

WEALTH PROTECTION WILL

Why use a Stacks Wealth Protection Will?

For many years Solicitors have routinely recommended to their client Mutual Wills – that is, a will leaving everything to a client's partner and upon the death of the surviving partner, leaving everything to their children. However, Mutual Wills are often not the most effective way to distribute your estate to your beneficiaries. An alternative to a Mutual Will is a Stacks Wealth Protection Will in which each beneficiary is given their bequest together with an optional Testamentary Trust to hold that gift. This approach gives the opportunity to minimise tax and protect assets for those who require it.

WHAT IS A TESTAMENTARY TRUST?

A Testamentary Trust is a trust established in someone's will. It comes into existence only when the person dies. A will can establish more than one Testamentary Trust such as a separate trust for each beneficiary.

WHO CONTROLS THE ASSETS?

Whoever is named in the will as trustee will control the trust's assets. Like any trust, a Testamentary Trust can be as flexible or as fixed as you want. The trustee can be given full discretion or no discretion as to who should receive income and capital from the trust and when they should receive it.

The trustee is often the same person who was appointed executor and can also be a beneficiary. For example, a parent can establish a Testamentary Trust for each child's inheritance. Each adult child can be the trustee of their own trust and can therefore control the assets held by the Testamentary Trust established for them.

WHY ARE THEY USED?

Testamentary Trusts can be used for a variety of purposes including:

- Reducing tax
- Protecting spendthrift beneficiaries from themselves
- Caring for children when they are young
- Caring for beneficiaries who may have a disability
- Providing some scope for keeping an inheritance out of the reach of the Family Court, where the beneficiary is involved in a Family Law property dispute
- Protecting inheritances from a beneficiary's creditors
- Providing some scope for avoiding an unintended loss by a beneficiary of their Government-sourced pension or other benefit.

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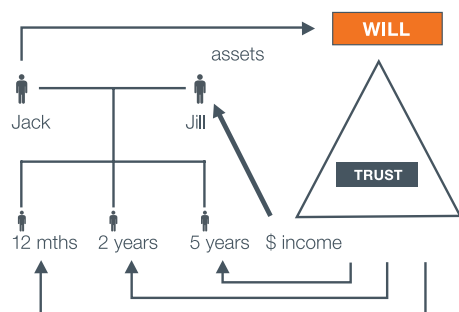
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WHO WOULD BENEFIT FROM USING A TESTAMENTARY TRUST FOR INCOME SPLITTING?

- Families with small children and/or a person whose partner does not work full time
- Those who would need extra income to support the surviving family members should a parent die
- Those for whom minimising tax is important.

HOW DOES IT WORK?



Jack’s will was a Stacks Wealth Protection Will. When Jack died, Jill used the Testamentary Trust within the will to distribute income. She was able to receive \$24,000 tax free each year for herself and her children. Without a Stacks Wealth Protection Will, Jill would only have received \$6,000 tax free.

TAX BENEFITS

Trust income distributed to children of any age will be taxed at adult rates rather than the penalty rates that normally apply to children’s unearned income. The trustee can have full discretion as to who receives trust income and capital or restrictions can be placed on the persons who are permitted to receive trust income and capital.

PROTECT INHERITANCES FROM THE IN-LAWS

Many parents are concerned the inheritance they leave to their children could end up in the hands of a son-in-law or daughter-in-law if their child’s marriage breaks down. If children receive inheritances in their own name, those inheritances will generally be intermingled with the children’s other assets and form part of the matrimonial property available to the Family Court for distribution. However, if you give each child their inheritance in a separate Testamentary Trust provided for in a Stacks Wealth Protection Will, those assets may be able to be kept apart from other assets that form matrimonial property.

How successful this would be in protecting the assets would depend on how the will was drafted and the circumstances at the time.

EXAMPLE

When Mary died she left her only son Jack an inheritance of \$250,000. Jack had been married to Jill for 10 years at the time but they separated shortly after.

Jack and Jill’s matrimonial property amounted to \$300,000. In determining the property settlement, the Court took into account Jack’s inheritance, but because of the terms of the Stacks Wealth Protection Will, Jack’s inheritance was not available for distribution to Jill. Thus the only property available to be distributed was \$300,000, and although Jill did get more than half of that sum it was below what she might have received had Jack’s inheritance been held by him in his own name rather than in a Testamentary Trust.

ESTATE PLANNING AND ASSET PROTECTION

Most people would be more than happy to receive an inheritance, but for those who have not put in place asset protection strategies or who could be facing bankruptcy, this can cause a problem.

People in financially high-risk occupations, such as professionals, business owners and company executives, will often prefer to not receive inherited assets in their own name. To solve the problem they can ask for there to be included an appropriate provision, such as a Testamentary Trust, in the wills of people likely to leave them assets.

EXAMPLES

Example 1

Jack owned his own business which was placed in liquidation during an economic downturn. As a result, Jack was made bankrupt.

A year earlier, Jack received an inheritance of \$250,000. As Jack received his inheritance in his own name, it was able to be taken and used to pay creditors of Jack’s business.

If Jack’s parents’ wills had been Stacks Wealth Protection Wills, Jack’s inheritance may not have been available to creditors of his business.

Example 2

Vivianne owned and ran a high-profile design company. She had deliberately ensured that most of her assets were in her husband’s (Stan’s) name. At least that way, if her business went bad, their home and savings would be protected.

When Vivianne’s parents died, she received the family beach house – unfortunately in her name. Though the business was doing well, its future success was not guaranteed. To protect the beach house from a possible trustee in bankruptcy, she transferred it to a trust and paid \$23,000 in stamp duty.

This expense could have been avoided if Vivianne’s parents’ wills had been Stacks Wealth Protection Wills.