

Precedent for a Discretionary Trust for a Sole Beneficiary

Standard Clauses

Prepared by: New Brunswick Association for Community Living
April 2011

Outline of Standard Clauses:

- 1) *Creation of trust and statement of trustees' authority.*
- 2) *Statement of non-vesting in beneficiary and intention to maximize government benefits.*
- 3) *Direction to accumulate income.*
- 4) *Relieving of duty to maintain an even hand between life beneficiary and remainderman of trust.*
- 5) *Direction to consult.*
- 6) *Gift over to remainderman of trust.*



- 1) If my son [daughter] _____ survives me, I direct my trustees to set aside the sum of _____ dollars [or part or all of the residue of the estate, or proceeds of a life insurance policy/RRSP/RRIF] for his lifetime, and to use so much of the income [or capital] therefrom, [or both] as my trustees in their absolute and uncontrolled discretion deem advisable from time to time.

2) Neither the said principal amount originally constituting this trust, nor any income therefrom shall vest in my son, and the only interest he shall have therein shall be in payments actually made to him, or on his behalf from time to time. Without in any way binding or limiting the discretion of my trustees, it is my wish that in exercising their discretion under this trust, my trustees seek to maximize the benefits or services which my son is receiving or may be entitled to receive from other sources if payments from the income or capital of this trust were not paid to him or made on his behalf. In particular, it is my wish that this trust maximize my son's entitlement to benefits or services provided by the New Brunswick Department of _____, or its successor agencies, or by other government or public agencies. I recognize that in view of the extensive cost involved in providing lifelong support for a person with a disability, distribution of income or principal to my son would rapidly dissipate the trust in the absence of the benefits or services my son now receives or may be entitled to receive in the future. In order to maximize such benefits or services, I authorize my trustees to make payments varying in amount and at such time or times as my trustees in their absolute and uncontrolled discretion deem advisable.

3) I further direct that any income from the trust which is not used during the year it is earned shall be accumulated by my trustees and added to the capital of the trust. However, should it become unlawful for my trustees to accumulate income, then any income not paid in any year to my son, or used on his behalf, shall be paid to _____.

4) I further relive my trustees of their duty to maintain an even hand between my son as life beneficiary and the remainder beneficiaries of this trust, it being my wish that my trustees should have access in their absolute and uncontrolled discretion to the entire income and capital of the trust for payments they deem advisable to or on behalf of my son _____.

5) Without and way binding or limiting the discretion of my trustees, it is my wish that in making decisions concerning payments from the trust to or on behalf of my son, my trustees consult with and be guided by the opinions and recommendations of _____.

- 6) Should my son die before the capital and any accumulated income of this trust has been distributed or exhausted, then I direct that the trust shall terminate and any amount of capital and accumulated interest that is remaining shall be given to

_____.

Miscellaneous Clauses

Outline of Miscellaneous Clauses:

- 1) *Limit on authority to invade capital of trust.*
- 2) *Authorization to use trust capital and accumulated income toward purchase of a home in the community.*
- 3) *Spendthrift clause.*
- 4) *Authorization to use trust capital and accumulated income at death of beneficiary for funeral and burial expenses.*
- 5) *Authorization to make decisions under Income Tax Act (Canada).*
- 6) *Authorization to use trust to pay taxes incurred by beneficiary resulting from preferred beneficiary election.*



- 1) *Clause to limit authority to invade capital of trust:*

I direct my trustees to use so much of the income from the trust as my trustees in their absolute and uncontrolled discretion deem advisable from time to time. In order to preserve the original capital of the trust and obtain the highest yield in income, I direct that my trustees only make invasions on the original capital of the trust in circumstances that my trustees in their absolute and uncontrolled discretion deem necessary.

- 2) *Clause authorizing trustees to use trust capital and accumulated income toward purchase of home:*

I declare that my trustees are authorized to apply all or any part of the existing capital and accumulated income of this trust as they in their absolute and uncontrolled discretion deem advisable toward the purchase of a home for my son, _____, or to apply all or any part of the capital and accumulated income as they in their absolute and uncontrolled discretion deem advisable toward any scheme, program or plan which requires a capital investment or expenditure to provide a home

for my son _____. In the exercise of this uncontrolled power, I authorize my trustees to transfer to any other person, organization or company any part of the capital and accumulated income of the trust as they deem advisable for the fulfilment of any such scheme, program or plan.

3) *Spendthrift clause:*

Prior to actual receipt by my son, _____, no income or capital under this trust shall be subject to assignment, anticipation, or alienation by my son or for control or interference by any creditor of my son, or to garnishment, attachment, execution, or other process available to creditors to satisfy any debt or liability of my son.

4) *Clause to authorize payment of funeral and burial expenses of beneficiary:*

Should my son die before the capital and any accumulated income of this trust has been exhausted, then I authorize my trustees to pay for my son's funeral and burial expenses from the trust fund. Following this, I direct that the trust shall terminate and any amount of capital or accumulated interest that is remaining shall be given to

_____.

5) *Clause authorizing elections under Income Tax Act (Canada)*

Without in any way limiting or binding the discretion of my trustees, I authorize my trustees to make elections permitted under the *Income Tax Act* (Canada). This authorization in no way or manner provides my son any greater rights under this trust than heretofore stated.

6) *Clause authorizing trustees to pay taxes incurred by beneficiary under preferred beneficiary election:*

Without in any way limiting or binding the discretion of my trustees, I authorize my trustees to pay from the trust income or capital any income tax liability incurred by my son _____ as a result of my trustees making a preferred beneficiary election under the provisions of the *Income Tax Act* (Canada).