

Testamentary Trusts

This is a special Trust which only starts upon your death. Once the Executor has distributed all the assets, it goes into a Trust, with the Trust as owner. You nominate beneficiaries (such as your spouse and children) who benefit from the assets, but as they are not the owners, they do not have control over it. You nominate rules for the Trust, such as how much income is distributed, when the Trust is dissolved and what happens with the capital left.

The major **benefit** of this, is that the assets are protected in family court proceedings (divorce) or bankruptcy, as the beneficiary does not own the asset. Young or vulnerable beneficiaries are also protected, as the assets are held in Trust to take care of them, so cannot be spent by irresponsible guardians or spendthrift kids. You appoint a **Trustee** who makes the decisions and follows your wishes, so they have a lot of power over the Trust. Many people nominate multiple Trustees who act together, to ensure best interest of the beneficiaries are maintained.

You need to set rules for the Trustee to follow. The key is to set guidelines and avoid the trap of “*ruling from the grave*” by being too strict. *The aim is to protect and provide, not control.*

Some issues to consider:

Levels of annual income which can be paid from the Trust. Will **education** costs be paid in addition to this, or does it need to be included in the annual income? Consider levels of income – too high might be a disincentive to your children to fend for themselves, while too low might mean a struggle.

Set provisions for **lump sum withdrawals** from the Trust – for example to the guardians of your children to buy a bigger car etc.

When will the Trust wind up – at what age of the youngest / oldest beneficiary? What will happen to any **capital left** in the Trust – divided equally amongst the beneficiaries?

Who are the Trustees – nominating multiple people is allowed, but consider who they are and if they get along – animosity between Trustees can affect everyone! Can your Trustee appoint someone else, in their place, or will you have nominated back-ups? Will your children become Trustees upon a certain age?

Sample Testamentary Trust Rules

One off payment at our death of \$150,000 to Mr & Mrs Guardian of the Kids for any expenses that may occur e.g. new car, alterations to their house.

Annual amount of \$20,000 per child will be paid to Child 1 and Child 2 for children's living expenses for as long as they live with the guardians, up to the age of 21. In

addition to this \$20,000 annual limit per child for any **specific medical expenses**, or if more medical expenses to be paid in full.

Schooling up the age of 18 will be the choice of Mr & Mrs Guardian of the Kids. All schooling, university, TAFE, and career required training will be paid for, up to the age of 30.

\$1,000 per child will be provided to allow an **annual visit to family**. Should no trip take place this money will not be made available.

\$20,000 will be made available every 2nd year to **overseas grandparents** should they wish to visit Australia. This to continue for as long as Child 1 and Child live in Australia, up until their 30th birthday.

The children will receive an **annual allowance** of \$20,000 from the age of 18, increasing to \$40,000 from the age of 25.

The Trust will lend them \$250,000 lump sum each to **help purchase their first house/apartment**, available at any age between 21 and 30. They can get tax and legal advice on the ownership, but if the Trust lends them the money, the home may also receive the protection from the Trust.

*All the above figures to be linked to **CPI Index** and increased each year from now.*

The **Trustees have the power** to manage all assets or alter the above in practice if required. Child 1 & Child 2 can become Trustees themselves at the age of 21 and learn to manage their assets in conjunction with the other Trustees. If a Trustee passes away, the other Trustees can appoint a new one.

The Trust is to be **closed by the age** of the youngest child's 30th birthday and all **residual assets**, to be divided equally between the children.

Details of Executors and Trustees required:

Full Name	Suzanne Pitt	Jennifer Robins	Peter Pan	Sonya Mooney
Role	Sole Executor	Trustee 1	Trustee 2	Trustee 3
Relationship	Sister	Sister-in-Law	Uncle	Friend
Date of Birth	7/10/1971	7/10/1980	10/4/1970	8/3/1950
Address	5 Reite Road London BN1 5AJ England UK	16 Milner Street Mosman NSW 2080	12 Roman Ave Concord NSW 2137	5 Princess Street Umina QLD 4001