

# Will receiving an inheritance affect your beneficiary's social security benefits?

Estate Planning Client Guide

Receiving an inheritance may seem like a windfall, but for a beneficiary who is on a pension or entitled to other social security benefits, there could be adverse consequences.

Social security benefits from Centrelink can provide a basic standard of living for a pensioner. Not only the income payments are important, but also the substantial fringe benefits that may be available (such as medical, pharmaceutical, transport and accommodation concessions).

Most Centrelink social security pensions and other benefits are subject to two qualifying means tests: an assets test and an income test. The receipt of an inheritance usually causes an increase in both the assessable assets and assessable income of a beneficiary on social security support, potentially resulting in either a reduction or the loss of their entitlements.

## What if the beneficiary gives away or renounces the inheritance?

A pensioner is only allowed to gift \$10,000 in a year and a maximum of \$30,000 over a continuous five year period. If a pensioner gifts more than the allowable amount, Centrelink will deem the pensioner to receive income from the excess amount over the next five years, which may reduce their social security benefits.

If a pensioner beneficiary renounces their entitlement to an inheritance, they may be deemed to have deprived themselves of an asset and the inheritance will be subject to the same deeming rules that apply to gifting. This may lead to additional 'deemed income' being assessed against the pensioner by Centrelink, even though they have not had the benefit of the income. As a result, renouncing the inheritance may leave the beneficiary worse off.

## Can a testamentary discretionary trust structure assist a pensioner beneficiary?

A trust is an ownership structure in which the assets of the trust are owned by one person or organisation (the trustee) but held for the benefit of other individuals or organisations (the beneficiaries). A testamentary discretionary trust is a trust created within and by your Will but does not take effect until your death.

The trustee has the discretion to distribute the income or capital of the trust between beneficiaries nominated in your Will.

Social security rules make it difficult to shield trust assets from Centrelink assessment for a pensioner beneficiary. When a testamentary discretionary trust is activated by the death of a testator on or after 1 April 2001, the assets and income of the trust are attributed to a pensioner who:

- is a potential beneficiary
- has control of the trust (irrespective of whether the pensioner is a potential beneficiary) or
- is a potential beneficiary and an associate has control.



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A person has 'control' if they act as a trustee of the testamentary trust, are able to remove or appoint the trustee, or are able to vary the trust deed or veto the decisions of the trustee. Control can also occur where a person has some influence over the trustee to act in their favour or in accordance with their wishes.

As a result, careful consideration should be given to the social security status not only of potential beneficiaries of a testamentary discretionary trust, but also its trustees. If a pensioner is a potential beneficiary or is a trustee, the entire income and assets of the trust may be attributed to them by Centrelink.

Specialist advice should be obtained which takes into account your circumstances and those of your beneficiary.

## Would you like further information?

For further information please contact your AET Estate Planner on 1800 882 218.

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