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Giftting to Family Trusts

& qualifying for a residential care subsidy

Many New Zealanders set up family trusts to maximise their entitlement to a residential care subsidy ("RCS") so that if they live in a retirement home, they will qualify for government assistance to fund the cost of their care.

Applications for RCSs are handled by the Ministry of Social Development ("MSD") and MSD's threshold for qualifying is currently \$230,495.

The threshold is the maximum value of assets that you may own and still qualify for an RCS.

There are other requirements and qualifications to the threshold that we can discuss with you if required.

Now that gift duty has been abolished (from 1 October 2011), many people are considering forgiving in one gift the balance owed to them by their trusts and also transferring more assets to their trusts by immediate gifts so that the value of the assets they continue to own personally will be less than MSD's threshold.

We warn that such transactions may prevent the donors from ever qualifying for an RCS because, under MSD's rules against deprivation of wealth, they may be deemed to own too much to qualify for assistance.

MSD is concerned about excessive deprivation of assets and there is no limit as to how far back MSD can look to see whether you have deprived yourself of assets. When assessing what you own, MSD takes into account what you have given away in excess of MSD's limits.

Currently, MSD will allow each applicant for an RCS to have gifted \$27,000 every 12 months but, where only one of a couple applies for a subsidy, MSD will include the gifting made by their partner or spouse. So if they have gifted between them more than \$27,000, the excess will be regarded as excess gifting.

In effect, under MSD's current policy, where a couple have each gifted \$27,000 every 12 months and only one of them applies for an RCS, they will be deemed to have made excess gifting of \$27,000 on each occasion that they made gifts.

The total of excess gifting will be deemed to be still owned by them forever, and thus, included as an asset in MSD's threshold calculations.

In this discussion, we are talking about the typical case where one of a couple goes into care and only that person applies for a subsidy. The position is different where both spouses apply for an RCS at the same time. In that event, they are each allowed to gift \$27,000 every 12 months.

Please also note that, in the period five years before an application for an RCS, an applicant is only allowed to have given away assets to the value of \$6,500 per year.

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The net effect of the above

When you are considering transferring assets to a trust (or to anyone, for that matter), you should review whether you wish to maximise your ability to obtain an RCS.

If you do, you should limit your gifting to \$27,000 every 12 months and avoid making gifts in the five years before you are likely to apply for an RCS.

The limit of \$27,000 every 12 months includes gifts made by you and your spouse so that, together, you should only gift that amount (\$13,500 each), not \$27,000 each.

If you wish to maximise your ability to obtain an RCS, you should also take steps to ensure that the value of your other assets (including any inheritances you may receive), does not exceed the threshold at the time you are likely to apply for a subsidy. You could, for example, ask persons who may benefit you in their wills, to provide in their wills for your benefit to go straight to your trust, rather than to you personally. You can also set up funeral trusts (even on the day before you apply for an RCS) to hold up to \$10,000 for each funeral—such funds are exempt from MSD's threshold assessments.

We set up and administer funeral trusts which have the advantage of being independent of any funeral home or association.

You may have set up your trust to protect your assets from claims from creditors or family. In these cases, the sooner you are not owed anything by your trust, the better and you should immediately forgive all debt unless you wish to maximise your ability to obtain an RCS should you need rest home care.

Confused?

Please do not hesitate to discuss your situation with us if you wish to check your gifting program and your eligibility for an RCS.

We look forward to hearing from you.