Testamentary Trusts

Quick Summary

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Testamentary Trust Wills

A type of Will that establishes a Trust or Trusts upon the death of the testator.

They are designed to protect the deceased's assets because they belong to the Trust rather than any individual. This allows flexibility for how capital and income generated by those assets is distributed.

Testamentary trusts are created by a need to provide a greater level of control over the distribution of assets to beneficiaries. There are also tax advantages available through testamentary trusts, making them an effective estate planning tool.

The Trustees who decide how the income is distributed can also be beneficiaries of the Trust. However, the Trustees must act in accordance with the provisions set out in the Will for how the Trust is to be managed.

There are two commonly utilised types of Testamentary Trusts:

- Discretionary Testamentary Trusts
- Protective Testamentary Trusts

The beneficiary must take their inheritance via the trust and does not have the option to appoint or remove trustees. This condition may be useful where the beneficiary is not in a position to responsibly manage their inheritance due to age, disability or spendthrift tendencies.

Why choose a Testamentary Trust Will?

There are many potential benefits of using a Testamentary Trust Will. Testamentary trusts can help protect your assets when they pass to your beneficiaries. A common and sensible objective for all Testators is to ensure that each beneficiary’s inheritance is protected and preserved waste, dissipation or claims due to marital or commercial breakdown.

Generally speaking, the Trust is set up to protect the assets that it holds. This is because creditors, divorcing partners and even the beneficiaries (in some cases) generally cannot access the assets in the Trust.

The Trustee or Trustees can also choose to distribute the income generated by the Trust in a way that minimises the tax burden of the beneficiaries. Depending on the assets, a Testamentary Trust can potentially save tens or even hundreds of thousands of dollars over its lifetime.

If a beneficiary takes their inheritance in their personal name, they will pay tax on the income generated from their inheritance at their personal marginal tax rate.

There may be significant tax advantages in taking an inheritance through a Testamentary Trust. The Trustee or Trustees can distribute the income from the trust in a way that minimises the tax burden on the beneficiaries.

Generally, if a person's estate is small in comparison to the potential life insurance proceeds or other amounts that will be paid to the estate at death, a testamentary trust may be advisable. It is generally inexpensive to include testamentary trust provisions during Will preparation.

Collins Hume is pleased to work with the region’s best legal firms to ensure your Testamentary Trust and estate planning needs are structured in the best possible manner.

Call us today to discuss the best solution for you and your family.