

# Real Estate & Housing

## Estate Planning for Special Needs Families

Hugill & Ip

The Ability Bridges Seminar

30 May 2026 | Café 8, Central Pier 8, Hong Kong

**Know Your Rights. Protect Your Family.**



**HUGILL & IP**  
SOLICITORS

### THE ABILITY BRIDGES SEMINAR

Know Your Rights. Protect Your Family.

**Saturday, 30 May 2026** 10:00 am – 12:00 noon Café 8, Central Pier 8, HK  
Free Event · Presented in support of Love21 Foundation, The Nesbitt Centre and Sensational Foundation

#### SEMINAR PROGRAMME

- 10:00 am** Welcome & Introduction
- 10:10 am** Legal Rights & Protections — Disability Discrimination Ordinance, EOC remedies & employment rights
- 11:00 am** Divorce, Custody & Access — Family court, custody, care & control, visitation, maintenance & legal aid
- 11:20 am** Real Estate & Housing — Special Needs Trusts, property planning & housing access
- 11:40 am** Open Q&A with our panel of lawyers
- 12:00 noon** Close

#### TOPICS AT A GLANCE

Legal Rights & Remedies	Divorce, Custody & Access	Real Estate & Housing
<ul style="list-style-type: none"><li>Disability Discrimination Ordinance (Cap. 487)</li><li>Rights in employment, education &amp; services</li><li>EOC complaints &amp; court remedies</li></ul>	<ul style="list-style-type: none"><li>Best interests of the child — special needs focus</li><li>Custody, care &amp; control, and visitation rights</li><li>Maintenance beyond 18 &amp; Legal Aid eligibility</li></ul>	<ul style="list-style-type: none"><li>Wills, EPAs &amp; private trust structures</li><li>Government SNT — eligibility &amp; asset limits</li><li>Public housing priority &amp; adaptation works</li></ul>

**RSVP**  
Reserve your on-site or virtual attendance — spaces are limited  
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Access to justice and legal knowledge is a fundamental right, not a privilege.  
The Ability Bridges — a landmark 6-month pro bono campaign empowering individuals with disabilities and their families.

# Overview: Planning Tools at a Glance

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**01**

## **Wills**

The foundation of estate planning, allowing you to appoint executors, direct asset distribution, and avoid intestacy complications.

**03**

## **Private Trusts**

Highly customisable structures that provide professional management, asset protection, and guaranteed long-term housing.

**02**

## **Enduring Power of Attorney**

A critical tool for incapacity planning, ensuring continuity of financial support for your child during your lifetime.

**04**

## **Government SNT**

An affordable, cash-only trust option managed by the Director of Social Welfare Incorporated to fund daily care.

# Wills: The Foundation of Estate Planning

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## Core Functions

A Will appoints an executor, directs asset distribution, and avoids intestacy that can force property to vest on an incapable child.

## Private Property Options

### 1. Sale

Executor sells the property and distributes net proceeds.

### 2. Vesting to Beneficiary

Executor transfers property directly. Difficulty: the beneficiary may lack capacity to sign conveyancing documents.

### 3. Life Interest

Grants the right to reside for life; executor manages the property until the life tenant's death.

## Stamp Duty & Costs

- No estate duty or inheritance tax.
- No ad valorem stamp duty on real property vested by succession under a Will.

### Pros & Cons

**Pros:** Highly tailored; takes effect only on death; can be amended while the parent has capacity. Avoids intestacy.

**Cons:** Depends on a trustworthy executor; direct vesting can be problematic if the beneficiary lacks capacity to manage assets.

# On Subsidized flats - Alienation Restriction

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- **Premium paid / restriction lifted**

- Sell in open market
- No stamp duty

- **Restriction still in force**

- Sale via **HOS Secondary Market** (Housing Authority) or the **FFSS Secondary Market** (Housing Society)
- Vesting to Beneficiary

**Note:**

- Pre-Approval is necessary
- No Stamp duty, BUT administrative fee applies

# Enduring Power of Attorney: Planning for Incapacity

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An EPA lets parents appoint attorneys to manage finances for the benefit of the parent (donor) and the other person whom they expect to provide the needs, when and if the parents become incapacitated, protecting ongoing support for a special needs child.

## Key Advantages

- **Effective During Incapacity:** Remains valid if the parent loses mental capacity.
- **Broad Powers:** Attorneys can pay living and care expenses, manage investments, and sell property. The authority and restrictions of attorneys, including to provide for needs of other person(s) whom the donor expects to, can be set out in detail in the EPA.

## Associated Costs

Legal preparation, medical assessment, and registration with the High Court of Hong Kong are typically required.

## Limitations & Risks

- **Donor must be fully mentally capable at the time of signing.**
- **Invalid Upon Death:** The EPA is automatically revoked when the donor dies; attorneys cannot make post-death housing or medical decisions.
- **Revocation Costs:** Revoking an EPA during lifetime can involve costly court proceedings.
- **Stamp Duty:** Transferring real property into a private trust may trigger ad valorem stamp duty.

# Private Trusts: Structure and Real Estate

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## Discretionary Structure

In a discretionary family trust, the trustee has full discretion over distributions among a class of beneficiaries.

Beneficiaries have no fixed entitlement unless the trustee exercises discretion in their favour, allowing flexibility for changing needs.

## The Three Certainties

To validly create a private trust it must show three legal certainties:

- **Certainty of Intention:** A clear intention to create a trust.
- **Certainty of Subject Matter:** Clearly identified property (e.g., a specific flat).
- **Certainty of Objects:** Identifiable beneficiaries or a defined class.

## Direct Holding of Property

Real estate can be placed into a private special needs trust, giving functional benefits:

- Provides a guaranteed long-term residence for the child.
- Trustee maintains and insures the property; it can be rented to fund care.
- Assets in trust pass outside probate, preserving care arrangements on the parent's death.

# Private Trusts: Key Advantages

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## Professional Management

Managed by a professional trustee or private trust company, protecting against mismanagement or exploitation.

## Tax Benefits

No estate duty, inheritance tax, capital gains tax, or gift tax in Hong Kong. Trust assets do not affect Disability Allowance eligibility.

## Long-term Continuity

Trusts may now exist indefinitely, as statutory perpetuity restrictions were largely abolished in 2013.

## Asset Protection

Assets in a properly structured discretionary trust are generally insulated from the settlor's personal creditors. Trustee may sell and reinvest real properties.

## Confidentiality

Trust arrangements are entirely private; there is no public register of private trusts in Hong Kong.

## Housing Security

The trust deed can grant the beneficiary an express right to live in and occupy the property for life.

# Private Trusts: Costs, Stamp Duty & Risks

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## Option 1: Lifetime Transfer

### Practical Risks

- If the property is mortgaged, lender consent or refinancing is required.
- May need to discharge the mortgage or re-document security.

### Costs

Legal fees, registration fees, and possible mortgage-related costs.

### Stamp Duty

**Ad valorem stamp duty** is charged based on the market value of the property at the time of transfer (unless a rare exemption applies).

## Option 2: Post-Death Transfer

### Practical Risks

- Transfer cannot occur until Grant of Probate is obtained, which may be time-consuming.
- During the gap between death and transfer, there may be no dedicated manager focused solely on the property.

### Costs

Legal fees for probate and conveyancing, plus Land Registry registration fees.

### Stamp Duty

**None.** There is no stamp duty on vesting property into the trust pursuant to the Will.

# Government Special Needs Trust (SNT)

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## Key Features & Eligibility

### Overview

Established in Dec 2018. Trustee is the Director of Social Welfare Incorporated. Manages cash assets after parents' death to disburse funds to designated carers.

### Requirements

- **Settlor:** Parent/relative, HKPR, 18+, not bankrupt.
- **Beneficiary:** Intellectual disability/autism, HKPR.
- Must prepare a Care Plan and sign a Letter of Intent.
- Annual fee: HK\$20,000 per trust account.

### Critical Limitation: Cash Only

The SNT accepts **only cash in HKD**. Real property must be liquidated first by the executor or parent before injection.

## Pros & Cons

### Advantages

- Cheaper than private trusts with lower administration costs.
- Provides affordable financial planning.
- A registered social worker acts as a case manager to oversee the beneficiary's needs over time.

### Disadvantages & Risks

- **Cash-only:** Forces liquidation of the family home.
- **Setup Time:** Discussions with SWD regarding details may take a long time.
- **Exhaustion Risk:** If the executor fails to inject additional funds (probate delay) before the initial trust funds are exhausted, the SNT will be terminated with no re-activation.
- **Residual Limits:** Surplus can only be gifted to ONE individual and/or ONE s.88 charity.

# Trusts & Public Housing: Critical Interactions

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## Impact on Subsidised Housing

### Public Rental Housing (PRH)

- **Government SNT:** Disbursements to carers fund daily living costs.
- **Private Trusts:** Paying regular income may affect means-tested public housing or welfare benefits by breaching income or asset limits.

### Related Authority Schemes

- **Harmonious Families Priority Scheme:** Priority for families living with or near dependent relatives (including special needs adults).
- **HOS / GSH:** No special priority for special needs families,

## Strategic Considerations

Families must carefully evaluate their estate planning structures against housing policies. Key factors include:

- Direct property ownership vs. trust ownership.
- The total size of trust assets and the frequency/amount of distributions.
- The potential impact on the beneficiary's ongoing eligibility for PRH and other subsidised schemes.

### The Importance of Legal Advice

Professional legal advice is **essential** when structuring wills, trusts, and property transfers. Poorly structured arrangements can lead to the inadvertent disqualification of the special needs beneficiary from vital subsidised housing or welfare programs.

# Key Takeaways: Protecting Your Family's Future

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<b>Wills</b>	The foundation of estate planning; appoints executors, directs asset distribution, and avoids intestacy complications.
<b>Enduring Power of Attorney</b>	Ensures continuity of financial support and property management during the parent's incapacity, but ceases upon death.
<b>Private Trusts</b>	Offers professional management, asset protection, and guaranteed long-term housing, though setup involves costs and stamp duty.
<b>Government SNT</b>	An affordable, cash-only trust managed by DSWI to fund daily care, requiring liquidation of real estate prior to injection.
<b>Housing Interaction</b>	Trust distributions and property ownership must be carefully structured to avoid disqualifying beneficiaries from public housing.

*"Legal advice is essential when structuring wills, trusts, and property transfers to secure your family's future."*