

SETTING UP A TESTAMENTARY TRUST

A trust describes a relationship where one person (the trustee) looks after assets for another (the beneficiary). A testamentary trust is created in a will and comes into effect after the will maker dies. Testamentary trusts may be created for the benefit of people who lack capacity to manage their own affairs (such as people with an intellectual impairment).

How to set up a testamentary trust

- **Choose a trustee.** While any adult of sound mind who has not been declared bankrupt can be a trustee, (including the executor/s named in a will, your spouse or partner, other relatives or trusted friends) you should think carefully about who you choose, and make sure it's someone you trust. *For more information about choosing a trustee, see our [Appointing a Trustee](#) fact sheet.*
- **Decide what type of trusts you wish to use.** Multiple testamentary trusts can be created within a will. These can either be **fixed trusts** (restrictive) or **discretionary trusts** (flexible). A **fixed trust** clearly states what a trustee must do (e.g. provide \$10,000 a year to a son or daughter). A **discretionary trust** gives the trustee flexibility to decide the level of financial support the beneficiary/beneficiaries may need at a particular time, as well as manage financial issues—including taxes and social security—that the testator may not have foreseen.
- **Set up guidelines for your trustee.** You may guide the way in which your trustee manages the trust either by setting up **guiding clauses** or by including a **Memorandum of Wishes**. Guiding clauses are legally enforceable, whereas a Memorandum of Wishes is a separate, non-legally binding document that outlines your wishes for how trust funds will be spent and helps with the will's interpretation.
- **Decide what will happen when the trust ends.** When the principal beneficiary dies or the perpetuity period (up to 80 years) ends, your trustee can wind up the trust and distribute the remaining property to whomever you have nominated to receive it (e.g. other family members or a charitable organization). Alternatively, if the trust continues past the principal beneficiary's death, you should consider how the trust will be managed for a second generation of beneficiaries.

To find out more about setting up a Testamentary Trust, call Disability Law Queensland on 3622 1250.