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Residential Care Subsidy and Gifting

In October 2011, gift duty was abolished in New Zealand. Previously, gifts of more than $27,000 attracted gift duty in New Zealand. To avoid paying gift duty when transferring property into a Trust, the property was typically transferred with a loan back to the vendors for the purchase price. The debt was progressively forgiven by way of gifts of $27,000 annually until no debt was left.

From 1 October 2011, no gift duty has been charged for gifts to Trusts. Any debt owed by a Trust can be forgiven in full without incurring any gift duty. For many people this meant that they have since forgiven all debt owed to them by a Trust from that date. Others continued with existing gifting programmes of $27,000 per person per year because of Work and Income's rules regarding Residential Care Subsidy eligibility.

Work and Income has now indicated its policies regarding gifting to Trusts and Residential Care Subsidy are likely to change in the future. This is likely to impact upon any existing or future gifting programme.

Asset testing

When someone requires full time rest home care and applies for a Residential Care Subsidy through Work and Income, an asset test is completed. If the person who needs care has a partner or is married, all assets owned by both partners is included. While a home held by a Trust is not included in the asset test, any debt owed by a Trust will be included.

Work and Income looks back at the Trust transactions which have taken place since a Trust was established. It looks to determine whether a family home was transferred at fair value and how debts have been dealt with.

Any debts to a Trust (or any other person) which have since been forgiven can be counted back into a person's asset test, so that they are treated as if they have not occurred and that the amount of the debt is money available to pay for care. There are different rules as to what is "allowable gifting" depending on when the gifting has taken place.

If an application for the Subsidy is made, Work and Income treats gifts made within five years of that application differently than gifts made prior. In the five years prior to making an application, gifts of $6,000 per year are allowed. That means that anything over $30,000 in that period will be treated as if it didn't occur and included in the asset test.

Previously, Work and Income allowed gifts of up to $27,000 per person per year for any gifts made more than 5 years before an application for the Subsidy. This has since been reviewed so that the limit is $27,000 per couple. Work and Income has now advised that its policies are likely to tighten further.

New Work and Income rules

Work and Income's recent advice to solicitors and their clients is that allowable gifting is likely to be reduced to **$13,500 per person per year** in the future.

This is because Work and Income has indicated that it is likely to take into account a couple's total assets, whether they are both alive or if one person has died. Previously, if the person who required care was a widow or widower, Work and Income did not require details of their late partner's assets and so only one person's gifting was relevant. That is highly likely to change so that all gifting completed by either partner during their lifetime will be included in the asset test.

If you established your Trust for the sole purpose of qualifying for a Subsidy in the future, and your Trust only owns your family home, you may want to reduce the gifting you complete every year from $27,000 per person to $13,500.

If there are other reasons why you hold assets in a Trust, you may want to forgive the balance of any debt owed to you in one gift, rather than continuing with a gifting programme.