



TESTAMENTARY TRUSTS

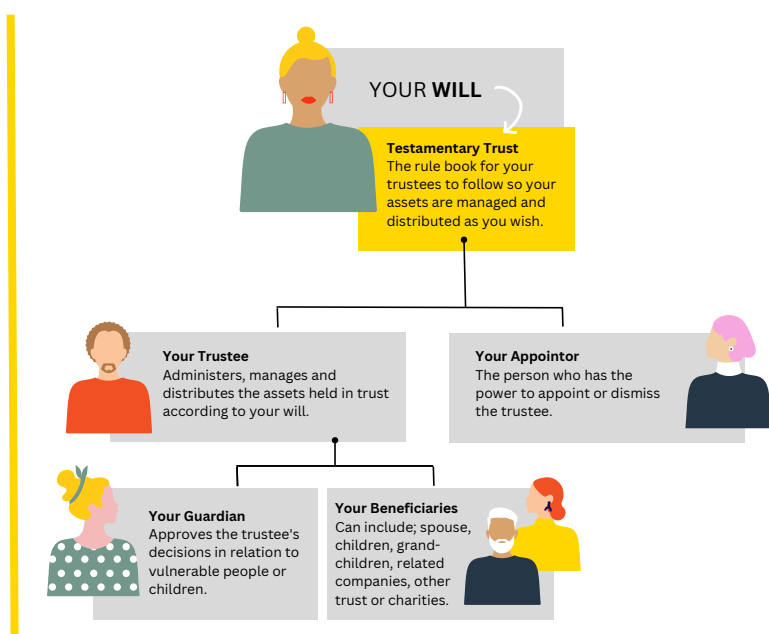


Estate Planning
that connects
your head and
your heart.

We think a great deal about who we want to leave our assets to when we die but don't give very much consideration to how those assets will be distributed.

A testamentary trust holds the gifts you wish to leave your beneficiaries in a trust that doesn't take effect until after your death. The terms and conditions that govern the control and administration of a testamentary trust are held within your will, including;

- the trustees of the trust;
- the powers to appoint and remove trustees; and
- the application and use of funds held on trust.



Whilst there are many kinds of testamentary trusts the most common is a **TESTAMENTARY DISCRETIONARY TRUST**.

A **testamentary discretionary trust** has:

- a trustee;
- two or more potential beneficiaries; and
- an appointor who holds the power to appoint and remove the trustee.

A **discretionary trust** differs from others trust structures because each financial year the trustee exercises its discretion to determine who will receive the income and/or capital from the trust fund and in what proportion.

LEGALEESE TRANSLATIONS

Testator: the will maker.

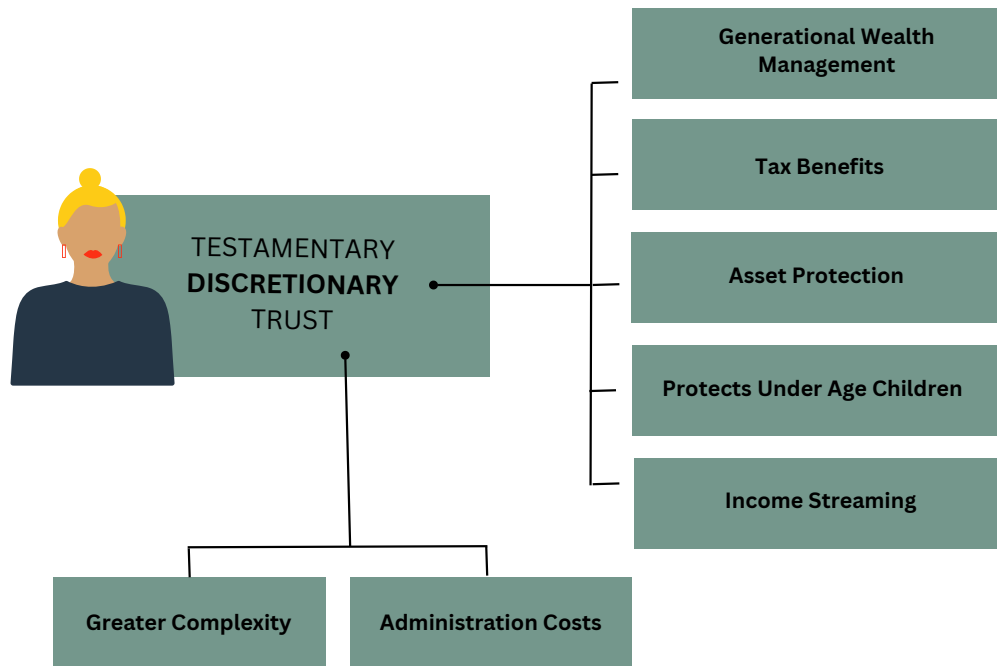
Trustee: controls the trust assets after your death. They can decide when beneficiaries receive income or capital from the trust and administer the trust in accordance to the terms and conditions set out by you in your will.

Beneficiaries: the people or organisations you have nominated to receive gifts from you after your death.

Appointor: person who has the power to appoint or remove the trustee.

Guardian: person nominated by you to manage the affairs and make decisions on behalf of any minor children, children under the preservation age, or vulnerable people.

Preservation Age: the age you nominate your beneficiaries can manage their own trust.



There are both benefits and drawbacks with including a Testamentary Discretionary Trust in your will. Your accountant will be able to provide more specific information regarding the benefits to you and your family. General benefits include:

#1. Protecting assets for underage children

Your estate can be retained in trust until your underage children reach a 'preservation age' chosen by you (e.g. mid to late 20's). Once children reach the preservation age they will gain control of their inheritance. Your children will still be entitled to receive income from the trust at the discretion of the trustee that you appoint which is usually applied to their welfare (e.g. school fees, university expenses etc).

#2. Asset protection

While the assets of the trust may be controlled by the intended beneficiary, the assets held in the trust do not form part of the beneficiary's personal estate. A testamentary discretionary trust can protect an inheritance if they:

- have financial difficulties or bankruptcy
- run their own business
- are going through a relationship breakdown

A **discretionary trust** differs from other trust structures because each financial year the trustee exercises its discretion to determine who will receive the income and/or capital from the trust fund and in what proportion.



SETTING UP A TESTAMENTARY TRUST IN MY WILL HAS HELPED ME FEEL LIKE I HAVE MORE CONTROL OVER HOW MY CHILDREN ARE CARED FOR IN MY ABSENCE.

#3. Tax benefits

Ordinarily, the highest marginal tax bracket will apply to most funds distributed from a trust to underage children as the funds are 'unearned income' for tax purposes.

This rule **does not apply** when it comes to testamentary trusts, meaning that the usual tax-free thresholds and income brackets will apply. The trustee of a testamentary trust can invest your estate in income producing investments and distribute the income earned among several beneficiaries, taking advantage of:

- the tax-free threshold of approximately \$18000 applicable to each beneficiary; and
- the lower tax brackets which apply to some beneficiaries.

#4. Income streaming

A testamentary discretionary trust allows the trustee the greatest flexibility when it comes to distributing income, with the ability to pay different classes of income to different beneficiaries. In practice this means you may choose to pay the dividends from shares to one beneficiary whilst paying the rental income to another.

#5. Generational wealth management

If families wish to ensure certain assets, such as heirlooms or family property, remain in their family for years to come, this can be achieved by including a testamentary discretionary trust in your will. This ensures future generations have the use and benefit of assets for years to come with boundaries around who can and cannot be included in the trust (this is sometimes referred to as a 'bloodline trust').



DRAWBACKS OF A TESTAMENTARY TRUST WILL

A testamentary trust will is a complex document, as it must deal with both the administration of your estate upon your death and specify the terms of your trust.

A simple will is approximately 5-6 pages where as a testamentary trust will is about 20-30 pages.

It's also more complex after you die, as your survivors need to call on the assistance of accountants and financial advisors to take advantage of benefits that the testamentary trust offer. This adds to the ongoing administration costs of your affairs.

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