

# TYPES OF TESTAMENTARY TRUSTS



- Discretionary Testamentary Trusts
- Lineal Descendants Testamentary Trusts
- Capital Protected Testamentary Trusts

Our testamentary trust Wills, including the terms of the different types of testamentary trusts offered by us, have been developed by our in-house legal experts and are designed to provide the best strategic provisions.

## Types of testamentary trusts offered by Topdocs

Topdocs offers testamentary trust Wills, incorporating discretionary testamentary trusts, capital protected testamentary trusts or lineal descendants discretionary testamentary trusts depending on the circumstances and requirements of the clients. Our testamentary trust Wills, including the terms of the different types of testamentary trusts offered by us, have been developed by our in-house legal experts and are designed to provide the best strategic provisions.

### Discretionary Testamentary Trust

Topdocs discretionary testamentary trust is similar to a discretionary family trust as money or other assets are left to a trustee to hold on trust to make discretionary distributions to the beneficiaries.

A discretionary testamentary trust is strongly recommended if:

- the estate of a willmaker will include, or is likely to be converted into a substantial sum

of money or income producing investments;

- the willmaker wishes leave all or a substantial part of his or her estate to an adult beneficiary who has children under 18; and
- there is a reasonable possibility of that beneficiary investing the gift they receive to earn income over a period (rather than spending it all on non-income producing assets – such as a house to live in – or to pay down debt).

Discretionary testamentary trusts are **designed to provide maximum flexibility and allow for tax-effective distribution of capital and income** and may also permit beneficiaries to qualify for aged, disability and sole parent pensions, Austudy or the like, for which they would otherwise not have qualified under a normal inheritance.

It also provides **protection of assets** for your beneficiaries from third parties **in the event of bankruptcy or family breakdown**. The nature and extent of the available protection varies and is subject to changes that may occur in the law from time to

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time. For example assets in a testamentary trust are often treated as a 'resource' available to a party to a marriage. If this is an important aspect of your estate planning the issue of protection should be specifically addressed.

Generally few restrictions are placed on how the trustee is to manage or maintain the assets. The trustee can dispose of all assets as he or she sees fit. Once the willmaker leaves the assets to a beneficiary by way of this type of trust, the trustee (who can be a beneficiary) will have total control, unless restricted through the intervention of a third party trustee or protector/appointor whose consent is required.

## **Lineal Descendants Discretionary Testamentary Trust**

The lineal descendants discretionary testamentary trust is designed to protect the assets for the benefit of a beneficiary and their natural heirs only. The lineal descendants discretionary testamentary trust is designed to ensure that control of the trust is retained by the natural heirs for additional family law asset protection purposes.

Lineal descendants discretionary testamentary trusts are often used:

- to ensure that the property of the trust will remain only with the "blood relatives" of the initial nominated trust beneficiary;
- where there is a concern that beneficiaries are likely to suffer marital problems;
- where the willmaker wishes to maximise the chances that assets will provide for the education and upbringing of children or grandchildren; and

- where tax planning with spouses may not be as high a priority as the protection of the assets from the Family Court's reach.

## **Capital Protected Testamentary Trust**

Topdocs capital protected testamentary trust is designed to protect and preserve assets for the benefit of a beneficiary or for future generations.

Capital protected testamentary trusts are often used where:

- there is a concern that a beneficiary is unlikely to be able to manage their own financial affairs; or
- the willmaker wishes to maximise the chances that assets will survive the beneficiary for the benefit of a subsequent generation.

A capital protected testamentary trusts enables the willmaker to pre-determine some degree of control or influence over the way the assets can be used or accessed by the beneficiaries.

## **More information**

Should you have any queries or require more information, please contact the team at HTA Advisory on 03 9810 3666.