



Feb 2008

Estate Planning and testamentary trustswhy most of your clients need them

Protecting assets and saving tax....

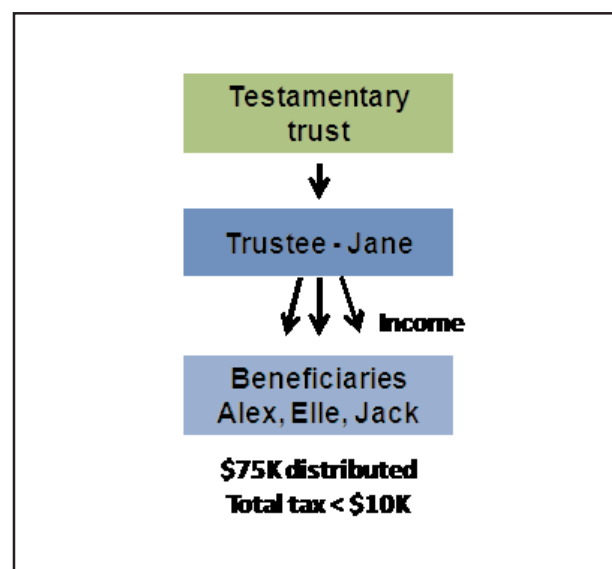
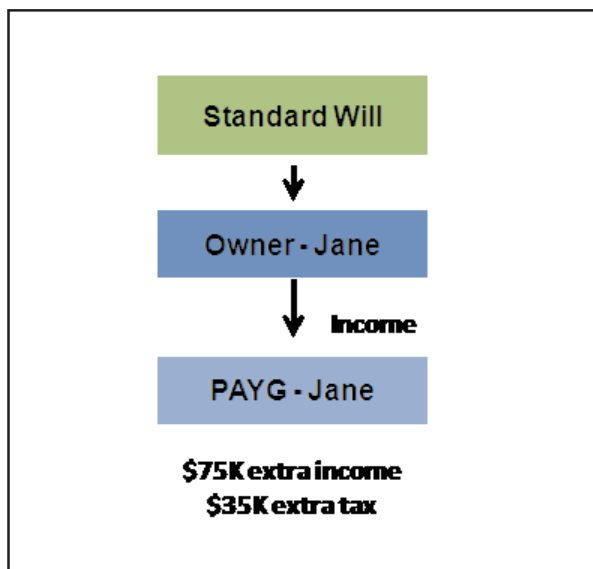
Sound like a good idea? Similar to a family trust, a testamentary trust keeps assets safe from a bankruptcy trustee. Similarly they provide tax advantages although these go beyond those offered by the usual family trusts. Whilst a standard Will only provides for a direct transfer of assets from one individual to another, a testamentary trust allows other chosen family members to receive income and capital when required.

Importantly any assets bequeathed to children can be held on trust until a nominated age - beyond the 18 years of age at which they can receive them via a standard Will.

In some circumstances a standard Will may be appropriate however many clients decide they would prefer to invest in a Comprehensive Will with testamentary trusts. The benchmark we have found is that having approximately \$300K in assets makes it worthwhile to do so although complicated family circumstances may dictate the need for testamentary trusts regardless of the total estate value.

Distributing income & loan accounts... Let's say Jane receives \$1.5m from her father's estate and places it in her testamentary trust, earning \$75K pa. Jane is a professional, paying tax at the top marginal rate and has three young children all at private school. Jane decides to distribute \$25K to each child who then each pays tax. If Jane had received this income direct she would have paid approx \$35K in extra tax compared to the combined amount payable by the children of \$10K.

Even if Jane had inherited only \$300K which earned \$15K, at \$5K each her children would pay no tax whilst she would have paid \$6975 if received direct. And the loan accounts? Jane can offset private school fees, living expenses, holidays etc against the loans.



Estate Planning and testamentary trusts...

How do they work? ... Comprehensive Wills contain a range of testamentary trust provisions that may or may not be required by the beneficiaries at the date of death. For example a general testamentary trust mentioned above can be established for each beneficiary with access available at an age nominated by the Willmaker (in most cases this is 25 yrs).

Other benefits ... Apart from the general testamentary trusts mentioned above, Comprehensive Wills also allow other special testamentary trusts and provisions to be established, providing a great deal of flexibility in tailoring an estate plan.

Special Care: For example if the Willmaker has a child who is not capable of managing their finances, funds can be settled in a Special Care Trust which is established on death, and with a trusted adult appointed to manage those funds.

Super: A Superannuation Death Benefits Proceeds Trust can also be established to ensure tax benefits are maintained if superannuation is directed into the Will.

Second spouses: Where there is a second spouse and the Willmaker has children from a prior relationship, they may wish to look after the second spouse whilst leaving the majority of their estate to their children. In these instances, the Will contains provisions that allow

the spouse the right to live in the home until they re-marry or die. At that point ownership of the house can then pass to the children or their testamentary trusts.

Education Trust: Where the Willmaker has a mix of older and younger children they may wish to provide for the completion of the younger children's education. For example if the Willmaker has two children who have finished University and a third child who is still at secondary school, a sum of money can be set aside to pay for the younger one to complete their education. The remainder of the estate is then split between the three children.

Helping clients understand they have these options available to them is important. Whilst the flexibility alone makes Comprehensive Wills a compelling option for many people, the advantages of asset protection, tax savings and control issues usually make them a 'must have' for most people.

Like to know more?

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