Rudall & Rudall

LAWYERS

Wills & Estate Planning

Testamentary Trust Wills

25 Murray Street Gawler SA 5118 // PO BOX 696 Gawler SA 5118 // T 08 8523 8400 // F 08 8523 0025 // legal@rudalls.com.au
www.rudalls.com.au // ABN 24 175 717 164 // Liability limited by a scheme approved under Professional Standards Legislation

Testamentary Trust Wills

A trust describes an ownership structure where the assets of the trust are owned by one person or organisation (the trustee) but held for the benefit of other individuals or organisations (the beneficiaries).

A testamentary trust will is simply a trust that is established by your will and therefore does not take effect until your death. In a '*standard*' will the person making the will gifts assets directly to the beneficiary whereas in a testamentary trust will they are gifted to the trustee of the trust for the benefit of a range of potential beneficiaries. A testamentary trust will can be designed to provide maximum flexibility to your beneficiaries as to how they receive their inheritance. It can allow for tax-effective distribution of capital and income, as well as providing potential asset protection for your beneficiaries from third parties such as creditors and in Family Court property disputes. Testamentary trust wills are an excellent estate planning tool that should be considered for all clients irrespective of their financial position.

Principal advantages of testamentary trust wills

The incorporation of testamentary trusts into a will can offer valuable advantages over standard wills.

Taxation Benefits	Trust income distributed to children under the age of 18 is taxed at normal individual tax rates. Accordingly, there will be a tax-free threshold each year for each child. The current tax-free threshold is $18,200 (which will increase depending upon low income rebates), which is significantly higher than the tax-free threshold of $416 of infant children for income earned outside of a testamentary trust. Where there are several children the tax relief can be very significant, particularly where there are a number of years until the children attain the age of 18.
Capital Gains Tax	Capital gains can be '*streamed*' to one or more beneficiaries who are able to take better advantage of the five year averaging rule or CGT losses. Accordingly, the tax on capital gains ultimately payable on realised assets can be considerably reduced where one or more of the designated beneficiaries have a low income in the year of distribution.
Creditors Protection	Under a simple will, if a beneficiary is experiencing solvency difficulties or is already bankrupt at the time of a distribution, it is likely the gift will end up in the hands of creditors rather than for the intended benefit of the beneficiary. This need not be the case where a testamentary trust will is involved as the beneficiary has no actual entitlement to a distribution until the trustee so determines. Accordingly, assets can be retained within the family, free of creditor's claims.
Family Law considerations	A parent may wish to prevent a child's partner making a claim against the family assets in the event of a relationship breakdown. If testamentary trusts are used in a protective way, the inheritance may not be passed onto the child and therefore may be excluded from the pool of assets to be divided by the Family Court. However, the beneficiary has the discretion (if

	a discretionary trust is used) to deal with the trust assets in such a way that they do become property of the relationship if the trustee so wishes.
Incapacity	In the event that a beneficiary is temporarily incapacitated, trusts enable assets to be managed by the family or professionals for the benefit of the beneficiary rather than having a portion of the estate controlled by an external agency.
Superannuation and Insurance Proceeds	Where testamentary trusts are used, the individual or his or her estate can be nominated as the beneficiary of superannuation or insurance proceeds. In this way, flexibility can be retained and the level of distribution to respective dependants, depending on the circumstances prevailing at the relevant time, can maximise the preferential tax status of the proceeds.
Flexibility	Testamentary trusts can provide complete flexibility both as to the nature of the investments of the trust and as to the distribution of income and assets of the trust. Trusts can be validly created for many years and, accordingly, can benefit two or three generations. Alternatively, the trusts can be dissolved at any time and distributions made to the desired beneficiaries.
Individual Trusts	When we set up testamentary trust we usually allow for each of your children to have a say about their own testamentary trust. That way any decision made by one child need not impact on the decision of another. For example, one child may take their inheritance now and not use the testamentary trust and another may elect to leave all of their inheritance in the trust for the time being.

Estate Planning Consultation

Contact us if you would like to arrange a review of your Will and Estate Planning documentation without obligation. If you would like us to contact you to arrange a conference, please complete the details below and forward the same to our office.

Your Details

Full Name:

Telephone Number:

Email: