**There are many advantages for you and those you leave behind if you have a will when you
pass away, as opposed to dying intestate (i.e. without a will), as the following table illustrate**

|  |  |
| --- | --- |
| If You Die Having Made a Will … | If You Die Intestate … |
| You can distribute your assets in the manner you decide is in the best interests of your loved ones  | The Law that is applicable in the state or other jurisdictions where your assets are located determines who gets what share of your estate. If you have no family your property goes to the Crown. |
| An executor is appointed who can represent your interests from the date of your death, including:1. organizing your funeral;
2. organizing finance for your loved ones;
3. holding property on trust for, and applying that property for the benefit of, minor children from the date of your death;
4. immediately collecting and preserving your assets; and
5. attending to creditors in good time to avoid disputes with them.
 | The court must appoint an administrator which takes quite some time.Various people may rank equally in terms of who is entitled to apply to the court for permission to administer the estate.While family members can organise your funeral there can be problems if no one person is clearly in charge.No one is appointed until the court grants letters of administration. No one is in charge of protecting and preserving the estate assets and dealing with creditors.  |
| You can appoint a guardian for your minor children. | Applications need to be made to the Court for guardians to be appointed for minors. |

WHAT SORT OF WILL?

Unless a testator has significant income-producing assets or an intellectually disabled, mentally incapable or wayward children for whom provision is to be made, a simple will is usually adequate.

If a testator has significant income-producing assets, which might include the family home if that is to be sold and the proceeds distributed to one or more beneficiaries, the testator should consider a will with a full discretionary testamentary trust.

DISCRETIONARY TESTAMENTARY TRUSTS

A Will may provide for the creation of one or more discretionary testamentary trusts, depending on how many beneficiaries are provided for in this fashion, where each discretionary testamentary trust:

1. is created on the death of the testator or testatrix;
2. has a beneficiary nominated as the primary beneficiaries of the trust, but with various related general beneficiaries to whom, or to which, income, capital gains and capital can be distributed;
3. has the executor as the initial trustee, but which may allow the primary beneficiary to control the trust on attaining a nominated age, which can be any age 18 or over, but we recommend to be not less 21 years of age; and
4. has all the terms of the trust and the powers of the trustee contained in the Will.

The main advantages to having a will with gifts given pursuant to the terms of a discretionary testamentary trust are as follows:

*Flexibility* – The trustee has the power to distribute capital and income not only to the primary beneficiary of the trust but also to various related general beneficiaries, at the trustee’s discretion.

*Income Tax* – The primary and general beneficiaries pay income tax on their allocated share of income according to normal marginal tax rates, but beneficiaries under the age of 18 years are taxed at adult rates rather than at a higher rate normally paid by minors. This allows income from the trust assets to be tax-effectively distributed to spouses and children of a primary beneficiary, as well as investment companies and other trusts.

*Capital Gains Tax* – Similarly, the trustee can select which of the beneficiaries of the trust should receive capital gains in a tax-effective manner.

*Protection of Assets* – While the primary beneficiary does not control the trustee of the trust, creditors of the primary beneficiary, including ex-spouses, cannot have recourse to the trust assets, although the Family Court may take the benefit of the trust into account in dividing assets. Once the primary beneficiary does get control of the trust, creditors of the primary beneficiary may have recourse to the trust assets, but in the case of an ex-spouse, it may be possible to successfully argue that:

1. the trust assets were 100% the proceeds of an inheritance; and
2. the trust assets were not the result of the joint efforts of the spouse while they were together,

… so, the trust assets should not be taken into account when distributing assets between the ex‑spouses.

*Provision for Incapable or Wayward Children* – A parent concerned about intellectually disabled or incapable or simply wayward children can use a discretionary testamentary trust to provide for such children without giving them any control over the trust assets.

*Longevity* – The trust can continue for a period up to 80 years, if required, but can also vest at an earlier time prior to the end of the 80 years, at the trustee’s discretion.

WILL INSTRUCTION SHEET

***IMPORTANT: When asked for names, please provide full names (no initials).
If the space in any section is insufficient, please use item 20 or a separate sheet.
If you have an existing Will, please provide us with a copy.***

|  |  |
| --- | --- |
| **DESCRIPTION** | **DETAILS** |
| 1. **Type of Will**
 | **[ ]  Simple Will [ ]  Will with a Full Discretionary Testamentary Trust** |
| 1. **Your name & occupation**
 |            |
| 1. **Your spouse’s name and occupation**
 |            |
| 1. **Your residential (and postal) address**
 |            |
| 1. **Contact details:**

**Telephone (Home):Telephone (Work):Fax:Email:** |                      |
| 1. **Executors (these can be beneficiaries):**
2. **Person(s) whom you wish to appoint as your executor(s).**
 | **Name, address, relationship** |
|       |
|       |
|       |
| 1. **Alternate executor(s), if your first choice(s) cannot act as executor(s)**
 |       |
|       |
|       |
| 1. **2nd Alternate executor(s), if your 1st and 2nd choice(s) cannot act as executor(s)**
 |       |
|       |
|       |
| 1. **If any children:**
2. **Name, address and age of each child;(please include children from ex‑relationships, step-, adopted and foster children and provide details)**
 |                      |
| 1. **Full name(s) and address of person(s) whom you wish to appoint as guardian(s).**
 |                 |
| 1. **Please list the specific gifts you wish to make, names and addresses of the beneficiaries (relatives, friends, charities, etc.), a percentage if relevant, and if the will is not a simple will, state whether the gift is given pursuant to the terms of the discretionary trust**
 | **Beneficiary (name & address)** | **Gift** | **What %** |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
| 1. **Remainder of Your Estate**
2. **Do you wish the remainder of your property to go to your spouse if your spouse survives you by 30 days, failing which it goes to your children in equal shares?**
 | [ ]  Yes, go to 9(c)[ ]  No, complete 9(b) |
| 1. **If “No” to 9(a), please specify the beneficiaries to whom the remainder of your property will be divided, the proportions, etc.**
 | **Beneficiary (name & address)** | **What %** |
|       |       |
|       |       |
|       |       |
|       |       |
|       |       |
|       |       |
| 1. **In the unfortunate event that all the beneficiaries above perish before you (including their children if yes to 10), please specify the beneficiaries to whom the remainder of your property will be divided.**
 | **Beneficiary (name & address)** | **What %** |
|       |       |
|       |       |
|       |       |
|       |       |
|       |       |
|       |       |
|       |       |
| 1. **Do you wish any gift to an intended beneficiary that dies before you to go to that person’s children, in equal shares?**
 | [ ]  Yes[ ]  No |
| 1. **Please provide details of any person(s) you are not providing for in your will who might otherwise be expected to be provided for, including the relationship with you and brief reasons for not providing for them.**
 |                                                    |
| 1. **Is everyone who is dependent upon you, wholly or in part, adequately provided for or reasons given for their exclusion? If no, please make some provision or give reasons for exclusion above**
 | **[ ]**  Yes |
| 1. **If you opted for a will with a full Discretionary trust, at what age do you want the primary beneficiary to control the trust? This can be any age of 18 or over, but we recommend it to be not less than 21 years of age.**
 |       |
| 1. **If you are you the trustee, appointor or guardian of any family, unit, superannuation or testamentary trust, or the shareholder of a corporate trustee, please give details and arrange for a copy of the trust deed(s) to be sent to us**
 |                                                                   |
| 1. **Name & address of your accountant(if any)**
 |                          **[ ]**  By ticking this box, you authorise us to contact your accountant and discuss the terms of your Will. |
| 1. **How would you like your body to be disposed of after your death?**
 | [ ]  I wish my body to be **buried** in the following cemetary:     [ ]  I wish my body to be **cremated** at the following crematorium:     and have my ashes **deposited** at the following place:      **OR** have my ashes **scattered** over the following location:     [ ]  **Undecided** |
| 1. **Do you wish to be an organ donor?**
 | [ ]  No[ ]  My organs can be used for transplantation, exlcuding:     [ ]  My organs can be used for other medical purposes, exlcuding:     [ ]  My organs can be used for study purposes, exlcuding:     [ ]  My organs can be used for scientific research, exlcuding:     [ ]  Undecided, in which case organ donation will not be mentioned |
| 1. **Please provide full details of any assets that you want us to ensure will be passed to the correct people, including property held as joint tenants and tenants in common.**
 |                                                         |
| 1. **Your superannuation is unlikely to be distributed according to the terms of your will. Have you made adequate provision for the distribution of your superannuation, e.g. with binding death nominations?**
 | **[ ]**  Yes**[ ]**  No, see your financial planner now! |
| 1. **Extra relevant details or details**
 |                                                                        |
| 1. **Notice to Executors**
 | **[ ]**  By ticking this box, you authorise us to contact your Executors to confirm their appointment. |
| 1. **Final Check: Is there anything else that you think we should know? If yes, add to 20**
 | **[ ]**  No, you have finished! |