

InfoSheet: Testamentary Trust Wills

A Testamentary Trust Will is an ideal vehicle for people who have significant assets or a complex family situation.

A Testamentary Trust Will is a sophisticated Will. It allows the Willmaker to leave assets controlled by a highly complex trust (similar to a discretionary family trust) with provision for creating any number of trusts, each having the same or different trustees.

The complexity of the formal document must not deter the Willmaker from obtaining the Will advantages. Whilst complex in a documentary sense, the Will is simple to administer both for Probate purposes and long term investment goals.

Income from the trusts can be distributed each year not only to the beneficiary under the Will, but to a wide range of discretionary beneficiaries (including minors) in the most tax-efficient way.

A Testamentary Trust Will offers:

- protection of family assets
- flexibility by giving your executors capacity to more effectively deal with your assets
- significant taxation opportunities
- protection for bankrupt beneficiaries, spendthrift or vulnerable children
- some protection in Family Law claims
- protection against exploitation of a disabled beneficiary.

Benefits of a Testamentary Trust Will

Your Will creates a trust for each of your beneficiaries. Each of your beneficiaries then has the choice of continuing his/her trust or cancelling their trust and holding their assets independent of the trust.

The beneficiary can also choose to leave the trust 'inactive'. No assets or investments are held in the trust but the beneficiary (or a future beneficiary – grandchild) may 'borrow' funds from the trust interest free and purchase an investment. Later, the trust can be activated by repaying the loan.

If your beneficiary continues to hold his/her inherited assets in the trust, they can:

- 'stream' income from the trust to their children (including those under 18 years) at a lower tax rate
- obtain significant taxation benefits
- benefit from some protection in the event of a marital breakdown.

A Willmaker can also protect his/her assets from 'risky' beneficiaries (spendthrift, bankrupt, gambler, etc).

Capital Protected Trust Will

The Willmaker can appoint trustees who are always in control of the assets of the estate. The income from the trust can be distributed to beneficiaries but the assets (capital) remain untouched.

This Will is designed to ensure that the wealth lasts more than one generation so that the Willmaker's children, grandchildren and great grandchildren can benefit.

The Trust may provide for defined amounts of capital to be made available to the primary beneficiary (wife/child etc).

A wife is concerned that on her death her husband may remarry. She wants to ensure that the assets of her marriage are protected so that her children benefit. She does not want her assets squandered by a spendthrift new wife.

Fixed and Flexible Trust

The Willmaker can limit access to the assets of the trust by a beneficiary for that person's lifetime.

A son is addicted to heroin. A daughter is an obsessive gambler. This form of Testamentary Trust affords protection.

Staggered release

The Willmaker can establish trusts for each of his/her beneficiaries with the income from those trusts only being available at certain times.

A couple has accumulated significant wealth during their marriage. They have 3 children in their young teens. They want their children to be independent and hard working, not relying on their potential inheritance. The couple made Testamentary Trust Wills with staggered release dates. Their children will not have access to the capital of their trusts until they attain 21 years of age when they receive ¼ of their trust, another ¼ when they attain 25 years, another ¼ at 28 years and the balance at 32 years.

Protection for Vulnerable Beneficiaries

A Willmaker can create a trust for a vulnerable beneficiary (especially one who has not been assessed by Centrelink to have a disability).

The Willmaker can appoint two trustees to manage the trust on behalf of the vulnerable beneficiary.

Adam and Roxanne have been separated for many years and Adam has custody of their only son. Roxanne has been drug and alcohol addicted for many years. Adam creates a trust to be managed by his brothers to ensure that Roxanne cannot have access to her son's inheritance.

Special Disability Will Trusts

A Willmaker can provide for his/her disabled child (under-age or adult) by creating that child's trust in the Will as a special disability trust, managed by at least two trustees. The trust is established for the care and accommodation of the disabled child.

This is a Centrelink and Commonwealth Government approved Will. There are maximum capital provisions (currently \$551,000 CPI indexed) to ensure retention of Centrelink benefits.

The income generated from the trust may be free from Centrelink means testing to protect the child's disability pension and benefits.

The Willmaker can provide for the distribution of the remaining balance of the trust on the death of the disabled person.

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Special Disability Trusts (non Will)

You can establish a trust for your severely disabled child prior to your death. Kells the Lawyers has Centrelink approved deeds to enable parents and carers to establish trusts and to make continued gifts to the trust.

See our InfoSheet *Special Disability Trusts*

John is an apparently fit and healthy engineer when he suffers a fatal heart attack playing his usual Saturday afternoon game of tennis.

Joan is employed fulltime as a school teacher on \$83,000pa. She is left with 3 primary age children aged 8, 10 and 11.

Fortunately John had life insurance of \$650,000 owned by him (that is, it passes under his Will) and superannuation of \$265,000. His other assets were investments of \$50,000 and a jointly owned home valued at \$585,000 (subject to a mortgage of \$185,000.) That home passed to Joan by survivorship.

Joan is left with \$780,000 to invest. A Testamentary Trust Will prepared by Kells The Lawyers increases the net income available for the education, health care and maintenance of the children.

Estate left to Joan:		Estate left to Testamentary Will Trust with Joan as Trustee:	
<i>Investment</i>	<i>\$780,000</i>	<i>Investment</i>	<i>\$780,000</i>
<i>Income (7% rate of return)</i>	<i>\$54,600</i>	<i>Income (7% rate of return)</i>	<i>\$54,600</i>
<i>Income to</i>	<i>Joan</i>	<i>Income to</i>	<i>3 children</i>
<i>Tax rate</i>	<i>37%</i>	<i>Tax rate</i>	<i>0%</i>
<i>Tax payable</i>	<i>\$20,200</i>	<i>Tax payable</i>	<i>\$0</i>

Is a Testamentary Will appropriate for you?

Kells The Lawyers Estate Planning Team will liaise with you and your accountant/financial planner to fully assess your needs and determine the best solution.

Contact Kells the Lawyers Wills & Succession Planning Team

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