



## What is a Testamentary Trust?

Discussing the features and benefits of a Testamentary Trust. By **Debbie Jacobs**, Senior Estate Administrator - Independent Executor & Trust

- Testamentary Trusts are created in a person's Will and only come into effect on the death of that person.
- The Will then operates as the Trust Deed, spelling out the terms of the Trust.
- These terms would state who benefits, and under what circumstances, beneficiaries are to benefit and when the Trust is to Terminate.

### When would I use a Testamentary Trust?

- For minor Children (under the age of 18), to provide for education, university maintenance etc.
- Or of age, but where the child lacks the necessary maturity or experience to take full responsibility of a sizeable inheritance at the age of 18.
- Children, or even adult children, who are spendthrifts.
- Addicted or troubled children who require possible monthly payments.
- Disabled/physical or mental impediments – which renders the beneficiary unable to manage their own affairs. A Trust can either provide partially or fully for the individuals maintenance during their lifetime.
- Second marriages, to ensure your spouse has income and in need, capital, and on her death or remarriage the capital and any undistributed income to your children/grandchildren from your first marriage.
- Elderly parents to be provided for in the case of your untimely death.
- Charities
- Divorce - to maintain monthly divorce obligations.

- Insolvent children, as protection against their creditors (careful of this wording, speak to your estate planner).

### Who should I appoint as Trustee on my Testamentary Trust?

- A beneficiary may be a Trustee
- Family member (spouse, children, Aunt, Uncle)
- Financial advisor
- Trust Company
- Lawyer
- An Executor may also be a Trustee

A Trustee can be anyone who is trustworthy, and who is willing to act in the best interests of those appointed as beneficiaries under your Trust; these Trustees are appointed in your Will.

### Many ask: what is the difference between an Inter-Vivos Trust and a Testamentary Trust.

Inter-Vivos Trust - is created during your lifetime.  
 Testamentary Trust - created in terms of your Will and takes effect after your death.

### Did you know?

- More than one Trust can be created in terms of your Will.
- Different Trustees may be appointed for each Trust created.
- If you have not created a Testamentary Trust in terms of your Will, a minor beneficiary's monies will be paid to the Guardian's Fund, which is a Government Department, until they attain the age of 18; this option would not be a pleasant experience for the guardian trying to receive maintenance payments. ⊕



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