An explanation of what a testamentary trust is and how it can be used as an estate planning tool.

Title: Should you consider a testamentary trust?

Do you worry about what will happen to your family when you're no longer here?

If so, a 'testamentary trust' may be the answer. A testamentary trust is a trust in a Will. It is established as an outcome of a Will and only comes into force in the event of your death. A will may contain multiple testamentary trusts, and they may cover all or a portion of your estate. You can create one to cover the whole family or a separate one for each beneficiary.

The trustee of a testamentary trust may be one or more of the beneficiaries, a legal professional, a trustee company, or other person. The trustee is appointed to direct to trust until a set time when the trust expires, for example when beneficiaries reach a certain age or marital status. The trustee exercises discretion over the trust, and in some jurisdictions, it's common to leave a letter of wishes for the trustee to consider.

The major benefits of a testamentary trust are taxation advantages and protection of the assets where children are involved, or where you may be concerned about the beneficiaries' management of their inheritance. A testamentary trust means you know your children and grandchildren can have access to a regular income, along with capital (if appropriate). It tends to be most appropriate where potential life-insurance settlement amounts are likely to be far greater than the existing estate, and where the beneficiaries are young or otherwise unable to manage their own inheritance.

Taxation

Generally, children under 18 are subject to penalty rates of tax on unearned income. However, where their income is received from a deceased estate normal tax rates apply, including the low-income rebate, if applicable.

Using a testamentary trust means that all income from the estate, including capital gains and franked dividends, may be distributed amongst the beneficiaries in the most tax-effective manner.

Protection of Assets

A testamentary trust, if structured correctly, may also prevent beneficiaries from having unlimited access to the capital from your estate. This may be of particular benefit where:

- you have a beneficiary who is disabled and unable to manage their own affairs;
- you believe a beneficiary may be financially irresponsible or you wish to protect their inheritance in the event of marriage breakdown;
- you think your spouse or ex-spouse may not manage the estate in the best interests of your children;
- you wish to ensure your children receive a defined part of your estate in the event of a surviving spouse remarrying.

There are several advantages and disadvantages to consider before choosing to include a testamentary trust/s in your Will. The terms of the trust are set out in your Will and it is therefore important to have professional legal advice in the preparation of your Will and to discuss your needs fully with your solicitor.

Sources:

What is a Testamentary Trust? State Trustees https://www.statetrustees.com.au/trustee-services/types-of-trusts-we-manage/testamentary-trust/

What is a Testamentary Trust? https://legalwill.com.au/what-is-testamentary-trust/