WILLIS & BOWRING

Solicitors

Testamentary Trusts

General Information

1. What is a Testamentary Trust?

A Testamentary Trust comes into existence by direction of your Will after you have died. In effect, the trust becomes the owner and manager of all assets that are passed to it by the instructions in your Will. These assets can include your real estate, your cash and your investments. The trustee has the discretion, according to the terms defined in your Will, to distribute the income and capital of the trust to those people whom you have nominated to be beneficiaries.

2. What are the advantages of a Testamentary Trust Will?

Some of the advantages of a Testamentary Trust Will may include:

- Greater flexibility for your beneficiaries, including the ability to decide whether or not they wish to take their share in the Estate absolutely or via a trust structure;
- A level of asset protection against claims from creditors, in the event of a separation, divorce or bankruptcy (depending on the structure of the trust); and
- The ability to split income to take advantage of more favourable tax rates for some beneficiaries, such as children, who are currently able to receive a total annual income of $18,200 per year tax free. Therefore, if the trustee of a Testamentary Trust decided to distribute income to four beneficiaries who were non-income-earning students under the age of 18 years, a total of $72,800 in trust earnings could be distributed tax free.

3. What is the general structure of a Testamentary Trust Will drafted by Willis & Bowring?

Depending on your instructions, a Testamentary Trust Will drafted by Willis & Bowring generally gives your beneficiaries the option to decide whether they wish to take their benefits either absolutely (as under an "ordinary" Will) or to have their benefits form part of a Beneficiary-Controlled Testamentary Trust. Creating the option of a trust structure can allow your beneficiaries the freedom to decide whether a trust structure would be appropriate at the time of your death.

If the persons you name in your Will as your beneficiaries do decide to establish a Beneficiary-Controlled Testamentary Trust, each named beneficiary will hold three key powers in relation to their individual trust:

(a) The power to "hire and fire" the trustee – including the power to appoint him/herself as the trustee (or one of several trustees);

(b) The power to consent to distributions – allowing them to direct the payment or withholding of income and capital to a range of other potential beneficiaries, including their children and grandchildren; and

(c) The power to consent to ending the trust – once the trust is established, the beneficiary may choose to terminate the trust at any time and require the trust income to be paid to them absolutely. This flexibility can be beneficial if their circumstances change or adverse changes are made to the law in future. In NSW, trusts can be run for a maximum of 80 years.

However, if a person named in your Will as your beneficiary is under the age of 25 years, our Testamentary Trust Will generally provides that the trust structure is *mandatory* and that beneficiary's share of your estate is to be looked after by your Executors until they have reached the age of 25 years.

We further note that the above structure may not be suitable in all circumstances and it is important to seek expert advice from legal and financial professionals to determine whether a Testamentary Trust is at all suitable in your own circumstances. Our Estate Planning team at Willis & Bowring have extensive experience in this area and can provide advice that is tailored to your individual needs.

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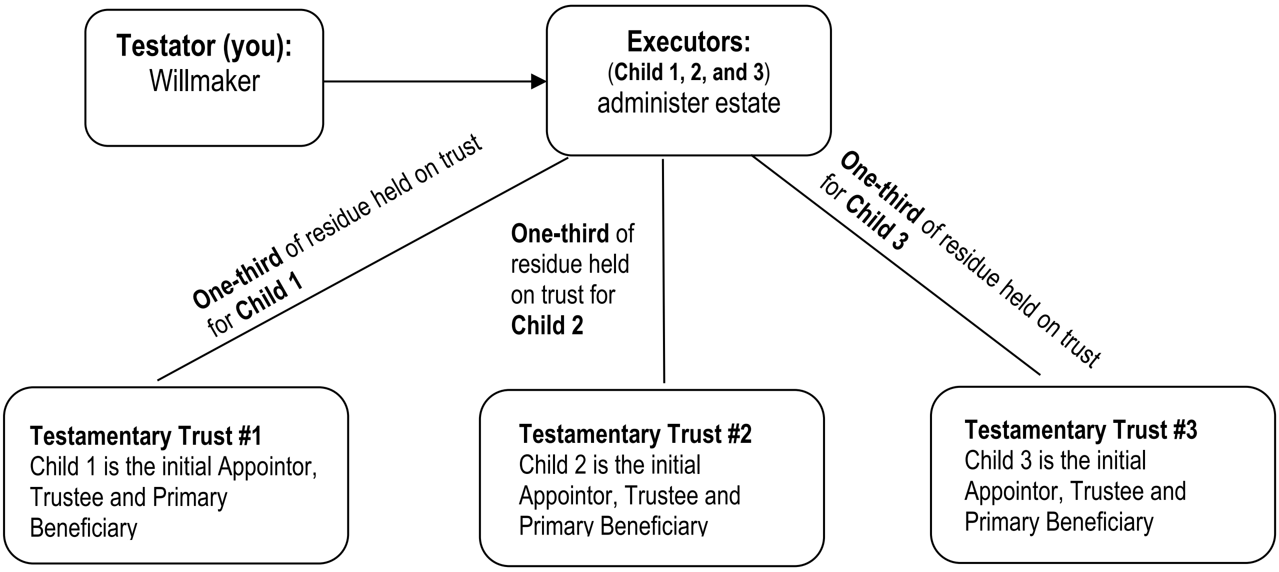
Beneficiary Controlled-Testamentary Trusts

The below is an outline of the proposed testamentary trust structures if any of your children do elect to establish a trust for his/her one-third portion.



Key terms:

Trustee: manages, invests and distributes income and capital at their discretion to the beneficiaries

Appointor: power to appoint and remove trustee, therefore has ultimate control of the trust

Potential beneficiaries of each Testamentary Trust:

1. The Primary Beneficiary (i.e. Child 1, Child 2 or Child 3)
2. Any descendant of a grandparent of the Primary Beneficiary (includes children, grandchildren);
3. Partners and spouses of all of the above;
4. Any additional person or entity (including companies and trustees) which the Trustees may nominate to be beneficiaries;
5. The trustee of any other trust of which any of the above persons/entities is a beneficiary or holds a direct or indirect interest;
6. Any company in which any of the above persons/entities has a beneficial interest in a share or is a director; and
7. Any charitable or religious funds or bodies,

BUT <u>EXCLUDING</u> “foreign persons”.