trustee on Trust asset management or asset distribution. For a Trustee, a Letter of Wishes can provide useful guidance, particularly when the Trustee does not know the Beneficiary very well. A Letter of Wishes gives information about the Beneficiary’s circumstances and what the Settlor wishes the Beneficiary to gain from the Trust. Even though not legally binding, a good Trustee may consider the recommendations contained in a Letter of Wishes because they are often prepared by someone who truly understands the Beneficiary.

As an example of a Letter of Wishes

This letter is to inform you of a couple of requests the family would like to be taken in consideration while establishing a Trust for our daughter. We would like her to receive forty dollars a month regularly for living incidentals. Any other expenses would be at your discretion. We would like you to know that our daughter has drug and alcohol problems and we would like to be sure that she won’t be able to use her Trust to support her addiction.

As mentioned before, family members often do not want the problem of being directly involved with managing the Trust funds of their loved ones. As well, being the “Ultimate Beneficiary” of the Trust when the Beneficiary dies, they may not want to be caught in a

conflict of interest. Nevertheless, a Letter of Wishes provides a means for the Settlor to have indirect influence on the Trust management.

Confidentiality

Beneficiaries often share personal information with the Trustee. Protecting the Beneficiary's right to confidentiality is important and so the Trustee should assure a Beneficiary that all information is kept confidential. For example, Coast will not share any Trust information with anyone, including government or mental health organizations, without the Beneficiary's prior approval or except when required by an order of the court.



When any kind of disclosure is requested, Coast requires a client to sign an authorization to release information.

Reimbursement of the Trustee

The Trustee can be compensated for the work, time, effort and any expenses that the Trustee incurs in the management of the Trust. Unless a Trust agreement specifies otherwise, in British Columbia, there is a maximum fee that the Trustee can charge for the Trustee services. According to the BC Trustee Act, the Trustee can charge a fee of up to 5% of Trust capital and up to 5% of the Trust's income. It is worth noting that the fee amount may vary significantly, with Trustees charging different amounts depending on the type of services provided and amount of money in the Trust.

Coast, for example, currently charges only a one-time setup fee of 2% of the amount of money initially deposited in the Trust. The fee is not less than \$250 and not more than \$1,000. Coast also charges an annual management fee of 1% of the ending balance for the year with a minimum fee of \$100. These fees might be adjusted periodically. Many Settlers specify in the Trust agreement what fees the Trustee can charge.

Establishing a Trust Program

Setting up a Financial Trust Program is a very complicated undertaking and requires of a variety of services including accounting, legal and advocacy services and administrative support.

Financial Aspect of Trust

Every person or non-profit organization that provides this program should have an accounting expert(s) to deal with the financial portion of the Trust. Coast, for example, has an accounting department responsible for opening and closing Trust accounts, preparing financial Trust statements, monthly reconciliation of the Trust accounts, preparation of Trust cheques and auditing of the Trust accounts. In fact it would be impossible to provide the Trust program without accounting services. Those organizations who would like to establish a Trust program and do not have an accounting department available to them might have to hire an accounting expert from time to time.

The Trust Account

The Trustee can, if the Trust deed does not stipulate otherwise, open an account at any bank, Trust company or credit union that is insured by Canadian Deposit Insurance Corporation (CDIC) or the Credit Union Deposit Insurance Corporation (CUDIC). When several Beneficiaries are involved, depending on the circumstances, Trust funds can be held in either a separate account in the names of each Beneficiary, or in a pooled Trust account.

Disbursement from the Trust

Money paid from the Trust is called a “Disbursement”. Trustees of the Beneficiaries who receive PWD benefits have to remember that the legislation provides a framework for disbursements from a Trust. According to the legislation, the Trust may be used only for disability -related costs which presently include:

- devices, or medical aids, related to the improving the person’s health and well-being;
- caregiver services or other services related to the person’s disability;
- education or training;
- renovation of the person’s place of residence necessary to accommodate the needs of that person’s disability;
- necessary repairs and maintenance for that place of residency;
- Any other item or service to promote the Beneficiary’s independence.

The first four categories do not have any limitation on spending and it is clear how the Trust asset should be used. The last category, “the independent living” category, may cause problems. It requires an interpretation of what “independent living” means. The regulations do not specify the intent of this category. According to government policy, this category should not be used for every day living expenses that should be covered by Beneficiaries from their monthly government cheque. As a good rule of thumb, this

category should be used only for things that benefit the Beneficiary's health and well-being.

A key problem is that some financial workers have a different interpretation of the purpose of this category. As a result, they may refuse to recognize some disbursements as appropriate spending under this category. The Ministry may consider this type of spending as "unearned income" which is deducted dollar-for-dollar from the Beneficiary's monthly disability benefits cheque. In serious cases, the Beneficiary's disability assistance may be suspended for one or more months.

The Trustee needs to make sure that this situation does not occur. In some situations, it makes more sense to refuse or delay payment if making such would likely result in the loss of government benefits. There may also be occasions where the Trustee views the expenditure as legitimate and the Ministry's financial worker does not. In these cases, it is crucial to appeal the decision to the worker's supervisor. With no concrete guidelines, financial workers often misinterpret the Trust regulations.

In order to preserve Trust assets for maximum benefit, no payments should be made from the Trust until the Beneficiary has first used other resources available, such as grants and supplements available through the Ministry. It is important to force the government to meet all its financial responsibilities before using the Trust. The Ministry cannot order the Trust to spend money the government is required to pay under Disability Benefits regulations. The Trust should be used only for things that are not

covered by the Ministry. For example, the government will pay only \$500 a year for dental work for individuals with PWD receiving disability benefits. If the client needs more than \$500 of dental work, the Trust can cover this difference.

Payments from the Trust

Where possible, the Trust should pay for items or services directly. As previously mentioned cash placed in the hands of a Beneficiary may be treated as unearned income and deducted from his or her benefits cheque. In some situations this may not be possible, as many companies, for example, supermarkets, won't accept cheques.

Some beneficiaries also prefer to pay for necessary services or goods themselves and then apply for reimbursement of the money spent. When this occurs, it is wise to keep a clear record, using receipts and cheques, to ensure that the Trust is seen as paying for the item. Any withdrawal or transfer of Trust money requires the signature of the Trustee.



At Coast, Trust cheques have to be signed by two staff members authorized by the Board of Directors. In the event that one or two staff members are not available, it is a good idea to have more staff members with signing authority.

Requisition Forms and Trust Records

It is advisable for both the Beneficiary and the Trustee to keep records of all Trust activities. The Trustee should keep a record of all decisions made with regard to the Trust, all instructions given to other people or financial institutions, or any money that comes into the Trust or is paid out of the Trust to mention just a few. In order to withdraw money from the Trust, Coast, for example, requires the client to fill out a requisition form⁸, specifying the nature and purpose of the expenditure. The requisition form helps make sure that there is a record of the money requested and agreement between the Beneficiary and Trustee with respect to the payment. The form has to be signed both by the Trustee and the Beneficiary. The spending has to be approved by two qualified Coast employees who also must sign the form. Beneficiaries should also attach relevant receipts and invoices to the requisition form that help to prove the nature and the necessity of spending.

Beneficiaries receiving disability assistance are subject to random audits by the Ministry. The Beneficiary has to satisfy the Ministry that all reported Trust activities match Trust documentation. The Trustee has to make certain all Trust records are accurate and complete.

Trust Statements

The Trustee has a legal obligation to give the Beneficiary a Trust statement detailing all receipts and disbursement of funds at least once a year. The Beneficiary has a right to

request interim statements with respect to the current status of the Trust. A Beneficiary also has the right to require from the Trustee a full and accurate accounting regarding the Trust property. The Trustee should be prepared to produce the required accounting to the Beneficiary, and for this purpose the Trustee should always keep clear and accurate records. Coast prepares semi-annually Trust statements which are sent to all Trust clients at the middle and end of each year. Coast always makes sure that any Trust client receives an interim statement when needed.

Payment Days

For a non-profit Trustee such as Coast Foundation Society to keep management costs down, it might be wise to have a structured disbursement procedure. For example, at Coast, Beneficiaries can apply for the funds from their Trust on Mondays. The cheques are ready on Thursdays. If the Beneficiary misses this deadline, they must wait another week for the funds. In special circumstances, Coast will prepare an emergency payment but there is a special charge for this service of \$30.

Investment

To maintain a reasonable income flow and preserve the real value of the Trust, the Trustee has an obligation to invest the Trust money wisely. The investment can be made according to the provisions of the Trust document, or in the absence of such provisions, section 15 of the Trustee Act. Recently, section 15 has been modified to adopt a “prudent investor” rule instead of the old “approved list” approach to

⁸ see appendix C

investments. This permits the Trustee increased flexibility in making investments for the Trust.

The “prudent investor” rule gives the Trustee authority to invest at the Trustee’s discretion in any form of property or security. This means that while investing Trust money, a Trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making those investments on behalf of others.

People on disability assistance and their Trustees must remember that income earned by the Trust remains a part of the Trust until it is used for the Beneficiary. As a result, it must also be used according to government rules. If the income is given to the Beneficiary as either cash or for a non-exempt purpose, it will be treated as unearned income and deducted from his/her disability benefits in the month that the disbursement occurred.

Taxes

People with disabilities should apply for the Federal Disability Tax Credit (T2201) or for Preferred Beneficiary Election that allows the Trust income to be taxed in the Beneficiary’s hands. This means the Trust



income can be paid out by the Trust to the Beneficiary free of tax in the Trust. If the Beneficiary is a low income person, the Beneficiary will pay income tax at a lower rate than the Trust would pay or will pay no tax if the amount is low enough.

The Beneficiary should apply for the Federal Disability Tax Credit every year.

Coast advises every Trustee to seek advice from tax experts who understand the Trust income taxation.

Administration of Trust Program

Another important aspect of the financial Trust program is its administration. For an organization that manages many Trusts it is vital that a good administration system is developed. Among others coordination of the financial Trust program, a policy and procedure manual and a good filing system are required.

Coordination of the Trust

It is imperative that a person managing the Trust program has a legal background and experience in advocacy and financial matters. The person should have a basic knowledge of Canadian law with respect to Trust law and disability benefits legislation.

It is important to remember that the Trust program was designed for a certain target population. Coast, for example, provides the Trust service for people with mental illness. It is crucial; therefore, that a person who manages the financial Trust program has a basic knowledge of how to deal with people with mental illness. Organizations dealing with a different target population need to ensure that the manager of the Trust program has the experience and training required to deal with their target group. Coast, for example, organizes courses such as: Dual Diagnosis, Dealing with Difficult Clients, Basic Detox Skills and Non-Violent Crisis Intervention etc.

In addition to this, Coast's staff is trained in psychosocial rehabilitation (PSR) which helps deal with challenges experienced from time to time by the person who manages the Trust program.

Policy and Procedure Manual

It is imperative that the Financial Trust Program has a Policy and Procedure Manual in place. Coast has developed a Policy and Procedure Manual explaining how the financial Trust program is run, its internal and external policies, eligibility criteria, the intake procedures and opening, maintaining and closing Trust accounts. It addresses issues such as file management and documentation or dealing with a difficult client. Each organization that would like to provide a financial Trust program should develop similar manuals that help deal with different kinds of situations and provide consistency in handling those situations.

Dealing with a Difficult Client

Although the Trust Program is a unique program that benefits people receiving disability benefits, some beneficiaries; however, may be frustrated by the requirement to put their money into a Trust in order to remain eligible for disability assistance. Some feel that they do not have any choice in the matter and believe that this money does not belong to them because they cannot use it in the way they want to.

It may happen that a client becomes angry, upset or even violent towards staff when refused a money request. A Trustee should always make sure that this kind of situation is not tolerated. Coast makes very clear it has zero tolerance for violence.

Coast always advises clients on its policy against violence and also makes sure that staff is prepared to handle violent or non-violent crises. This includes special training and courses that focus on non-violent crisis intervention. Coast has experienced a few situations when clients were abusive towards Coast personnel and the clients were always informed that Coast does not tolerate this kind of behavior. In some situations, when there is a danger of dealing with a violent client, the person responsible for a Trust administration will meet the Beneficiary in the presence of another Coast worker. A Beneficiary who has a tendency to be verbally and physically abusive will be officially informed about Coast's non-violence policy and if he /she continues to be violent coast will withdraw its services as a Trustee.

File Management and Documentation

The Trustee should keep a record of all activities related to the Trust. It is imperative that records and files are maintained in a manner that allow for efficient access and retrieval while protecting clients privacy. The Trust record includes documentation related to financial and administrative activities. (At Coast each individual department provides those activities.) All active files should be stored in locked filing cabinets in staff only areas. Every organization that is a Trustee should have also enough space to store securely inactive files, which in the case of Coast, stores for 7 years after the client has left the Financial Trust Program. All files should be destroyed appropriately (e.g. by shredding or burning).

Support and Advocacy

In order for the Trust program to be successful, Coast strongly believes that all non-profit organization interested in providing Trust services to its members need to develop an adequate and strong financial, legal, administrative, and support system with the help of financial, social and legal organizations.

A support network should involve allied organizations of a similar background and professionals that help to deal with different kind of problems.

It would be very difficult for Coast to run the Financial Trust Program successfully without the extensive help of Mental Health Teams, financial advisors, social workers, lawyers or organizations such as BC Coalition for People with Disabilities, PLAN and the Kettle Friendship Society. All these organizations and individuals contribute to the Financial Trust Program by offering Trust clients and the Trustee assistance when it is needed most. For example, some of the Trust clients need help and support in setting up a Trust, in getting independent advice on a Trust, or in filling out requisition forms, etc. Occasionally, the Trustee also needs help or advice on different financial or social issues.

Some Trust clients cannot manage any money on their own even with the help of the Trustee. It is a challenge for them to apply for the Trust money or to do basic budgeting. Some of them have drug or alcohol problems and the Trustee should make

sure that the Trust money does not support their addictions. Coast, in some cases, acts through other organization such as St James Community Services Society, Kettle Society or Community Living Support which help in managing small amount of money for people who are not able to do it on their own.

Ms. M. is on disability assistance due to her mental illness. She also an alcohol problem and spends her money to support her addiction. Ms. M. has a problem managing even the smallest amount of money. She has a problem going shopping or paying her bills. When Ms. M. needs money from her Trust, St. James Community Services Society, an organization that helps people to administer their disability assistance, helps her. The money disbursed from Ms. M. Trust is managed by St. James, which pays her bills and gives her small change for pocket expenses.

Trust Advisory Committee

It is advisable that a Trustee get proper advice on managing the Trust.

Coast's Financial Trust Program faced various legal, financial and social challenges. In order for the Trust Program to be successful, the challenges had to be resolved in a professional manner. A non-profit organization such as Coast Foundation Society has limited opportunity and funds to hire lawyers or financial advisors to deal with difficult legal and financial problems. To address some of these issues, Coast Foundation Society created a Trust Advisory Committee composed of volunteer representatives of the legal, social, financial and mental health professions, relevant staff and the Executive Director.

The Meetings of the Trust Advisory Committee

Meetings of the Trust Advisory Committee are held every four months. During the meetings, a variety of legal, financial and management issues related to the Trust Program are discussed. The group focuses on issues such as wills and Trusts, competency issues, financial planning, investments, setup fees, management fees, costs of administering the program, RRSP conversion, funding sources for the Trust Program, budgeting for different services, marketing and investing issues, policies for disbursing funds after a client's death, and many others. The committee provides objective and knowledgeable guidance in setting Trust policies and procedures.

Short Summary about the Trust

1. Choosing the right Trustee(s). A Settlor of a Trust should make sure the person or organization named as a Trustee has no objection to becoming involved in the Trust. A non –profit organization that provides a Trust program should have criteria for accepting clients into program which could be based on type of disability, amount of money that is put into the Trust , the client understanding of the Trust program, the client behavior and client expectations.
2. Preparing and signing a Trust Agreement. The Trustee and the Settlor of the Trust should make sure that the Trust Agreement outlines all important aspects of Trust administration such as: the Trustee’s rights and obligations, the specific needs of the Beneficiary, rules regarding Trust disbursements, appointment of new Trustee(s), resignation of Trustee(s), replacement of Trustee, etc.
3. The Trust agreement may include clauses with regard to an Ultimate Beneficiary. The Ultimate Beneficiary is the person who inherits the money when the immediate Beneficiary dies. It is the Settlor’s choice who the ultimate Beneficiary will be.
4. The Trust Agreement has to be signed by the Trustee and the Settlor.
5. A copy of the Trust Agreement that is established for people with disability benefits has to be sent to Ministry of Human Resources for approval.
6. The Trustee can establish the Trust account at any respectable, well established bank, Trust company or credit union that is insured by CDIC or other similar agency.

The bank account should be opened in the Trust's name, for example: *Coast Foundation Society in Trust for*

7. The Trustee(s) should keep a record of all activities related to the Trust.
8. The Ministry of Human Resources must be informed how the Trust money is disbursed and if there was any financial contribution to the Trust.
9. The Ministry may refuse to accept the Trust spending as an exempt income. Any decision made by the Ministry of Human Resources with regard to the Beneficiary's PWD eligibility can be appealed.

Appendix A - Sample of Non- Discretionary Trust Agreement

THIS TRUST AGREEMENT dated this 5th day of December, 2003
BETWEEN:

(the "Settlor")

OF THE FIRST PART AND:

(the "Beneficiary")

OF THE SECOND PART

AND:

***** and COAST FOUNDATION SOCIETY
(the "Trustees")

OF THE THIRD PART

WHEREAS:

- A. The Settlor wishes to establish a Trust for the Benefit of the Beneficiary, composed of \$ ** and such other assets as may be assigned to the Trust in the future (the "Trust"),
- B. The Trustees are willing to act as Trustees of that Trust for the benefit of the Beneficiary,
- C. The Beneficiary is suffering from certain mental health problems and will continue to suffer from them for an unknown further time,
- D. British Columbia Provincial legislation provides for special consideration of some certain persons disabled by mental health problems where money is held in Trust for them and the Beneficiary is a person so entitled.

THIS AGREEMENT WITNESSES that in consideration of the agreements set out below, the parties agree as follows:

- 1. The Settlor assigns and conveys to the Trustees for the exclusive benefit of the Beneficiary, a disabled person, \$**
- 2. Coast Foundation Society and ***** each agrees to act as one of the Trustees.

3. The Trustees and each of them agree to help administer the Trust and all investments and reinvestment of the Trust assets and agree to help maintain the Trust for the benefit of the Beneficiary.
4. Any person may add other property to the Trust by delivery, conveyance, bequest or by causing the proceeds to be payable to the Trustees.
5. Coast Foundation Society (or any successor) shall be entitled to reasonable compensation in accordance with fee schedules from time to time agreed between Coast Foundation Society (or successor) and the Beneficiary, which is to include all out of pocket expenses plus reasonable compensation for Coast's services as Trustee.
6. The Trustees agree to exercise their powers in the best interests of the Beneficiary.

MANDATORY PAYMENT

7. The Trustees shall pay to or expend for the benefit of the Beneficiary such part of the income and principal of this Trust as may be required or desirable to meet the following needs, being the cost of providing the Beneficiary with the following:
 - a) devices, or medical aids, related to the Beneficiary's health or well being;
 - b) caregiver services or other services related to the Beneficiary's disability;
 - c) education or training;
 - d) necessary maintenance for the Beneficiary's principal residence;
 - e) expenses up to \$5,484 a year that promote the Beneficiary's independence;
 - f) any other item for which the expenditure is not considered "income" under the B.C. Benefits Act, Disability Benefits Program Act or other applicable statute or regulation under which the Beneficiary is receiving benefits.
8. No payments may be made from the Trust until the Beneficiary has first utilized, until exhausted, all other income and resources available to the Beneficiary from all sources other than this Trust known to the Trustees including, without limitation, benefits, payments, programs, services and funds provided, administered, sponsored or paid for by or on behalf of any governmental (federal, provincial or municipal) agency.
9. A payment may be delayed or may not be made at all if making that payment would result in the loss of government benefits.

OPTIONAL PAYMENTS

10. In addition to the payments made as described above, the Trustees shall pay to or expend for the benefit of the Beneficiary such part, all or none of the net

income and principal of this Trust as the Trustees, in their absolute discretion, determines to be in the Beneficiary's best interests.

11. The power to make the Optional payments shall be exercised for the Beneficiary without regard to more remote interests.
12. The power to make Optional payments of income or principal shall be exercised by the Trustees after considering the following suggested guidelines, so that the Trust money may be used to provide for the Beneficiary's:
 - a) health (including, without limitation, medical, dental, nursing, rehabilitation, psychiatric and psychological care);
 - b) support;
 - c) education (including special, vocational, or rehabilitating education);
 - d) welfare and comfort;
 - e) to attend a wedding or funeral or other similar event or for a vacation;
 - f) to strengthen, enrich and gladden the Beneficiary's life, including, by way of example but not of limitation, expenditures for vacation and recreation trips away from the Beneficiary's residence including persons to accompany the Beneficiary on such trips, clothing, recreation, entertainment, hobbies and "treats";
 - g) and generally to promote the Beneficiary's independence, but only after first utilizing, until exhausted, all income and other resources available to the Beneficiary for such purposes from all sources other than this Trust.

EXERCISE OF TRUSTEES POWERS –PUBLIC RESOURCES

13. As it is intended to assure initial and continued availability to the Beneficiary of all governmental payments, funds, programs, services, and facilities ("public resources") available to the Beneficiary, the Trustees are directed to exercise their powers to distribute the Trust money to supplement, exceed and extend, but not to supplant, "public resources" by providing only such health, support, education, welfare and comfort as is unavailable from "public resources".
14. It is the overriding intent of this Agreement to give the Trustees the discretion and obligation to make such payments of income and principal as will be in excess of, or in addition to, those provided by "public resources" but in no respect shall such expenditures replace or duplicate "public resources".

15. The Trustees shall have no power to pay or apply Trust assets to pay or reimburse any governmental agency, or provider of “public resources”.
16. In the event and to the extent:
 - a) any governmental agency, pay or, sponsor, or provider determines administratively, or a court shall determine, that provisions of this Trust are ineffective or are to be disregarded for purposes of determining the Beneficiary’s eligibility for statutorily provided “public resources”, or;
 - b) a court or administrative tribunal shall determine notwithstanding provisions of set out above that this Trust is or may be subject to garnishment, attachment, levy, execution, or bankruptcy proceedings instituted by any creditor against the Beneficiary, then, the Trustees may appeal that administrative or judicial determination.

GENERAL AND ADMINISTRATION

17. Payments of Trust money may be made in person to the Beneficiary or may be deposited in any bank account in the Beneficiary’s name or be paid directly to a third party for the benefit of the Beneficiary.
18. Should **** become unable to act as a Trustee, Coast Foundation Society shall be the sole Trustee of this Trust.
19. Should Coast Foundation Society wish to resign, refuse or become unable to act, Coast Foundation Society may, with the approval and consent of the Settlor, appoint a successor Trustee to act in its place, and failing agreement a successor Trustee shall be appointed by the Supreme Court of British Columbia.
20. Should the Beneficiary recover from the mental health problems referred to above, the assets remaining in Trust shall be paid to the Beneficiary.
21. Should the Beneficiary die, the remaining assets of the Trust shall form the part of the Beneficiary’s estate.
22. No interest of the Beneficiary shall be subject to assignment, alienation, pledge, encumbrance, sale, gift, transfer or other disposition in anticipation of payment prior to actual distribution, either by the voluntary or involuntary act of the Beneficiary or by operation of law, nor shall any such interest be liable for or subject to any debt, contract, obligation, claim, or liability, in contract or tort, legal or equitable, of the Beneficiary by reason of bankruptcy, insolvency, or otherwise subject to the Beneficiary’s debts or in any way be subject to attachment, garnishment, levy, execution, seizure under claim of creditor or other legal pr

23. The Coast Foundation Society as a Trustee may combine the separate Trust accounts administered under this and other similar Trust agreements with each other for purposes of commingled investment and administration of the combined Trust accounts, and the Coast Foundation Society shall allocate all Trust receipts and disbursements among the combined Trust accounts proportionately.
24. The Trustees shall allocate receipts and expenses of the Trust first to income and then to capital. If the net income from the Trust is not spent in any year, the amount not spent is to be added to capital.
25. A statement showing all receipts and disbursements and the property comprising each Trust shall be given at least annually to the Beneficiary.
26. Unless otherwise provided in this instrument:
- a) the legal title to all property of this Trust shall remain vested in the Trustee from time to time without any act of conveyance or transfer to, by or from any succeeding or retiring Trustee;
 - b) all of the rights, powers and authorities, discretionary or otherwise, granted to the original Trustee shall descend to any successor Trustee;
 - c) no Trustee shall be required to give any bond or security or to render any periodic court accounting;
 - d) all words denoting number and gender shall be construed to denote the proper number and gender applicable to the Trustee with respect to the power or duty involved;
 - e) no person dealing with the Trustees shall be obliged to inquire into the Trustees' powers or to see to the application of any money or property delivered to the Trustees; and
 - f) a successor Trustee may accept the accounts rendered and the Trust property delivered by the predecessor Trustee without review or liability.
27. This Agreement shall be construed, regulated and determined by the laws of British Columbia.

SIGNED, SEALED & DELIVERED

in the presence of:

_____) _____
Name) *****

SIGNED, SEALED & DELIVERED

in the presence of:

_____) _____
Name) *****

Appendix B - Sample of Discretionary Trust Agreement

DISCRETIONARY TRUST AGREEMENT dated this 9th day of July, 2008.

BETWEEN:

(the "Settlor")

OF THE FIRST PART

AND:

(the "Beneficiary")

OF THE SECOND PART

AND:

Coast Foundation Society
(the "Trustee")

OF THE THIRD PART

WHEREAS:

- A. The Settlor wishes to establish a Trust for the Benefit of the Beneficiary, composed of \$**** and such other assets as may be assigned to the Trust in the future (the "Trust")
- B. The Trustee is willing to act as the Trustee of that Trust for the benefit of the Beneficiary;
- C. The Beneficiary is suffering from certain mental health problems and will continue to suffer from them for an unknown further time;
- D. British Columbia Provincial Disability Legislation, the Employment and Assistance for Persons with Disability Act and Regulations, provide for special consideration for certain persons disabled by mental health problems where money is held in trust for them;
- E. The Beneficiary is currently receiving benefits under the Employment and Assistance for Persons with Disability Act and Regulations and it is one of the purposes of this Trust to protect and preserve the Beneficiary's entitlement to those benefits;

F It is one of the purpose of this Trust to assure initial and continued availability to the Beneficiary of all governmental payments, funds, programs, services, and facilities(Public Resources)available to the Beneficiary;

THIS AGREEMENT WITNESSES that the parties agree as follows:

1. The Settlor assigns and conveys to the Trustee for the benefit of the Beneficiary, a disabled person, the sum of ****.
2. Coast Foundation Society agrees to act as the Trustee.
3. The Trustee agrees to administer the Trust and all investments and reinvestments of the Trust assets for the benefit of the Beneficiary.
4. Any person may add other property to the Trust by delivery, conveyance, bequest or by otherwise causing assets to be paid or transferred to the Trustee.
5. Coast Foundation Society (or any successor) shall be entitled to reasonable compensation in accordance with fee schedules established from time to time by Coast Foundation Society (or successor), which is to include all out of pocket expenses plus reasonable compensation for Coast's services as Trustee.
6. The Trustee agrees to exercise their powers in the best interests of the Beneficiary.

ABSOLUTE DISCRETION IN THE DISTRIBUTION OF TRUST MONEY

7. In this Trust Agreement "Discretion" means absolute and unfettered discretion to the extent permitted by law.
8. The Trustee, in its absolute and unfettered discretion, may pay to the Beneficiary or expend for the benefit of the Beneficiary all, none or such part of the net income and principal of this Trust that in the Trustee's absolute and unfettered discretion the Trustee considers proper.
9. The Trustee shall exercise their discretion without regard to more remote interests.

10. In exercising its discretion, the Trustee shall consider the provisions of the Employment and Assistance for Persons with Disabilities Act and Regulations and any successor legislation and shall consider whether or not expenditure is an exempt expenditure under that legislation.

EXERCISE OF TRUSTEES POWERS - PUBLIC RESOURCES

11. The Trustee shall exercise its absolute and unfettered discretion to expand Trust money to supplement, exceed and extend, but not to supplant, Public Resources by providing only such health, support, education, welfare and comfort as is unavailable from Public Resources.
12. It is the overriding intent of this Agreement to give the Trustees the absolute discretion to make such payments of income and principal as will be in excess of, or in addition to, those provided by Public Resources but in no respect shall such expenditures replace or duplicate Public Resources.
13. The Trustee shall have no power to pay or apply Trust assets to pay or reimburse any governmental agency or provider of Public Resources.
14. In the event and to the extent that any governmental agency, payor, sponsor, or provider determines administratively, or a court shall determine, that provisions of this Trust are ineffective or are to be disregarded for purposes of determining the Beneficiary's eligibility for statutorily provided Public Resources this Trust may be varied by the Trustee so that it is so effective and in addition, the Trustees may vary this Trust so that it complies with the requirements of relevant British Columbia provincial legislation and regulations, including the Employment and Assistance for Persons with Disabilities Act and Regulations and any successor legislation so that the Beneficiary's benefits from Public Resources are preserved.

GENERAL AND ADMINISTRATION

15. Payments of Trust money may be made directly to the Beneficiary or may be deposited in any bank account in the Beneficiary's name or be paid directly to a third party for the benefit of the Beneficiary.
16. Should Coast Foundation Society wish to resign, refuse or become unable to act, Coast Foundation Society with the approval and consent of the ***** appoint a successor Trustee to act in its place, and failing agreement a successor Trustee shall be appointed by the Supreme Court of British Columbia.
17. Should the Beneficiary die, the remaining assets held in Trust shall go to *****.
18. No interest of the Beneficiary shall be subject to assignment, alienation, pledge, encumbrance, sale, gift, transfer or other disposition in anticipation of payment prior to actual distribution, either by the voluntary or involuntary act of the Beneficiary or by operation of law, nor shall any such interest be liable for or subject to any debt, contract, obligation, claim, or liability, in contract or tort, legal or equitable, of the Beneficiary by reason of bankruptcy, insolvency, or otherwise subject to the Beneficiary's debts or in any way be subject to attachment, garnishment, levy, execution, seizure under claim of creditor or other legal process.
19. Coast Foundation Society may combine the separate trust accounts administered under this and other similar Trust agreements with each other for purposes of commingled investment and administration of the combined trust accounts, and Coast Foundation Society shall allocate all Trust receipts and disbursements among the combined trust accounts proportionately.
20. The Trustee shall allocate receipts and expenses of the trust first to income and then to capital. If the net income from the Trust is not spent in any year, the amount not spent shall be added to capital.

21. A statement showing all receipts and disbursements and the property comprising this Trust shall be given at least annually to the Beneficiary.
22. Information relating to the Trust may be given to government authorities if required to preserve or increase the Beneficiary's benefits or if required by law.
23. Unless otherwise provided in this instrument:
 - a. the legal title to all property of this Trust shall remain vested in the Trustee from time to time without any act of conveyance or transfer to, by or from any succeeding or retiring Trustee;
 - b. all of the rights, powers and authorities, granted to the original Trustee shall descend to any successor Trustee;
 - c. no Trustee shall be required to give any bond or security or to render any periodic court accounting;
 - d. all words denoting number and gender shall be construed to denote the proper number and gender applicable to the Trustee with respect to the power or duty involved;
 - e. no person dealing with the Trustee shall be obliged to inquire into the Trustee's powers or to see to the application of any money or property delivered to the Trustee; and
 - f. a successor Trustee may accept the accounts rendered and the trust property delivered by the predecessor Trustee without review or liability.

24. This Agreement shall be construed, regulated and determined by the laws of British Columbia.

SIGNED, SEALED & DELIVERED
in the presence of:

SIGNED, SEALED & DELIVERED

Name
SIGNED, SEALED & DELIVERED
in the presence of:

)
)

Name

)
)
)
)

Appendix C



C O A S T
MENTAL HEALTH

Coast Foundation Society (1974) Trust Fund Cheque Requisition

Amount Requested:

\$ _____

Date: Month _____ Day _____ Year _____

Please Print Amount:

Trust Account Name: _____

Pay to: _____

Address: _____

City: _____

Prov: _____ Postal Code: _____

Phone: _____

Please describe the nature and purpose of the payment:

Is this a Mandatory Payment item? (An item which qualifies under Section 7 of the Trust Agreement).

If so please check with area: YES NO

- A device or medical aid related to your health or well being
- Caregiver Services or other services related to the beneficiary's disability
- Education or Training
- Necessary maintenance of your principal residence
- An item or service necessary to promote your independence
- An item which the expenditure is not considered "income" under the BC Benefits Act, Disability Act

Is this an OPTIONAL payment request per sections 10, 11, & 12 made at the sole discretion of Coast Foundation? YES NO

Declaration: I, _____ declare that the information herein is accurate and I have utilized and exhausted all other income and resources available to me other than this trust.

Signature: _____

Date: _____

For Coast Foundation Society (1974) Use Only

Authorized Signatory	Title	Date
----------------------	-------	------

Authorized Signatory	Title	Date
----------------------	-------	------

NOTE: A PAYMENT MAY BE DELAYED OR MAY NOT BE MADE AT ALL IF MAKING THAT PAYMENT WOULD RESULT IN THE LOSS OF GOVERNMENT BENEFITS.

Appendix D - Glossary

Asset - the financial resources of a person. An asset may include money, property or investments.

Beneficiary - a person for whose benefit the Trust is created

Conflict of Interest - happens when someone is in a position to gain from a decision that is made for another person

Disbursement - Any money taken out of the Trust .

Estate - all of the property and belongings owned by a person at the time of his/her death. It does not include joint property or insurance policies.

Express Trust - A Trust which is intentionally created by the act of the Settlor

Fiduciary Relationship - a relation in which there is a duty on the Trustee to act solely for the benefit of another person with respect to any property that is the subject matter of the relation.

Inter-Vivos Trust - A Trust that is created by a living person

Public Guardian and Trustee - a provincial appointed person responsible for protecting the interest of dependent adults and children under the age 10 19

Settlor- is the person who sets up a Trust, or the person who transfers property to a Trust.

Testamentary Trust - A Trust that is created through a will.

Testator - the deceased person who made and left a valid will.

Trust - a relationship where one person, the "Trustee", holds money or other assets for the benefit of another, the "Beneficiary".

Trustee - an individual or a Trust institution that holds legal title to property in Trust for the benefits of Trust beneficiaries.

Will - a legally enforceable document that declares the intentions about disposal and administration of the testator's estate after his or her death.

Ultimate Beneficiary - A person(s) who eventually inherits the remainder of a Trust.

Appendix E - Bibliography

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Making Trust Works. The Continuing Legal Education Society of British Columbia. Vancouver, 2000

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Therault, S., Carmen (2002). Widdifield on Executers and Trustees. Sixth Edition. Toronto, Canada: Carswell

Waters, D.W.M., (1984). Law of Trust in Canada. Toronto, Canada: Carswell.

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Appendix F - Legislation

Employment and Assistance for Persons with Disabilities Act. S.B.C., 2002, c 41

Employment and Assistance for Persons with Disabilities Regulations. B.C. Regulation 265/2002

Public Guardian and Trustee Act, R.C.B.C, 1996 c.383

Trustee Act, R.S.B.C., 1996, c.464

Trustee Investment Statutes Amendment Act S.B.C., 2002, c.33

Wills and Variation Act, R.S.B.C., 1996 C 490

Appendix G - Resources

- Coast Foundation Society (1974)
293 East 11th Avenue
Vancouver, BC V5T 2C4
(604) 872- 3502
www.coastfoundation.com
- B.C. Coalition for People with Disabilities
204- 456 West Broadway
Vancouver, B.C. V5Y 1R3
(604) 872- 0188
www.advocacy@bccpd.bc.ca
- Planned lifetime Advocacy Network
Boundary Plaza
260-3665 Kingsway
Vancouver, B.C. V5R 5W2
(604) 439-9566
www.plan.ca
- The Voice of Cerebral Palsied of Greater Vancouver
107-577 East 8th Avenue
Vancouver, B.C. V5T 1S9
(604) 874-1741
vcpgv@vcn.bc.ca

- Access Law Group
Barristers & Solicitors
Halldor K. Bjarnason, B.A. (Hons.) LL.B.
1700-1185 West Georgia Street
Vancouver, BC V6E 4E6
(604) 689-8000
halldor@trustlawyers.ca
- David Unterman
Barristers & Solicitors
200-6330 Fraser Street
Vancouver, BC V5W 3A4
(604) 321-3232
untermanlaw@telus.net