



FRANK LAW



THE POWER OF TESTAMENTARY TRUST WILLS

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CHOOSING THE BEST TYPE OF WILL

It's important to have a Will to say what you want to happen with your estate (your property, money and rights) when you die.

There are two main types of wills:

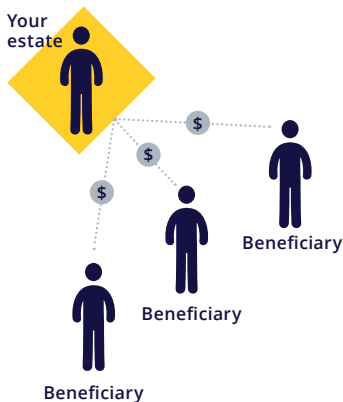
- 1 a Traditional Will
- 2 a Testamentary Trust Will.

1 A Traditional Will gives your estate directly to your beneficiaries. ('Beneficiaries' are the people who benefit from your will. They get an inheritance when you die.)

2 A Testamentary Trust Will creates one or more trusts for beneficiaries – it has a number of advantages.

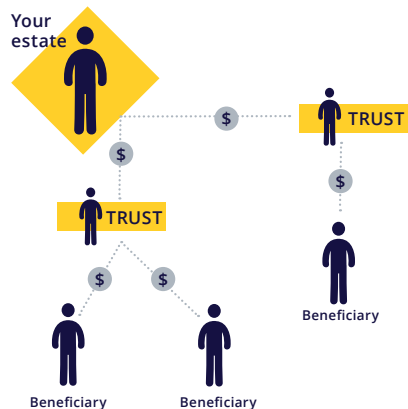
1 TRADITIONAL WILL

Beneficiaries receive their inheritance directly.



2 TESTAMENTARY TRUST WILL

Beneficiaries receive their inheritance in a Testamentary Trust.



A Testamentary Trust is a special type of trust that can only be set up in a Will. You also nominate a Trustee in your Will to control the trust.



Contact our Wills & Estate Planning Team to see if a Testamentary Trust Will is right for you.

LOWER THE TAX PAID ON YOUR ESTATE

A Testamentary Trust Will may result in a lower amount of income tax being paid on investment income from the inheritance you leave. The advantage depends on the circumstances of your beneficiaries.

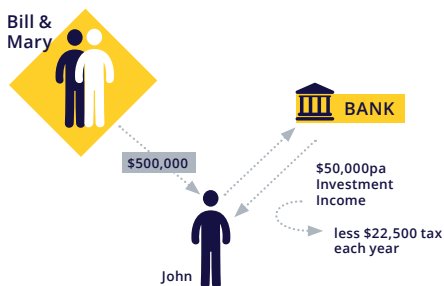
Example:

Bill and Mary have an estate worth \$500,000 they wish to leave to their son John. John has three young children under 18; that is, Bill and Mary's grandchildren. Bill and Mary have worked hard to build their estate and they want to make sure their family gets maximum value from it.



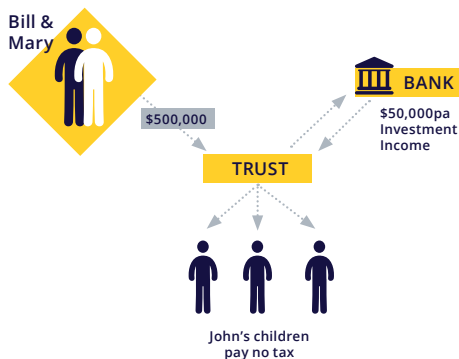
TRADITIONAL WILL

When Bill and Mary pass away with a Traditional Will, John receives \$500,000 directly. He invests his inheritance at a 10% return, generating \$50,000 p.a. However, John is on the highest tax rate of 45% and so he pays \$22,500 p.a. in extra tax. Even if he passed the investment income to his three children, the tax office would likely get \$21,936 p.a.¹. Over ten years that's more than \$200,000 paid in tax.



TESTAMENTARY TRUST WILL

Bill and Mary set up a Testamentary Trust Will with John and his children as beneficiaries. When they pass away, John's inheritance goes into the Testamentary Trust. The trust invests the inheritance at 10%, generating \$50,000 p.a. The investment income is directed to John's three young children – up to \$18,200 can go to each child under 18 years tax free. So, no tax is paid on the investment income.



¹ Special tax rules apply to income earned by people under 18 years old. Under these rules, certain types of income, such as a distribution for a family trust, (but not a Testamentary Trust), may be taxed at a higher rate.

This rule was introduced to discourage adults from diverting income to their children



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PROTECT YOUR ASSETS

A Testamentary Trust Will can protect your estate from being lost through:

- ◆ a beneficiary who may waste assets (perhaps by gambling, drug, alcohol or other addiction)
- ◆ a beneficiary who is bankrupt or at risk of being sued
- ◆ a beneficiary whose marriage or defacto relationship breaks down.

Example:

Todd and Jill have two children; Betty and Chris.

- ◆ Betty has a gambling problem and does not manage finances well.
- ◆ Chris' marriage is on the rocks and it will likely end in divorce.

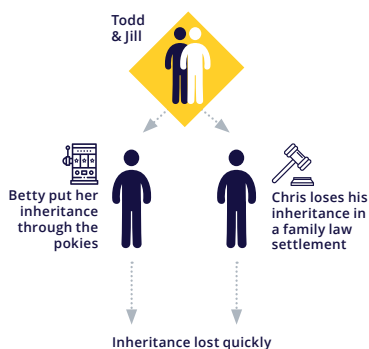
Todd and Jill want to protect their estate so that Betty and Chris get a good benefit.



TRADITIONAL WILL

If Betty and Chris received their inheritance outright through a traditional will

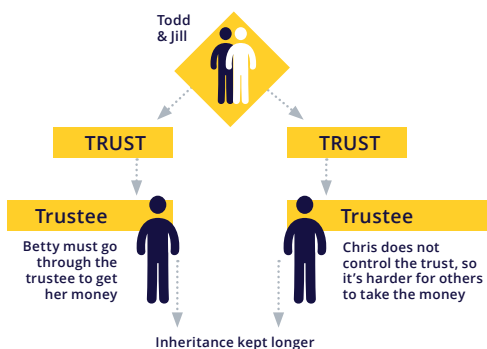
- ◆ Betty may gamble away her share and be left with nothing very quickly.
- ◆ Chris may lose a large part of his share in a family law settlement.



TESTAMENTARY TRUST WILL

Todd and Jill protect Betty and Chris by setting up a Testamentary Trust for each of them in their Wills. They appoint an independent person to control the trusts.¹

- ◆ Betty will not have direct control over her trust. She will have to work with the independent trustee to access funds.
- ◆ Chris does not control his trust and does not have sole interest in the trust's assets, so it is more difficult for another party to make a claim for it.



² In this case, it is best to appoint an independent person to control the trusts. Chris should not be the only beneficiary of the trust set up for him as this will make it harder for a family law claim to be made against it



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PROTECT BLENDED FAMILIES

A Testamentary Trust Will can be used when a will-maker wants to provide for their spouse and the will-maker's children from a previous relationship. It can protect the estate from being diverted to a new family if the spouse remarries.

Example:

Anna is married to Jerry. Anna has children from a previous relationship, and Jerry and Anna also have a child together.

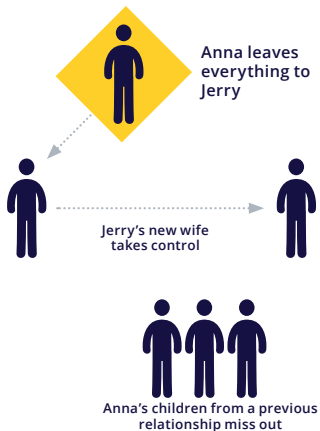
Anna wants to ensure that Jerry and the child they had together are provided for, but she also wants to make sure her children from a previous relationship do not miss out.



TRADITIONAL WILL

In a Traditional Will, Anna would likely leave everything to Jerry.

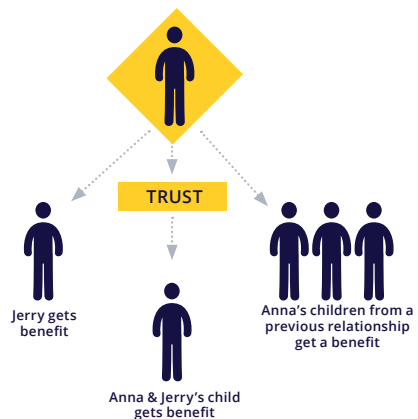
But he might later re-marry. His new spouse might not agree to provide for Anna's children because they are not directly related to her or Jerry.



TESTAMENTARY TRUST WILL

Anna creates a Testamentary Trust Will. The beneficiaries of the trust include Jerry, their child together, and Anna's previous children.

Any future spouses can be excluded as beneficiaries. Anna may choose for Jerry to control the trust, or she may appoint a completely independent trustee.



Contact our Wills & Estate Planning Team to see if a Testamentary Trust Will is right for you.

WHAT NEXT?

Testamentary Trust Wills are an effective way to protect your estate in a range of circumstances. However, they are more complex than Traditional Wills and need to be set up carefully and with expert knowledge. Contact our Wills & Estate Planning Team to see if a Testamentary Trust Will is right for you.



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This brochure contains general information and is not intended to constitute legal advice.

Contact us so we can provide you with advice based on your circumstances.

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