

Testamentary Trust



A Testamentary Trust is essentially a trust that forms part of a Will. A Testamentary Trust comes into existence by direction of the deceased's Will after they have died.

A Testamentary Trust is different to a family trust in the sense that a family trust is a trust created during your lifetime whereas a Testamentary Trust only comes into effect after you pass away.

In effect the Trustee(s) on behalf of the Testamentary Trust becomes the owner and manager of all the deceased's assets that are passed to the Trustee(s) by the instructions in the deceased's Will. This can include the deceased's personal real estate, cash and investments.

What are the benefits of a Testamentary Trust?

Asset protection

It can provide protection if you have children that are in relationships, or grandchildren that are in relationships if any of them break down.

It can also provide protection in the form of protection if one of your children or any beneficiary of the trust becomes bankrupt.

In such events the assets are quarantined away by the Testamentary Trust and held in the trust name, rather than in that individual's name who is going through a separation or has gone into bankruptcy.

Tax minimisation

Under a Testamentary Trust any income generated by the assets can be split between the beneficiaries of the trust, so you can tailor it to beneficiaries that have lower tax thresholds, to minimise that tax.

You can also use minors to distribute income and save on tax because, unlike trust created during your lifetime, they can be taxed at the adult tax rates.

This can be extremely beneficial especially if you have a flow of family, including children and grandchildren. The testamentary trust will allow for the income to be distributed to a number of beneficiaries, as opposed to only one individual.

Types of Testamentary Trust Wills

There are many options for setting up a Testamentary Trust Will including but not limited to:

- a single trust under your Will for the benefit of your spouse and children; or
- multiple trusts under your Will, for example, one for each of your children. Generally, this is considered when your children are adults;
- a single trust to receive only some or all of your superannuation for the benefit of your spouse and minor children. This is sometimes referred to as a Super Proceeds Testamentary Trust.

If you would like advice to see if a testamentary trust would benefit you please call our team on 9523 5535 or email info@southernwaters.com.au