



TESTAMENTARY TRUSTS INFORMATION SHEET

A Testamentary Trust is a trust which is established by a Will. Testamentary Trusts can have many different variations which can be tailored to best suit the long term financial and personal needs of the will maker and their family. Testamentary Trusts can provide the following advantages which are not provided in a standard Will:

1. Asset protection, either from creditors or against matrimonial property settlements;
2. Tax benefits (both income and capital gains);
3. Restriction of access to large amounts of capital or income for vulnerable beneficiaries;
4. Flexibility during times of crisis, such as beneficiary loss of legal capacity or bankruptcy; and
5. Allowing the enjoyment of income or assets whilst allowing capital to pass to subsequent generations.

A Testamentary Trust can be structured in any of the three following methods;

I. Executor Controlled Testamentary Trust

This variety of Testamentary Trust establishes the framework for the administration and investment of the estate and provides for the control of the estate by the Executor, such as a trusted family member. This structure is especially useful if beneficiaries are vulnerable and family wealth protection and flexibility are important considerations.

2. Primary Beneficiary Controlled Testamentary Trust

This Testamentary Trust establishes the framework for the administration of the estate and provides for general powers for the Primary Beneficiary, such as a child, to control the administration of the estate and the distribution of capital and income. This structure is especially useful for taking advantage of income tax and capital gains tax advantages.

3. Combination Trust

It is possible to combine the benefit of the Executor Controlled Trust and the Primary Beneficiary Controlled Trust to create a trust that allows for control of part of the Estate by the Executor but also leaves control of other parts of the Estate by Beneficiaries.

Is a Testamentary Trust Will necessary?

For most clients, a standard will creating a trust allowing the Executor to collect assets and distribute amongst beneficiaries is adequate. A Testamentary Trust Will is only required if the Estate is very large or potential vulnerable beneficiaries need protection.

Costs

	One Person	Couple
Standard Will	\$300	\$500
Testamentary Trust Will	\$1,000	\$1,500

The higher cost of a Testamentary Trust Will reflects the additional work involved in taking instructions and drafting necessary provisions for the Will.