

Testamentary Discretionary Trust (TDT) Wills

A TDT Will in a nutshell

- **Created inside your will**
- **Only takes effect after your death**
- **Can be beneficial if you hold assets valued at more than \$1m (excl super)**
- **Managed by people you have chosen**
- **Benefits a wide range of people**
- **Increases protection from bankruptcy or divorce/relationship breakdowns**
- **Means that minors can receive approx. \$22k of tax free income every year (from investments in the trust)**

Is a TDT Will right for you?

It is recommended to consider looking into a TDT Will if any of the following apply to you:

- You have minor children
- You have or will have net assets worth over \$1m (excluding super)
- You have a child who will require ongoing care for a disability
- Your beneficiaries are at risk or vulnerable/have issues with addiction
- There is any risk of your beneficiaries becoming a bankrupt
- There is any risk of your beneficiary/ies facing divorce/potential relationship breakdowns
- You have a blended family

TDT Wills offer a range of benefits, including the ability to maximise potential tax efficiencies for future generations of beneficiaries, helping to preserve and safeguard your legacy.

Understanding a TDT Will

A Testamentary Discretionary Trust (TDT) is established through your Will, where you appoint trustees and outline the trust's terms within the document. The trust only takes effect after your death.

It can give trustees significant flexibility and discretion in determining how and when assets or funds from your estate are distributed to beneficiaries.

Flexible control over your estate

A TDT allows flexibility in how and when beneficiaries receive their entitlements. This can help protect those entitlements while reducing potential tax implications.

Under this structure, estate assets are held by trustees on behalf of beneficiaries rather than being transferred directly to them. Although a trustee can also be a beneficiary (and often is), trustees collectively manage and control the inheritance, helping to reduce risk to the assets.

Protecting assets for your beneficiaries

Many people leave most of their estate to their children as primary beneficiaries. However, there may be circumstances where you would prefer that a child — even an adult child — does not receive a large lump sum immediately.

Trustees can exercise discretion about when and how estate funds are distributed. For example, you may wish to delay or stage distributions if a beneficiary:

- is too young to manage a significant amount of money
- has special needs that make managing a lump sum difficult
- is experiencing addiction, making staged payments more appropriate
- operates a business that may be financially unstable
- is going through relationship or marital difficulties and you want to protect assets from an ex-partner
- is exposed to potential legal claims or litigation

A trust structure can shield assets from claims against beneficiaries. Where the trustee is separate from the beneficiary, it can also protect the trust assets from misuse by the beneficiary.

If a beneficiary becomes bankrupt, assets held for them within a TDT are generally not available to creditors. Similarly, such assets may fall outside the pool considered in family law property settlements if a beneficiary separates from a spouse or partner.

This protection can also extend to claims against a beneficiary's own estate. Assets held in trust do not automatically form part of their estate when they die and may not be available to claimants.

TDTs can also provide safeguards where beneficiaries may be vulnerable. For instance, funds can be applied toward appropriate support or treatment without granting direct access to the capital.

Tax-efficient estate distribution

For larger estates, distributing funds in a tax-effective way can be highly beneficial for beneficiaries.

A TDT can provide tax advantages by allowing income, capital gains and franked dividends (from shares) to be allocated among beneficiaries each year in the most efficient manner. For example, income may be directed to a minor with little or no other income rather than to a parent already paying tax at a higher marginal rate.

With a TDT, beneficiaries under 18 are treated like adults for tax purposes which means they can receive the same tax-free threshold each year (currently about \$22,000) (instead

of a minor's usual tax-free threshold of only \$416 per year). This is not available with any other trust structure.

Trustees can determine how to distribute income, capital gains and dividends annually to achieve the best tax outcome.

Costs and preparation of a TDT Will

A TDT Will is tailored to your individual circumstances and is more complex than a standard Will. As a result, preparation takes longer and involves higher costs.

Fees and pricing are discussed with your lawyer at the initial appointment. Please enquire if you would like a quote.

Why doesn't everyone just have a TDT Will?

- **They may not want to pay the higher legal costs to set up one up**
- **They may not have enough assets to justify having it i.e. the \$22k of tax-free income for minors which is explained above only actually comes into play if the trust is earning enough income to distribute that much to a minor beneficiary**
- **They may not have concerns about their beneficiaries to justify the increased protection**
- **They may just not know about it**
- **They may be discouraged by the ongoing expenses associated with maintaining a TDT after your death, such as accounting and auditing fees.**