

WHAT IS A TESTAMENTARY TRUST?

An estate is divided into a number of equal Trusts, each Trust being for the benefit of one person. That person is called the Primary Beneficiary of that Trust.

Alternatively, the balance of the estate can also be put into one testamentary trust, with your spouse/child nominated as the Primary Beneficiary of that Trust.

Those who stand to inherit from that person, or who are nominated by that person to benefit, are called the Residuary Beneficiaries. They too have powers over the Trust.

Each Trust is to be in effect controlled by its Primary Beneficiary, to reduce/eliminate the scope for conflict between a number of beneficiaries under a Will (if applicable).

- The first Trustee will be either the Primary Beneficiary or that person's child or someone nominated by either
- The Primary Beneficiary and that person's descendants have the power to appoint and remove Trustees
- The Trustee needs the written consent of the Primary Beneficiary to vary the terms or the ending date of the Trust
- The Trustee needs the written consent of the Primary Beneficiary to lend trust monies at non-market interest rates, authorise use of Trust property etc unless this is for the benefit of, or equal benefit of the Primary Beneficiary
- The Primary Beneficiary may specify how the trust funds are to be distributed at the end of the Trust (no more than 80 years after the date of death). If this is not done, the beneficiary's children/grandparents take in equal parts

The Executor of the Estate retains the power, with the consent of the beneficiary involved, to distribute the beneficiary's portion of the Estate directly to that beneficiary or to another Trust nominated by that beneficiary.

The powers of Executors of the Estate and the Trustees are drawn very broadly:-

- to make loans, investments, guarantees, to purchase or dispose of assets etc;
- to pay, with the Primary Beneficiary's consent, the whole of a Primary Beneficiary's entitlement to a particular beneficiary.

Testamentary Trust provisions also allow that if a child does not survive – for any children of that child to take on that person's behalf.

The Beneficiaries may include anyone who is:

- a **descendant of a grandparent of one of your children**; or
- a **descendant of the wife/husband of one of your children**; or
- a **trust/company** ("entity") in which any of your children, or (1) or (2) above have an interest ("an absolute, contingent or expectant interest"); or
- a **charity or religious institution**

At Cynkler Kaye Levy Lawyers we can assist you with the above issues.

If you would like to speak to our **experienced Probate Lawyers**, please do not hesitate to ring directly on +61 3 9500 1722.

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