



Crystal Lawyers

Crystal Clear Advice & Pricing



ESTATE PLANNING GUIDE

A *Smarter* Will Protects What Matters.

Why a testamentary trust will can be a valuable estate planning upgrade

Most Australians spend decades building their wealth — their home, savings, investments and superannuation. Yet many leave it behind with a will that transfers assets outright, without a continuing structure for tax planning, asset management, creditor risk, relationship breakdown risk or young beneficiaries. A testamentary trust will can provide that structure — and it may be simpler to arrange than you think.

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FREE INITIAL ASSESSMENT AVAILABLE

\$18,200

Resident minor beneficiaries receiving qualifying excepted trust income from a testamentary trust are taxed at adult marginal rates — meaning the first \$18,200 is generally tax-free under the 2025–26 rate schedule, before Medicare levy and subject to current tax law. The benefit is that adult rates apply at all: under a family trust, minors are taxed at penalty rates on eligible income above \$416.

80 yrs

The maximum period a testamentary trust can run in Western Australia where the will specifies it (s 101 Property Law Act 1969 (WA))

Fixed fee

Every estate plan is quoted as a fixed fee before any work begins — no billable hours and no surprises

CRYSTAL LAWYERS

IS THIS RIGHT FOR YOU?

IS THIS FOR YOU?

A simple will costs more *than most people realise.*

A testamentary trust will is not only for the wealthy. If you own a home, have children, or have accumulated meaningful savings or superannuation, the difference between a simple will and a smarter one may amount to many thousands of dollars in tax over the life of the trust — and may provide a structure to manage risks that an outright inheritance does not address.

Do any of these apply to you?

If you tick even one box, a testamentary trust will is worth discussing with us.

- | | |
|--|---|
| ☐ You have children under 18, or adult children who may not yet be financially mature | ☐ You own a home or investment property that will form part of your estate |
| ☐ You have superannuation — regardless of the amount | ☐ A beneficiary works in a high-risk profession (medicine, law, construction, finance) |
| ☐ A beneficiary is in a relationship you have concerns about | ☐ You have a beneficiary with a disability, addiction, or difficulty managing money |
| ☐ You have a blended family or complex family dynamics | ☐ Any beneficiary lives overseas or may do so in future |
| ☐ You already have a family trust and want your estate to coordinate with it | ☐ You want your estate distributed fairly on an after-tax basis |

THE DIFFERENCE

What your current will is not doing for your family

Most people assume a simple will is sufficient. In practice, it usually hands your assets directly to your beneficiaries, without a continuing structure for tax planning, staged control, or risk management after your death.

SIMPLE WILL

Assets pass directly — unprotected

- ✗ No testamentary trust structure for annual income distribution — income is generally taxed in the recipient beneficiary's hands
- ✗ Assets may be exposed to creditors and bankruptcy
- ✗ Inheritance may be relevant in a divorce or separation
- ✗ Children receive a lump sum at 18 — no conditions
- ✗ Less flexibility — beneficiaries generally receive what the will gives them outright
- ✗ Tax outcomes for an overseas beneficiary are left to chance, with no structure to plan around them
- ✗ Superannuation bypasses the will if not separately nominated

SMARTER WILL WITH TESTAMENTARY TRUST

Assets managed, protected & tax-efficient

- ✓ Potential to distribute qualifying estate-derived income to lower-tax beneficiaries each year
- ✓ Assets held in trust — may assist with creditor risk management
- ✓ Trust structure may assist with relationship breakdown planning
- ✓ Capital held until beneficiaries reach the right age
- ✓ Greater flexibility — depending on the terms of the will and trust
- ✓ A structured plan that lets your solicitor address tax issues for an overseas beneficiary
- ✓ Superannuation can be coordinated with the will structure

"You've worked all your life to build what you have. A smarter will may cost more to prepare than a simple will, but it can give your family a structure for tax planning, asset management and long-term protection."

HOW IT WORKS

From signing your will to protecting your family

A testamentary trust is created inside your will but does not come into existence during your lifetime. It activates only after your death, when your executor administers your estate and, if the will provides for it, estate assets can be held on the terms of the testamentary trust.

1 You sign your will — nothing changes during your lifetime

The trusts created by your will have no legal existence yet. Your assets remain in your own name. You can update or revoke the will at any time.

2 Your executor applies for a Grant of Probate

After your death, your executor applies to the WA Supreme Court for Probate — the court's confirmation that your will is valid. This commonly takes several months, and can take longer in more complex estates.

3 The testamentary trust springs to life

Once Probate is granted and the estate is ready for distribution, your executor can transfer estate assets into the testamentary trust or trusts created by the will. In Western Australia, a transfer that gives effect to a distribution under a will, for no consideration, generally attracts nominal duty rather than full transfer duty.

4 The trustee manages and distributes income each year

The trustee decides each year which eligible beneficiaries receive income and in what amounts, subject to the will, the trust terms and tax law. This can allow the family to manage the overall tax position with appropriate accounting advice.

5 The trust protects your family for up to 80 years

In Western Australia a testamentary trust can operate for up to 80 years where the will specifies that period, so it can run across multiple generations. When the time is right, the remaining assets are distributed and the trust is wound up. The will can also be drafted to give beneficiaries choices about whether assets are retained in trust or distributed directly.

Beneficiaries can keep choices. A properly drafted testamentary trust will can allow a beneficiary to take some or all of their share directly — for example, to reduce a mortgage — or to keep assets within the trust. The available choices depend on the terms of the will and the structure chosen during the estate planning process.

THE TAX ADVANTAGE

The power of income streaming

One possible feature of a testamentary trust is the ability to distribute qualifying estate-derived income to family members in lower tax brackets — including children. Unlike a family trust, where children under 18 are taxed at penalty rates, income from a testamentary trust distributed to a minor is generally taxed at adult rates where it is excepted trust income. This treatment applies to income from assets of the deceased estate, or the proceeds of selling or investing those assets — not to outside money later injected into the trust. The Government has also announced that income from all types of testamentary trusts will be exempt from the proposed minimum tax on discretionary trusts, including future discretionary testamentary trusts, where they are established for genuine testamentary purposes. Tax outcomes depend on individual circumstances and you should always obtain advice from a qualified accountant.

ANNUAL INCOME TO A CHILD UNDER 18	FAMILY TRUST RATE (PENALTY RATE APPLIES TO MINORS)	TESTAMENTARY TRUST RATE (ADULT MARGINAL RATES APPLY)
\$0 – \$416	0%	0%
\$417 – \$1,307	66% on the excess over \$416 (penalty rate on excess only)	0%
\$1,308 – \$18,200	45% on the whole amount	0%
\$18,201 – \$45,000	45%	16%
\$45,001 – \$135,000	45%	30%
\$135,001 – \$190,000	45%	37%
\$190,001+	45%	45%

Family trust column: penalty rates on a minor's eligible income under Division 6AA of the Income Tax Assessment Act 1936 (Cth). Once eligible income reaches \$1,308, the whole amount is taxed at the top marginal rate of 45% — not just the excess. The 66% rate in the \$417–\$1,307 band applies to the excess over \$416 only; the effective average rate across that band is lower. Testamentary trust column: 2025–26 resident adult marginal rates, applied to a minor's excepted trust income. Both columns exclude the 2% Medicare levy. The \$18,201–\$45,000 adult marginal rate is legislated to fall to 15% from 1 July 2026 and 14% from 1 July 2027. Rates are subject to legislative change — obtain current advice.

THE TAX ADVANTAGE — CONTINUED

A worked example and what's changing

WORKED EXAMPLE — STREAMING RENTAL INCOME

How a testamentary trust can change the tax result for rental income

Jane Smith has one significant asset: a 2-bedroom apartment worth \$800,000. Her daughter Mary earns \$120,000 a year and has two school-age children. Under a simple will, the apartment passes directly to Mary. She rents it out for \$40,000 net per year — all of which sits on top of her salary at a marginal rate of 30% plus 2% Medicare levy, costing about \$12,800 in tax each year.

With a testamentary trust will, if the apartment is held in the trust and the trust terms allow it, the trustee may distribute that \$40,000 to Mary's two children — \$20,000 each — as excepted trust income taxed at adult rates. On these figures each child pays roughly \$288 in tax, about \$576 in total. On the assumptions used, the family tax difference is in the order of \$12,000 in the first year, with similar differences possible in later years if the same income and distribution pattern continues.

INDICATIVE ANNUAL TAX SAVING

~\$12,000

Illustrative only, based on 2025-26 rates and the assumptions noted below. Your position will differ.

Assumptions: net rent of \$40,000; two minor beneficiaries with no other taxable income; the apartment was an asset of the deceased estate, so the rent is excepted trust income taxed at adult rates; 2025-26 resident rates; Medicare levy and any tax offsets ignored for simplicity. This is a simplified illustration, not a prediction of your outcome. The proposed discretionary trust minimum tax is addressed below. Always obtain advice from a qualified accountant before relying on any figure.

Important — announced trust tax changes. In the 2026-27 Federal Budget, the Government announced a proposed 30% minimum tax on discretionary trusts from 1 July 2028. The Budget explainer states that the tax is to be paid by the trustee and that beneficiaries, other than corporate beneficiaries, will receive non-refundable credits for tax payable by the trustee. On 18 June 2026, the Government announced that income from all types of testamentary trusts will be exempt from the minimum tax, including future discretionary testamentary trusts, where they are established for genuine testamentary purposes. The Government has stated that the exclusion will be limited to income from assets of the deceased estate. For discretionary testamentary trusts established on or after 1 July 2028, the Government has stated that the exclusion will only apply to trusts that can only benefit individuals and income-tax-exempt entities. This means that if the measure is enacted as announced, a testamentary trust will drafted after the relevant date may need to restrict the class of potential beneficiaries to individuals and income-tax-exempt entities — and to exclude corporate beneficiaries — if the testator wishes to preserve the exemption. Legal and accounting advice should be obtained at the time of drafting to reflect the requirements as finally enacted. These measures are not yet final legislation. Obtain current legal and accounting advice before acting.

ASSET PROTECTION

What happens to your estate *after you are gone?*

Even carefully accumulated wealth can unravel quickly once it passes directly into a beneficiary's hands. A smarter will anticipates life's uncertainties and builds protection into the inheritance itself.

Divorce and relationship breakdown

Assets inherited directly become part of a beneficiary's personal estate and may be relevant if their relationship ends. A testamentary trust separates legal ownership from the benefit, which may assist in protecting inherited assets from a property settlement. The Family Court retains broad discretionary powers and each case turns on its own facts. Legal advice should always be obtained in this area.

Creditors and bankruptcy

Assets held in a testamentary trust do not legally belong to the beneficiary personally. Where the beneficiary does not control the trust, this may provide a measure of protection against creditor claims — though the extent of that protection will depend on the trust structure and the specific circumstances. Anyone concerned about creditor exposure should obtain legal advice on how best to structure the trust.

Young or financially inexperienced beneficiaries

A testamentary trust can hold capital until the beneficiary reaches an age you specify — for example 21, 25 or 30 — while allowing distributions for approved purposes in the meantime. Your will can set the framework for how and when younger beneficiaries receive control of their inheritance.

Beneficiaries who move overseas

Where a beneficiary is a foreign resident for tax purposes when they inherit, some assets can trigger a CGT liability in the estate even without a sale. This is known as CGT event K3 under s 104-215 of the Income Tax Assessment Act 1997 (Cth). Australian real property is generally not caught by K3 because it is taxable Australian property under that Act — meaning the CGT exemption for the estate arises from its classification as taxable Australian property, not from the general death rollover in s 128-15, which operates in different circumstances. Assets such as shares in an Australian company, which are not taxable Australian property, can be caught by K3 and the resulting tax falls on the estate rather than the overseas beneficiary. Careful drafting may help manage this risk. Tax advice from a qualified accountant is essential if any of your beneficiaries live, or may in future live, outside Australia.

Beneficiaries with disability, addiction or vulnerability

A specially structured protective trust can help provide for a vulnerable beneficiary while taking account of Centrelink, NDIS and other support arrangements. For those with a severe disability, a Special Disability Trust may provide means-testing concessions up to the legislated threshold.

THE GAP MOST WILLS MISS

Your superannuation is *not covered by your will.*

For most Australians, superannuation is their largest or second-largest asset. Yet it is also the asset most commonly left unplanned — because it sits entirely outside the will and passes under completely different rules.

WHY SUPERANNUATION NEEDS SEPARATE PLANNING

When you die, your superannuation fund trustee decides who receives your super death benefits. Unless you have a valid **Binding Death Benefit Nomination (BDBN)** in place, the fund trustee can pay your super to whichever eligible dependant it chooses — completely bypassing your will and any testamentary trust you have arranged.

Even if you do have a nomination, most **lapse after three years**. If yours has expired, your super is once again at the fund's discretion. In many cases, nominating your **estate** as the beneficiary allows super to flow through your will and into your testamentary trust, which may preserve the structural benefits you have arranged. However, the tax consequences of directing super through your estate depend on individual circumstances and you should always obtain advice from a qualified accountant before deciding how to nominate.

There is also an important exception to consider. If there is any risk of a family provision claim, or of a challenge to the validity of your will, nominating your estate as beneficiary carries an additional risk. A nomination in favour of your "legal personal representative" means that the super is paid to whoever holds the grant of probate or administration. If the will is successfully challenged and set aside, the grant may be revoked and the LPR's authority extinguished — which may affect the nomination, require the fund trustee to redetermine the payment, or result in the super passing under intestacy rules. The outcome in those circumstances is uncertain and the document should not be taken as predicting it in any direction. In those circumstances it may be preferable to nominate a dependant beneficiary directly. This is a complex area and legal advice tailored to your personal circumstances is essential.

1**Check every super fund**

If you have multiple funds, each needs its own current nomination.

2**Consider nominating your estate**

In many cases, directing super to your estate allows it to flow through your testamentary trust — but this may not suit every situation. Obtain legal and accounting advice first.

3**Choose non-lapsing if available**

A non-lapsing BDBN removes the three-year expiry risk. Ask your fund whether this is available.

4**Review regularly**

Review whenever your family or financial circumstances change, and at minimum every three years.

Life insurance — the same considerations apply. If your life insurance is nominated directly to a named individual, those proceeds bypass your will entirely. In many cases, nominating your estate allows the proceeds to flow through your testamentary trust, which may provide structural and asset protection benefits. However, the same caveat applies: if there is any risk of a challenge to your will or a family provision claim, and the will is successfully challenged, a nomination of your legal personal representative may also be at risk. In those circumstances, a direct nomination of a dependant may be more appropriate. As with superannuation, the tax treatment of life insurance proceeds depends on individual circumstances — always obtain advice from a qualified accountant and solicitor before deciding how to structure your nominations.

COMMON QUESTIONS

What people *ask us most often*

Q Is this only for wealthy people?

Not at all. The benefits are greatest where the estate includes income-producing assets, but even a modest estate can gain from the asset management, tax planning and structural advantages a testamentary trust provides — as the worked example in this guide illustrates. For some families, the additional cost of a testamentary trust will may be outweighed by the benefits after the trust begins operating.

Q What does it cost?

Crystal Lawyers charges fixed fees for all estate planning — no billable hours, no surprises. The exact fee depends on the complexity of your situation. We start with a free 15-minute assessment before providing a written quote. You know the full cost before any work begins.

Q I already have a simple will. Is it too late?

No. You can update your will at any time. Upgrading to a testamentary trust will is straightforward, and your existing will remains valid until a new one is signed.

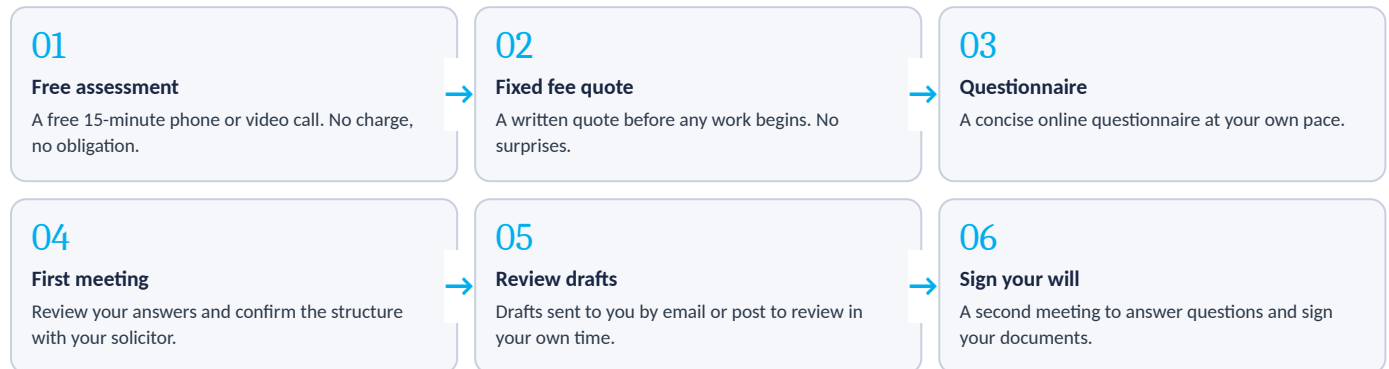
Q Will it complicate things for my family?

A well-drafted testamentary trust will should make the intended structure clear for your family. It is more sophisticated than a simple will, but Crystal Lawyers is available to assist your executor, trustee and beneficiaries at every stage after your death.

Q I already have a family trust. Do I still need this?

Yes. Assets in your family trust do not form part of your personal estate and are not covered by your will. A testamentary trust will and an existing family trust work together as a coordinated estate plan — we can help you align both.

OUR PROCESS

Crystal clear from *start to finish*

TAKE THE NEXT STEP

A free conversation costs nothing. Inaction does.

Book a free 15-minute assessment with an experienced estate planning solicitor. A brief, no-obligation conversation to understand what you have and what you need — followed by a fixed fee quote with no surprises.

[BOOK YOUR FREE ASSESSMENT →](#)

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