

InfoSheet

Testamentary trusts

A will including a testamentary trust may be suitable for you.

Efficiency⁺ Fulfillment⁺ Integrity⁺ Teamwork

What is a testamentary trust?

A testamentary trust is a particular type of trust established by your will. On your death the trust becomes the owner and manager of the assets that you give to the trust in your will.

Your appointed trustee has the discretion to distribute the income and the capital of the trust to nominated beneficiaries.

What are the benefits of a testamentary trust?

Minimisation of income tax

- Testamentary trusts are subject to a different tax regime to other types of trusts
- Each child beneficiary has a tax free threshold of \$6,000.00
- The income of testamentary trusts can be distributed by your trustee to those beneficiaries that pay the lowest rate of tax.
- The tax saving from the income of a testamentary trust being spent on a child or a grandchild may effectively subsidise the education or maintenance of that child or grandchild

Capital gains tax

There is no imposition of CGT on the transfer of assets to a testamentary trust. The death of a person is often a tax effective time to effect the transfer of an asset into the shelter of a trust.

Family law disputes

A testamentary trust may protect your assets from distribution to a spouse of your beneficiary in the event of divorce or separation. The Family Court cannot order the sale or transfer of an asset in a testamentary trust in connection with the division of the assets of a marriage. It can however take the value of the asset into consideration.

Bankruptcy of a beneficiary

Creditors of a bankrupt beneficiary do not have access to the assets left by you to a testamentary trust despite the fact that the bankrupt beneficiary is one of the named beneficiaries under the terms of the testamentary trust.

Spendthrift/gambling or alcoholic beneficiaries

By distributing the inheritance of a beneficiary who has a personal problem to a testamentary trust with an independent trustee you can protect the beneficiary from frivolously wasting that inheritance.

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