



SUCCESSION  
PLANNING:  
What parents &  
caregivers of a  
loved one with  
FASD need to know

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# Estate Planning

## What is a Will?

- A Will is a legal document effective upon your passing, that outlines who will receive your assets (money and property), and how. Those who receive your assets are known as Beneficiaries, and the person(s) who will manage your affairs is the Estate Trustee.
  - A Will is the best way to make sure that after your passing, everything is in place so that your loved one with FASD is taken care of, that they receive proper finances and maintain government benefits.
  - You can decide who manages their finances and put checks and balances in place to make sure that they are managed properly.
  - If it is within their ability to do so, your child with a disability should also create their own Will.



## What would happen if I don't have a Will?

- Without a Will, the court will decide who manages your estate.





## How do I decide who will be my Estate Trustee?

An Estate Trustee, also referred to as an Executor, is the person who will carry out the terms of your Will.

When deciding who will be your Estate Trustee, many things need to be considered:

- Sensitivity: they should be sensitive to your wishes and the needs of your loved one with FASD;
- Time: they should have enough time to carry out the responsibilities that come with being your Estate Trustee;
- Knowledge: they should know about the needs of your child;
- Longevity: they should be **around** to see the terms of the will are taken care of- this can be a lengthy process;
- Trustworthiness: they should be able to put aside their personal interest in your estate, and prioritize the needs of your child;
- Living in close proximity to you/your loved one: this may not always be the case, however it is advisable that they live in the same province/territory, as there are legal implications that can complicate across-border communication.

## How do I divide my Estate amongst my loved ones?

- Things to consider:
  - The size of your Estate;
  - The needs of your child(ren);
  - The age, health, and required support of your loved one with FASD;
  - Other sources of income your child is receiving (i.e. Disability Tax Credit, RDSP);
  - Your child's current and future expenses;
  - Your child's standard of living;
  - Your child's long-term residence and housing needs.

## Who will take care of my child after I pass?

- If your child is a minor (under the age of 18), you can decide who will care for them after your passing.
  - You can appoint a guardian for your child if there is no one else entitled to have custody.
  - After 90 days, the person you have appointed needs to apply to the court to be your child's permanent guardian.
  - Even if you have appointed someone to be your child's guardian, anyone can apply to the court for custody and guardianship. It is then up to the court to decide who should be their guardian.
- If your child is an adult (over the age of 18), you do not have any rights to appoint a guardian.
  - At the age of 16, the law considers people to be able to make decisions about their personal care.
  - By age 18, the law considers anyone to have the ability to manage their own property.
  - This applies to everyone- including individuals with FASD and other disabilities, unless the province or territory has specific alternatives such as Guardianship for dependent adults or representative agreements for example.

# Trusts

## What is a trust?

A **trust** is when property is managed by someone on behalf of another person (i.e. your child with FASD; the Beneficiary).

- This way, you can provide property to your child after your passing, but have some control over how and when it is used.
- There are various types of Trusts, each with their own advantages and limitations.
- The person who will manage your property, known as the **Trustee**, is usually responsible for:
  - Managing the RDSP;
  - Managing your assets and deciding what should be given to your child.
- It is a good idea to get a lawyer to help you prepare a Trust and ensure that your wishes for your child are met.
- **Plan Institute** hosts workshops and Webinars on **Wills, Trusts and Estate Planning**.

## What is a Henson Trust?

- A discretionary trust is often referred to as a Henson trust. In this case, the Trustee has full control over the assets in the trust.
- A non-discretionary trust means that your child will have some control over the assets in the trust.

# Guardianship

- If you pass away while your child is under the age of 18, they will likely be cared for by their other parent. If you have not made other arrangements, your child's guardian may be chosen by the court.
- By law, you are allowed to name a guardian for your child in a will, to care for them after you pass away. Choosing someone you trust, who knows and loves your child, will relieve a lot of stress and worry. When considering who to choose as your child's guardian, think about:
  - If they are physically able to care for your child;
  - If they are financially stable;
  - If your child already has a relationship with them;
  - If they have their own children, and how this might affect your child;
  - If they will be a good parent to your child.
- It is important to discuss guardianship with the person you are considering to choose as your child's guardian, before you do so. Do not assume a friend or family member would be willing and able to take on this role.





# RDSP

## What is an RDSP?

- RDSP is a Registered Disability Savings Plan, that helps parents of children with a disability (including FASD) save for their future.
- Long-term savings plan.
- The plan holder can open the RDSP, manage and make decisions about contributions, investments and payments.
  - If your child is under 18, a parent or guardian can be the holder of the RDSP.
  - Once your child turns 18, you can continue to be the holder, allow your child to be the holder, or become joint holders.
- You can decide if payments from the RDSP are received as recurring payments, lump sum or specified payments.
- In terms of succession planning, having more than one plan holder would be helpful. If one person is unable to continue being a plan holder, having another person would allow for a smooth transition of the role/responsibilities of the plan holder.
- [Check out this 'how to' guide on RDSPs.](#)
- Plan Institute holds workshops and tele-seminars on the [RDSP](#), and has a [website](#) dedicated to educating people on the RDSP.



## Disability Tax Credit

- Disability Tax Credit ([DTC](#)) helps individuals with a disability (including FASD) save on how much income tax they are required to pay.
  - Qualifying for DTC means the person may also open a RDSP.
  - [Child Disability Benefit.](#)



# Self-directed Support Organizations

Small non-profit organizations like [Vela Canada](#) can help plan your child's future, advocate for their needs, monitor services and make sure they are safe, connect to their community, etc. This can be done by forming a Microboard, and/or accessing individualized funding.

- Vela Canada is based in British Columbia, however, they often mentor and provide information to groups in other provinces.

## What is a Microboard?

- A Microboard is a small group of family and friends who create a board to help your child with a disability, plan their life. The people who are part of your child's Microboard, should hold similar values as you, people who have worked with your child and bonded with them, and those who care about your child's well-being.
- Microboard members do not necessarily need expertise in the area of disability or support services. The importance is placed on the relationship the person has with your child, their knowledge and commitment to them.
- Microboards are recommended to include 5-8 people.
- There are also options to access funding for the individual with a disability.



# Personal Support Network

Plan Institute promotes the formation of [Personal Support Networks](#), where people are invited to play a specific role in the life of your child with FASD.

- This includes calling to check in, helping them with chores and grocery shopping, or taking them to social outings.
- Having a Personal Support Network will offer safety and security, bring joy to your child, and will put your mind at ease, knowing that your child is being supported.



## Circles of Support

A circle of support is a group of people who come together to support and share a relationship with a person who has a disability, and may be at risk of becoming isolated and surrounded by people who are in their life only because they are paid to be.

- [NABORS](#) works to protect people through strong circles of support, that includes family members, friends, a neighbor, teacher, co-worker, peer, community member or former support staff.
- Use Plan Institute's [worksheets](#) to help you plan for your loved one

# Other Helpful Resources

- [Safe and Secure: Seven Steps on the Path to a Good Life for People with Disabilities](#)
    - A free inspirational guidebook for parents and other family members who are concerned about the future of their relative with a disability.
  - [Future Planning Tool](#)
    - Build a plan for yourself or anyone with a disability.
  - [Facing the Future Together Workshop](#)
    - This workshop will help families to plan for the future and start the conversation between current and future caregiving generations.
  - [Tax, Benefits, Trusts and Wills Toolkit for Ontarians with Disabilities](#)
    - Does not contain legal advice, but is an overview of legal considerations, introducing you to the issues so that you know what the outcomes are and what questions to ask when seeking professional assistance.
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# Glossary

**Assets**- property owned by a person or company.

**Beneficiary**- those who receive your assets after your passing.

**Estate**- property or possessions. the legal position or status of an owner, considered with respect to property owned in land or other things.

**Estate Trustee**- a designated representative who is responsible for carrying out the terms of your Will.



# Provincial/Territorial Resources

Province/ Territory	Disability Benefits- Financial	Estate Law	Legal Information	Other Information/ Resources
<b>Alberta</b>	Financial Assistance for People with Disabilities	Wills in Alberta	Centre for Public Legal Education Alberta	FASD Alberta
<b>British Columbia</b>	Disability Assistance	Wills and Estates	Legal Services Society	The Asante Centre
<b>Manitoba</b>	Employment and Income Assistance	Public Guardian and Trustee	Community Legal Education Association	Manitoba FASD Centre
<b>New Brunswick</b>	Family Supports for Children with Disabilities	Wills and Estate Planning	Public Legal Education and Information Service	FASD Centre of Excellence
<b>Newfoundland &amp; Labrador</b>	Health and Community Services- For Persons with Disabilities	Wills, Estates and Guardianship	Public Legal Information Association	FASD NL

# Provincial/Territorial Resources

<b>Northwest Territories</b>	Income Assistance-Policy Manual	Estate Administration	Legal Services	Health and Social Services-FASD
<b>Nova Scotia</b>	Disability Benefits	Estate Services	Legal Information Nova Scotia	Disability Support Program
<b>Nunavut</b>	Income Assistance	Probate and Wills	Legal Services Board	Piruatigiti Resource Centre
<b>Ontario</b>	Ontario Disability Program	Office of the Public Guardian and Trustee	Community Legal Education Ontario	FASD ONE
<b>Prince Edward Island</b>	Permanent Disability Benefit Social Assistance	Public Trustee, Public and Official Guardian	Community Legal Information Association of PEI	AccessAbility Supports
<b>Québec</b>	Services Québec-Citoyens	Justice Québec	Educaloi	Safera

# Provincial/Territorial Resources

<b>Saskatchewan</b>	Saskatchewan Assured Income for Disability	Wills and Estates	Public Legal Education Association	FASD Network of Saskatchewan
<b>Yukon</b>	Services for People with Disabilities	Estate Administration	Public Legal Education Association	FASSY

