

WGC LAWYERS

Testamentary Discretionary Trust Wills

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Over the past five years, I have noticed an increasing trend towards making Wills containing testamentary discretionary trusts (“TDT”).

TDT Wills are one of the most powerful estate planning tools available and offer the following benefits:

- Save your family tax after you die.
- Protect your beneficiaries’ inheritance from divorce and bankruptcy risks.
- Not administratively burdensome – any extra compliance is far outweighed by the tax savings.

What is a TESTAMENTARY DISCRETIONARY TRUST?

A TDT is established by a person’s Will and remains dormant until the Willmaker dies.

The discretionary nature of the trust is what makes the trust so powerful for asset protection. Because none of the beneficiaries own the trust assets and their only right is to be considered by the trustee, it is very difficult to argue that the assets of the trust belong to any one of the beneficiaries.

A trustee can also be one of the beneficiaries of the trust. If that is the case, then the trust assets will ‘look and feel’ more like that beneficiary’s assets because they are in control and can choose themselves or their family members to benefit from the trust.

THE KEY BENEFITS OF A TDT WILL

- Protects vulnerable beneficiaries.
- Income tax flexibility.
- Protects assets from beneficiary

relationship breakdowns.

- Beneficiary bankruptcy protection.

Tax benefits

TDTs offer fantastic tax flexibility. In fact, this is the only environment where you can get such great tax treatment. Each year the trustee can choose which of the beneficiaries should receive the income earned from investing the inheritance each year, which allows them to give income to beneficiaries who have lower tax rates. Testamentary trusts offer an additional benefit which is not available to any other trust – beneficiaries under 18 are treated like adults for tax purposes which means they can receive the same tax free threshold each year, currently about \$22,000 (instead of merely \$416 tax free per year).

Relationship breakdown protection

It is an unfortunate fact of our time that, as parents, we need to plan for our children’s future relationship breakdowns. Using a TDT as a vehicle for your children’s inheritance means that their inheritance has the best possible chance of protection from being handed over to your children’s future ex-spouses by the Family Courts.

Bankruptcy protection

If your child’s inheritance is under the protection of a TDT, and your child becomes bankrupt, then the TDT assets remain outside the scope of assets that the Official Trustee in Bankruptcy can seize to satisfy your child’s creditors.

THE WRAP UP

The purpose of writing this article is, in my view, everyone needs to know that TDTs exist as an option for your estate planning. You spend your whole life amassing the wealth that becomes your children’s inheritance. A TDT Will is an incredible gift for your children, and the last opportunity you have to protect your children’s financial wellbeing.

The only way a person can obtain these extremely attractive benefits unique to a TDT is if someone who loves them gifts them this trust and then dies.

A TDT Will is truly the ‘Rolls-Royce’ of estate planning.

Having said all of the above, you should not get your TDT Will done by just anyone. You need to see lawyers who understand and appreciate the intricacies of this type of estate planning.

At WGC Lawyers our estate planning team are up to date on all things TDT, and we can advise you on whether a TDT is appropriate for your unique circumstances. Our TDT Wills are comprehensive, user-friendly, and not unnecessarily complicated.

Please feel free to contact me at WGC Lawyers if you would like to know more about this product.

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