

Testamentary Trusts.



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What is a Discretionary Testamentary Trust?

A Discretionary Testamentary Trust is like any other trust except it is contained within a person's Will and only comes into effect when the testator or 'will maker' dies.

A 'Trustee' and 'Beneficiary' will be appointed in the Will. The Trustee will control and manage the trust for the benefit of the beneficiary/s.

Standard Wills v Wills with Testamentary Trusts

A standard Will is the most common type of Will prepared by solicitors. These types of Wills make 'simple gifts' to beneficiaries where the gifts are received by beneficiaries in their personal name and capacity, in most cases absolutely. Whilst these types of Wills costs less, they may not be the most tax effective or offer adequate asset protection for beneficiaries.

Discretionary Testamentary Trusts are renowned in the financial and estate planning industry for their flexibility, asset protection attributes and income tax advantages.

Benefits Of a Discretionary Testamentary Trust

Where a beneficiary has attained the preservation age nominated by you, the benefit of a Discretionary Testamentary Trust Will is that they have the option of taking their inheritance outright (as a simple gift) or through a discretionary testamentary trust structure.

Where a beneficiary is under the preservation age, their share of your estate is automatically held in a testamentary trust with a trustee appointed by you or your executor to manage the trust until that beneficiary has attained the preservation age (at which time the beneficiary can take control of their trust or vest it as they choose).

Tax effectiveness

Inheriting through a Discretionary Testamentary Trust can result in significant tax savings, particularly where the beneficiary has:

- a high personal marginal tax rate;
- a partner on a lower income;

- minor children/grandchildren; and/or
- children or grandchildren with no or lower taxable income.

In a standard Will, all income generated by the beneficiary's inheritance is taxed at their marginal rate. Discretionary Testamentary Trusts, however, allow beneficiaries to split the income generated from their inheritance amongst one or more potential beneficiaries of the trust. The beneficiaries can include spouses, children and grandchildren who may have a lower marginal rate of tax.

Income distributed to minors from a testamentary trust is 'excepted' from the penalty rates usually applicable to unearned income. Minors are treated as adults for tax purposes – they have a tax free threshold of \$18,200* and normal marginal tax rates apply to every dollar above the threshold.

As a result Discretionary Testamentary Trusts can provide significant tax planning opportunities for your beneficiaries.

Asset protection

A Discretionary Testamentary Trust can assist in protecting and preserving a beneficiary's inheritance.

Undue waste

You may need to provide protection for particular beneficiaries such as minors, or spendthrift beneficiaries with gambling or substance abuse problems.

A Discretionary Testamentary Trust will provide for that particular beneficiary whilst ensuring that their inheritance is protected from waste by ensuring that someone else is managing the inheritance for that beneficiary's benefit.

**threshold amount is current as at the date of publication and is subject to change.*

Claims by third parties

A Discretionary Testamentary Trust may protect assets from claims by third parties, bankruptcy or relationship breakdowns.

It should be noted that the level of asset protection provided by a Discretionary Testamentary Trust will depend on the terms of the trust, its control mechanisms and the persons holding key positions of power. It is therefore important that you and your beneficiary obtain appropriate legal advice.

If you are concerned about asset protection for your beneficiaries, you should seek our expert advice so that the terms of the trust can be tailored to meet your objectives.

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