

Residential Care Subsidies and Trusts: The Devil is in the Detail

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Historically one of the reasons people settled assets into a trust was to protect those assets in the event the person went into a rest home later in life.

Government currently subsidises most of the cost of residential care if an applicant passes a means test. The means test has asset and income components. For over 65’s, the current asset threshold (effective 1 July 2024) is $291,825, or $159,810 when excluding the home and car. If a spouse or partner is living in the home, it is

excluded from the applicant's assets. Assets correctly settled into a trust are not included in the asset assessment, so this is where the potential advantage lies. As is so often the case though, the devil is in the detail…

An asset is correctly settled into a trust for residential care subsidy purposes when the asset is transferred and the resultant "paper entry" debt is gradually forgiven or "gifted" at the appropriate annual rate. This can be up to $27,000 per annum (per couple). In the five years prior to a residential care subsidy application an even smaller amount, about $8,000 per annum, or up to $40,000 can be gifted.

Any gifting in excess of the acceptable limits will be added back into the applicant's assets. Captured would be significant gifts to family members, and half of the $54,000 per annum that many settlors engaged in before gift duty ended in 2011.

Significant property value increases in recent times, without a corresponding increase in the asset or gifting thresholds, have made trusts less helpful in qualifying for the subsidy. Gifting the entire value of a home would now take decades at the above rates. A million dollar home for example could take 37 years to gift at $27,000 per annum.

Other circumstances can also reduce the likelihood of the trust assisting with a residential care application:

- Some trust settlors have amassed significant assets in their own names outside the trust. Those assets would need to be exhausted before any residential care subsidy can be sought,
- Has the trust been administered properly? For example, do the trustees hold adequate documentation relating to their decisions and detailing the movement of assets to and from the trust?
- Have the settlors treated trust assets as their own? Perhaps they have taken funds from the trust as a capital distribution rather than as a loan?

With rules tightening in recent years, these examples show how a trust that was set up with the intention of assisting with a residential care subsidy may now be of little help in that regard.

To make matters worse the trust deed may have rules that make the trust inflexible or costly to do things that need to be done when a beneficiary goes into residential care. A trustee with diminishing mental capacity may need to retire and a replacement trustee appointed, sometimes at significant cost.

Further, new laws relating to trusts came in to force in January 2021. Click here for a useful summary. The changes will, among other things, impose greater administrative burdens on most trustees, especially in relation to record-keeping and communication with beneficiaries. Trusts are likely to cost more to administer as a result.

If you want understand whether an existing trust can assist in obtaining a residential care subsidy then don't wait until a loved one goes into care. We can advise you of the potential ongoing benefits of the trust and help you weigh up whether to retain it, or wind it up.