

What is a testamentary trust?

A testamentary trust is a trust established under the terms of a will.

The trust itself is created upon the death of the relevant person. The will contains all the provisions of the trust.

A testamentary trust can be a fixed trust where beneficiaries have a fixed entitlement to the assets of the trust.

Alternatively it can be established as a discretionary trust where there is a specified category of beneficiaries but there is no fixed entitlement to any distributions of income or capital under the terms of the trust - the trustee of the trust retains absolute discretion to determine the manner and timing of any distributions of income and capital. The trustee can for instance exclude certain beneficiaries for whatever reason in their discretion.

There are various reasons why you might consider establishing a testamentary trust in your will. For instance:

- you may wish to ensure that the assets in the trust are available for the long term to assist subsequent generations of the family; or
- the beneficiary may be a minor, or disabled, and as such lack the capacity to manage his or her own affairs.
- you may wish to quarantine assets from a beneficiary's creditors or spouse;
- you might also want to provide your beneficiaries with the flexibility to decide whether or not a testamentary trust would be of benefit to them and their families;

In many cases there are also very good tax reasons to use testamentary trusts.

There are costs associated with the establishment and ongoing accounting/ management of a testamentary trust. You need to consider these when thinking about including a testamentary trust in your will.

We would need to review your personal and financial circumstances to ascertain whether or not a testamentary trust is right for you. Please contact us and we would be happy to discuss the matter with you in more detail.

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