MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Map. The Guide to Social Development Policy

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Ownership by a trust or company

If property or any other assets are owned by a trust, these are not included in the client's means assessment of assets. This is because the client does not own the assets.

Generally when a trust is established and a client transfers an asset into the trust, a Deed of Acknowledgement of Debt is established and gifts are made each year to reduce the debt. The Deed of Forgiveness of Debt shows the value of all outstanding debts owed to the client by the trust.

This outstanding debt must be included as an asset in the means assessment of assets.

Note you may also need to include any excess gifting and consider deprivation.

If you are unable to determine the client's assets or what may be included in the means assessment of assets seek advice.

For more information see:

- Key words within trusts
- Interpreting Trusts
- Gifting
- Deprivation of assets and income
- Residential Care Subsidy Trusts

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Key words within trusts

Trust

A trust is an obligation accepted by the trustees to hold property, typically given by the settlor, for the benefit of beneficiaries of the trust.

Settlor

The person who sets up the trust. Normally this is the person intending to transfer assets to the trust but sometimes it is another person (such as a lawyer) who is merely setting up the mechanism of a trust to be used by someone else (such as the client).

Trustees

The people who hold the ownership of the trust's assets and look after them for the beneficiaries. Their prime duty is to carry out the terms of the trust and preserve the trust property.

Trustees have the legal ownership of the assets but not the beneficial ownership i.e. they are only holding the property for the benefit of others.

Beneficiaries

The people for whose benefit the assets are held by the trustees. They include the people who will ultimately get the property of the trust and those that may receive the benefit of the trust's assets or income during the continuation of the trust.

Trust deed

This is the document that establishes the trust, which is signed by the settlor and the trustee(s). This document sets out what the trustees' powers are under the trust and for this reason is extremely important.

Testamentary trust

A trust established through a will. This type of trust is only established once a person has died, having made provision for it in their will. There will not be a separate trust deed; the will itself is the document that establishes the trust.

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Interpreting Trusts

When you have the required information regarding a trust you will need to establish the following:

1. Do the beneficiaries of the trust include the client or their partner (if any)?

If yes there may be an entitlement to income if any is generated from the trust. Check the financial statements to see if:

- income is being generated
- income is distributed from the trust to the client or their partner (if any) **and**
- any conditions set out in the trust deed around distributing any income.

2. Is there a history of trust income being paid to the client or their partner (if any)?

If yes include any estimated income in the means assessment of income. If the income has stopped you need to establish the reasons for this and consider if the client or their partner has deprived themselves of income.

3. Was any property transferred to the trust by the client or their partner (if any) at a fair value?

The capital valuation at the time of sale should confirm that the transfer to the trust was for a fair value. If the value was less than the capital valuation you will need to consider if the client or their partner has deprived themselves of an asset.

4. Are the values of any investments transferred into the trust confirmed?

Unless the trust purchased the investments for the client or their partner (if any) out of its own assets the value of any investment transferred to the trust should be recorded in a Deed of Acknowledgement of Debt and verification of the value of the investment at time of transfer should be provided. If the Deed of Acknowledgement of Debt is less than the value of the asset you may need to consider if the client or their partner has deprived themselves of an asset. If the trust has purchased the investments from its own assets then the sale price should be recorded in the trust's financial statements.

5. Is there an outstanding debt owed to the client or their partner (if any) by the trust? Is interest payable on the debt?

If so the latest Deed of Forgiveness of Debt should show the value of any outstanding debt balance. The Deed of Acknowledgement of Debt should show any interest payable and repayment details. If there is no interest you need to establish the reasons for this and consider if the client or their partner have deprived themselves of income.

6. Is there a life interest?

Any life interest granted by the trust should be included as an asset of the client. The sale and purchase agreement will show you if there was a life interest retained when the client sold the property to the trust. This will appear in the special terms of agreement section at the end of the sale and purchase agreement. Seek advice from a Financial Analyst as to the current value of the life interest.

Note trusts can be complex and the client's interest may be difficult to determine. If you are unsure seek advice.

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