

WHAT IS A TESTAMENTARY TRUST?

A "Testamentary Trust" is a trust specified in a Last Will and Testament which arises upon the death of the testator.

Each Last Will and Testament may contain more than one testamentary trust in the same Will and may address all or any portion of the estate.

The testator may appoint any number of trustees to manage and administer the trust on behalf of their chosen beneficiaries.

What are the provisions of a Testamentary Trust?

The provisions of a testamentary trust may contain, but are not limited to the following:

- The powers and duties of the trustees;
- The division of income and capital among the beneficiaries;
- The termination or dissolution date;
- Many other provisions which we will discuss in a consultation.

What are the benefits of a Testamentary Trust?

One of the main advantages of a testamentary trust is that the trust gives the testator a piece of mind in that his/her assets will be administered, invested and managed for the benefit of the beneficiaries by the trustee/s of his/ her choice.

If a testator fails to create a testamentary trust the following may result:

- The estate assets may be liquidated as there is no chosen trustee to manage same to the benefit of the beneficiaries;
- Assets may end up in the hands of a legal guardian who does not have the skills or time to maintain and manage said assets;
- The minor's share of the inheritance may be paid into the Government Guardian Fund where the funds are generally invested at interest rates that will not sustain the impact of inflation.

The procedure once the testator passes away?

- The executor of the estate as appointed in the Last Will and Testament must be appointed to administer and wind up the estate;
- The trustee/s appointed in the Last Will and Testament must register the trust with the Master of The High Court;
- Once the trust is registered, the trustee/s must open a bank account for the trust, the executor must transfer all assets into the trust and cash into the bank account in the name of the trust the duty of the trustee/s to administer the trust then commences.



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