



How to safeguard vulnerable or special needs beneficiaries in your Will

What can you do when making a Will and you have concerns whether one of your proposed beneficiaries will be able to manage their inheritance adequately? One way of dealing with this dilemma is to create a Testamentary Protective Trust to safeguard the gift you intend to leave them.

Assets inherited directly by your beneficiaries become part of their personal assets and fall under their control. As a result, the sensible use and investment of these assets is dependent on the beneficiary's ability to manage their own financial affairs. Leaving an inheritance directly to a beneficiary who is vulnerable or has special needs may lead to the loss or misuse of their inheritance if they don't have the required capacity or skills to manage their financial affairs. These may include people affected by one of more of the following: -

- they have a physical disability;
- suffer from a mental disability or illness;
- have a drug or gambling addiction;
- are of advanced age; or
- are too young to manage large sums of money or significant assets.

Testamentary Protective Trusts

In a typical Testamentary Protective Trust, the person with the disability (principal beneficiary) will usually be the sole beneficiary of a specific trust fund established under a Will. The principal beneficiary receives the benefit of the income and / or capital of that part of the Willmaker's assets that the Willmaker bequeathed to create the specific trust fund, but the principal beneficiary cannot call for it or deal with it personally.

The trustee of the specific trust fund can be the executor of the Will or another person or entity nominated by the Willmaker in the Will to be the trustee. The Trustee manages and invests the trust fund and authorises the expenditure from it.

Who makes the rules of the Trust?

It is the Willmaker in their Will who determines the important rules for the Trustee to implement relating to the Trust, such as:

- the duration of the trust – typically until the death of the principal beneficiary, but it can be shorter;
- the investment powers of the trustee;
- whether it is only income, or income and capital that can be spent;



- the purpose of expenditure – typically for maintenance, education and advancement of the principal beneficiary but can also be for other specific purposes nominated by the Willmaker including accommodation, or specialist care;
- whether any surplus accrued income in any year is accumulated in the Trust or distributed to other persons;
- the intended ultimate beneficiaries once the Protective Trust has come to an end, such as the children or siblings of the principal beneficiary.

Testamentary Protective Trusts can be an important vehicle for ensuring that a beneficiary you wish to provide for under your Will, who has a limited or affected capacity to manage their financial affairs, actually receives the full benefit from the gift you wish to leave to them

If you would like further information about including a Testamentary Protective Trust in your Will or want to make a Will or update your existing Will please contact [Lisa Delalis](mailto:Lisa.Delalis@batemanbattersby.com.au) or [John Bateman](mailto:John.Bateman@batemanbattersby.com.au) at our office on 02 4731 5899 or email willsstates@batemanbattersby.com.au.