



## Testamentary Trusts

**Testamentary trusts are established in a Will and take effect following the death of the Testator.**

The Will may direct that specific assets from the estate (e.g. life assurance, property, cash) or simply the residue of the estate can be allocated to the trust fund.

### Control of the trust

Control of the trust, through the Will, is given to one or more Testamentary Trustees. The Trustees have discretionary powers to control the assets and the income earned by the trust from time to time. The same persons (including a company or a professional trustee) or different persons can be appointed as Appointor(s) of the trust. Appointors have the ability to appoint a new Trustee in circumstances where the Trustee dies, loses capacity, or in some circumstances is deemed to have acted against the interests of the trust. In a family situation, a spouse or children are usually appointed as the Trustees and Appointors.

Testamentary Trusts can continue through more than one generation and, subject to State legislation, can extend for 80 years or longer. The Trustee has the discretionary power to wind-up the trust at any future time within the period given by legislation.

### Typical arrangements

The terms of the trust, as established in the Will, provides that income earned by the trust can be distributed to a range of beneficiaries nominated in the Will (usually family members) in such a way that the least amount of tax is paid.

The Trustees have discretionary powers to also apply capital to the beneficiaries at any time. Separate trusts can be set up for each child within the family so they can control their own fund for the benefit of their respective families.

### Advantages

- Because the trust is discretionary, the Trustee is able to constantly monitor and make decisions based on the changing legislative, legal and financial environment once the trust has been established and during the term of the trust – not based on a non-discretionary Will made years earlier.
- Significant *tax benefits* can be gained by distributing income to low income beneficiaries, which can be used for school fees and the like.
- In certain circumstances, the surviving spouse may be able to retain the pension or portion of it. However, advice must be sought as to the specific circumstances and construction of the trust.
- Asset protection can also be given to a beneficiary who has a debt problem; a matrimonial problem or perhaps is a spend-thrift.
- Assets retained for significant periods within the trust are unaffected by the death or a change to a Trustee. In this event, Capital Gains tax is likely to be deferred until assets are sold or on the termination of the Trust.

### Special Disability Trusts

Recent legislation has provided persons receiving a Centrelink or DVA pension to receive some protection from losing benefits under a Disability Trust. Refer to Client Info sheet no. 10 – Special Disability Trusts.

Further details can be found in our brochure “Estate and Succession Planning services” or by contacting your local FTL Estate Services office or national free-call 1800 623 530.

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*The above is intended to provide general information only and must not be taken or used as advice when preparing any document.*