

Wills and Testamentary Trusts



Introduction

Having a legal will is the first essential measure in Estate Planning. It sets out how you wish your assets to be provided following your death and without one you risk the Government via intestacy laws providing your property incorrectly, as well as additional expense to those you leave behind.

However, all wills are not created equal. It is important to have a Will that is not only relevant to your current situation but also has the flexibility to be updated as circumstances change. A basic Will can have many limitations. The answer for most people is to invest in a properly drafted Will including a discretionary testamentary Trust.

WHAT IS A TESTAMENTARY TRUST?

A trust is a legal relationship where one person holds assets on behalf of one or more people. A testamentary trust is a type of trust created via the will of a deceased person. It does not come into being until the will maker passes away, but following administering the Estate it allows benefits that leaving assets directly to parties does not allow. For instance, it allows you to leave assets on trust for minors until they reach a certain age.

BETTER STILL?

The testamentary trust we create for you in our wills is a type of discretionary family trust. This means that whilst assets will be provided on trust for a particular person (your spouse or children for instance), for asset protection purposes, they do not “legally own” these assets, meaning they are often very difficult for third parties to access in the event of bankruptcy or litigation against that beneficiary.

Equally as impressive and perhaps more useful in most circumstances is the enormous tax savings that your family will receive via a testamentary trust. With a discretionary testamentary trust, the beneficiary can allocate income received from your Estate to any family member of theirs, meaning they can allocate income to children who otherwise would not be using their tax free thresholds, or lower income earners in the family.

For example, Richard dies suddenly leaving \$100,000 in cash and \$500,000 in life insurance. His wife, Maria, works and has a marginal tax rate of 30%. They have two minor children who do not work. Assuming Maria invests this money wisely and earns \$50,000 in the first year. The following table illustrates the benefits of a Mulcahy & Co Testamentary Trust Will.

Regular Will	Taxed to:	Tax payable:
Regular Will	Maria (no discretion on this)	\$50,000 x 30% \$15,000
Mulcahy & Co Testamentary Trust Will	Maria can elect for the income to be directed to the children	Child 1 = \$1,350 Child 2 = \$1,350 Total Tax Paid: \$2,700

That's a tax saving of over \$12,000 every year for Maria!

FS360 - What does being financially secure mean?

It means assessing your personal and business goals and developing a plan to achieve these.

We have identified 12 key areas to help you become financially secure:

1. **Goals & objectives**
2. **Estate plan**
3. **Risk plan**
4. **Asset protection plan**
5. **Taxation plan**
6. **Debt plan**
7. **Retirement and succession plan**
8. **Business plan**
9. **IT Plan**
10. **Marketing Plan**
11. **Superannuation plan**
12. **Investment plan**

Setting goals and objectives and having strategies to achieve these is an essential element of becoming financially secure. Once you know what you are aiming to achieve and how you are going to get there, we then need to make sure you have a strong foundation in place to protect you, your family and other investments.

A strong foundation needs an estate plan, risk, plan, asset protection plan, taxation plan and debt plan. With the foundations in place we can then work on the strategies to achieve your goals and objectives. It may seem out of order that we have the retirement and succession plan at number 7 rather than 12. It is important that this is considered early and a plan is put in place. This assists to plan for this financially as well as keeping the communication lines open on the topic.