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Lifting the Lid on Testamentary Trusts: Part II

Testamentary Trusts come in different shapes and sizes....

As we mentioned in our last newsletter, there are a range of testamentary trusts that can be used to meet different circumstances. In this edition we explore these options even further.

First - to re-cap... What is a testamentary trust?

A testamentary trust refers to a set of provisions contained within a Will. It is not a Will in itself. A standard or simple Will usually does not contain testamentary trust provisions.

Whilst people often talk about a testamentary trust in the singular, a well-prepared Comprehensive Will contains a range of testamentary trust provisions. The objective is to ensure a will provides for a wide range of trusts that can be used to suit different circumstances at the time of inheritance.

It's like putting tools in a tool box - they don't have to be used but are there if needed. So what are the different types of trusts?

Last edition...

- General testamentary trusts
- Child Trusts
- Superannuation Death Benefits Proceeds Trust
- Life Insurance Proceeds Trust
- Equalisation clauses

This edition...

- Special Care Child Trust
- Lifetime Benefits Trust
- Capital Preserved Trust
- Preserved Pension Trust
- How to manage Family Trust assets

1. Special Care Child Trust - providing for special care children or restricting access to the inheritance.

These are often used where there is a beneficiary who needs looking after or who can't be relied upon to manage money prudently.

We see a lot of parents with children who unfortunately have (or suspect they have) a drug habit or gambling problem.

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A separate trustee becomes responsible for administering their share of the estate. This could be another sibling or perhaps an uncle or aunt.

2. Lifetime Benefits Trusts - keeping everyone happy

These trusts are often established to provide accommodation and an income stream for the lifetime of a close relative or friend. They are often used by people who have remarried and want to provide for their new spouse in their lifetime, whilst passing on ultimate ownership of assets to their children.

3. Capital Preserved Trust - used to preserve capital in an estate whilst allowing the income to be accessed.

These are often used if the will-maker wants their children to benefit from the estate's income but not to be able to cash in the assets for a period of time. Sometimes they feel their beneficiaries would be better off if the money was managed by an independent trustee with them only being given access to the assets when they are much older.

4. Preserved Pension Trust - maintaining a pension when a partner dies

When a partner dies and the surviving partner receives their share of the estate, they may suddenly find their pension is affected as their (now solo) income and asset levels rise above the minimum requirements for a single pension. With a Preserved

Pension Trust however, the partners instead leave their share of the estate in a testamentary trust for the children, with that trust set up to provide a loan or line of credit from those estate assets to the surviving parent. They can then maintain their pension.

Other Issues

Family Trust Provisions

Assets in a family trust are not owned by an individual - they are simply controlled by a trustee which can be an individual, company or another trust.

A trust will also always have an appointor, who has ultimate control of those assets, as they can replace the trustee.

Therefore when planning an estate, it's important to remember that if the will-maker is an appointor of their trust, that that position needs to be passed onto someone else via the Will.

It's a common mistake - people often try to leave assets held within a trust to beneficiaries when in fact they can't. It's only the trustee (and ultimately the appointor) who can do that.