

structuring your will

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Before making any decision, we recommend you consult a licensed adviser or legal practitioner to take into account your particular objectives, circumstances and individual needs.



How can I structure my will?

There are two main ways to structure your will.

They differentiate depending on how you wish you leave your assets to your nominated beneficiaries (the people you wish to receive a benefit under your estate).

Option 1 - simple will

The first and more common type of will structure is often called "simple wills". Under this approach, your assets are left directly to the beneficiaries of your estate in their own names.



you

When someone passes away, their personally owned assets pass into the control of the administrators of the estate (often called 'executors')

your executor

The executor then goes about managing the estate and when complete, distributes estate funds to the beneficiaries in their own names.

your beneficiaries

This means that the beneficiaries do not receive any tax planning or asset protection opportunities.

It also means that any minors entitled to receive assets must be able to demand control of those assets when they turn 18.

Option 1 - simple will (cont)

This approach can be appropriate in many scenarios, for example where:

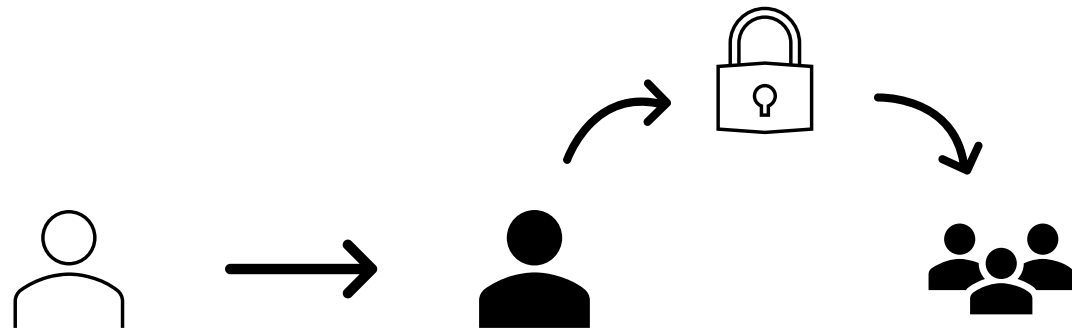
- The size of the estate is such that any other structure would be unwarranted (see more information below on using testamentary discretionary trusts)
- The risk status of the beneficiaries is low (see below for more information on risk status)
- The beneficiaries are permanently located overseas meaning that a trust in Australia would create issues with cross border administration
- The beneficiaries do not require tax planning strategies. In this regard, any income earned from their inherited assets will be taxed at their marginal rate.

Under this approach, if you pass away with minor children, your assets are held by your executors on 'bare' trust until your children turn 18. See more information below about what a trust is and what a 'bare' trust is.

Option 2 – TDT Will

The alternative approach is to embed testamentary discretionary trusts [TDTs] into your will. Under this approach, your assets are left into a TDT to manage for the benefit of a range of beneficiaries.

This can be shown diagrammatically as follows:



you

When someone passes away, their personally owned assets pass into the control of the administrators of the estate (often called 'executors')

your executor

The executor then goes about managing the estate and when complete, distributes estate funds to the trustees of the TDT.

your beneficiaries

This means that the trustees determine which beneficiaries receive what assets and when (allowing for greater flexibility for tax planning or asset protection opportunities).

It also means that control of the TDT can be passed to younger generations at a pre-determined time.

Option 2 – TDT Will (cont)

This approach has become more popular in recent times due to the asset protection and tax planning opportunities it affords. A will including a TDT can be appropriate in many scenarios, for example where:

- The size of the estate is such that it warrants protection from third parties and from the beneficiaries themselves
- The risk status of the beneficiaries is medium to high (see below for more information on risk status)
- The beneficiaries require tax planning strategies. In this regard:
 - » Advice can be obtained at the time [and based on the circumstances at that time] by a professional support team [accountants, financial planners etc] about tax minimisation strategies
 - » Minor children can receive just over \$20,000 of income each year, entirely tax free from estate assets inside the TDT.

Ultimately, the approach taken should be based on advice and your circumstances.

Hold on, what is a trust?

A trust is a legal relationship where someone ('the trustee') holds an asset for the benefit of others.

A trustee can be natural persons (up to a maximum of 4) or a company and has the day to day decision making powers over the assets of the trust. The trustee is considered to be the legal owner of the assets and subsequently, their name will appear with any third parties as owning the assets.

The assets are then deemed to be 'trust property' and must be held in accordance with particular terms. The terms of a trust can be found in:

- the 'trust deed' which is similar to a rule book setting out the rights and obligations of the parties to the trust (for a TDT, this is the will of the deceased person)
- Trust laws relevant to the jurisdiction of the trust (this also includes succession law where the trust is a TDT)
- a combination of both

The range of people that are able to benefit from a trust are called the 'beneficiaries'. Beneficiary categories can be very narrow or very broad, depending on the circumstances. Most trusts have a very broad range of beneficiaries for asset protection and tax planning reasons.

Trusts can also include an additional role often called 'Appointors', 'Principals' or 'Guardians'. Often referred to as 'God' of the trust, this person usually has the ultimate control of the trust by getting to determine who is the trustee.

However, the actual powers of a person in this role vary according to the terms of the trust deed (or will, where the trust is a TDT).



What is a 'bare' or 'fixed' trust?

The primary features of a 'bare' or 'fixed' trust are as follows:

- the trust will generally have a very limited range of beneficiaries with each beneficiary entitled to a fixed amount of the assets of the trust. The trustee does not have a discretion to allocate assets between the beneficiaries often creating practical or taxation issues
- the trust does not offer the same asset protection (or tax flexibility mentioned above) afforded by an appropriate crafted TDT, due to the fixed entitlement of the beneficiary to the assets of the trust if they attain the nominated age
- the trustee will be unable to protect the beneficiary if it is not appropriate for them to obtain control of the trust assets at the relevant time (for example, due to issues with bankruptcy, addiction or their own financial immaturity) by being provided instructions from a will creator about when control of the trust should be handed over to children

In this regard, any entitlement under a will intended for anyone under the age of 18 is held by the trustee of the will until they obtain 18 years of age.

If care is not taken regarding the drafting of a will, regardless of the age nominated by a will creator for a beneficiary to take control of their inheritance, the beneficiary can access their inheritance on their 18th birthday

Generally, none of the above rules are applicable where the asset passes to a TDT.

When should a TDT come into effect?

A common consideration is when any TDT should come into effect. TDTs can be established either on the death of one spouse or only on the death of both spouses.

The key considerations in determining when a TDT should come into effect are the same as above: are asset protection and tax planning strategies needed by the surviving spouse? If not, there is potential for everything to be left to a spouse in their own name. We generally find that as couples get older, the need for asset protection and tax planning for the surviving spouse is significantly reduced.

For clarity, regardless of when you want the TDT to come into effect, it can only be established after your death (meaning that there is nothing you need to proactively do to establish or manage the trust during your lifetime – other than reviewing your will regularly).

How many TDTs should my will include?

Another issue that often arises is where there is more than one family unit to benefit and each unit requires asset protection and tax planning opportunities. An example of such is where a couple both have children [whether minor or adults], from past relationships.

There are several considerations when deciding whether to implement a single TDT [for all children] or multiple TDT [one for each child] will.

Some of these include the items set out on the next page.

Again, the ultimate approach taken should be based on advice and your circumstances.



How many TDTs should my will include?

| Consideration | Circumstances | Rule of Thumb |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|---------------|
| The age of the beneficiaries | Some of the beneficiaries are minors | Single TDT |
| | All beneficiaries are adults [or close to being so] | Multiple TDT |
| The relationship between the beneficiaries | The relationship between the beneficiaries is such that they could jointly manage the trust | Single TDT |
| | There is a poor relationship or substantially different communication styles between beneficiaries | Multiple TDT |
| Lifestyles of each of the beneficiaries | The beneficiaries are in the same stage or state when it comes to lifestyle | Single TDT |
| | The beneficiaries have vastly different lifestyles | Multiple TDT |
| Whether asset protection is a priority | Asset protection is paramount for the beneficiaries | Single TDT |
| | Providing beneficiaries with autonomy over their inheritance outweighs any perceived additional asset protection | Multiple TDT |
| The nature of the assets to be divided | Assets in the estate are such that division between multiple parties would be difficult or create conflict | Single TDT |
| | Assets in the estate can be easily divided | Multiple TDT |
| Whether children should have control of their inheritance | The same control mechanisms are appropriate for all beneficiaries | Single TDT |
| | Some beneficiaries require different control mechanisms | Multiple TDT |



Who can benefit from the TDT under my will?

Exactly who can benefit depends on the terms built into your will.

Our standard TDT has the following key features with regards to beneficiaries:

- The Primary Beneficiaries are the main beneficiaries of the trust. This is generally your nominated beneficiary and all of their lineage.
- The Secondary Beneficiaries are a broader range of family members
- There are Tertiary Beneficiaries that, broadly speaking, are other entities related to the Primary and Secondary Beneficiaries.

Each beneficiary type is detailed in Schedule 2 of our wills that contain TDTs.

What's important to remember is that just because someone fits within one of these categories, doesn't mean they can demand anything. Our TDT wills are discretionary, meaning that a beneficiary can only receive trust funds at the discretion of the trustee. This is why careful consideration must be taken when choosing your nominated trustee for your TDT.

The only right a discretionary beneficiary has under our standard TDT wills is to be considered as a possible beneficiary.

It's important to have a wide range of discretionary beneficiaries for several reasons largely related to asset protection and tax planning.

How do I know if my intended beneficiaries are 'high risk'?

Identifying if a beneficiary is high risk is critical to ensuring that person is adequately protected under your estate plan. In determining if a beneficiary is high risk, it is best to categorise the risk into one of two categories:

- Commercial Risk
 - » the person is a company director
 - » the person has provided personal guarantees for business or investment debts or liabilities in favour of creditors
 - » the person has assets that are heavily geared or minimal cashflow to cover any events that may create issues with repayment of loans
- Non-Commercial Risk
 - » the person is at risk of relationship breakdown
 - » the person has special needs
 - » the person is easily influenced
 - » the person makes poor financial choices
 - » the person has an addiction of some sort
 - » the person is minor
 - » the person lives overseas

