Testamentary Trusts and You

Preparing your Will is perhaps the most important step you can take to ensure that your wishes are carried out with minimum expense and delay after your death. A well-thought-out Will serves as the foundation of an effective estate plan, allowing you to leave a legacy for those you care about, in the way you feel is best.

There are a number of options when it comes to distributing your assets to your loved ones, either during your lifetime or after you're gone. Among them are methods of direct asset transfer including joint ownership of non-registered assets with a right of survivorship*; designating a beneficiary for a registered asset*, tax-free savings accounts* or life insurance policies; gifting assets directly to beneficiaries before your death; establishing inter vivos or living trusts while you're alive; and distributing assets through your Will, either directly or using a testamentary trust. Each method has its own merits and special considerations. In this document we'll look at the uses of testamentary trusts.

WHAT IS A TESTAMENTARY TRUST?

A testamentary trust is a trust established in your Will that comes into effect only upon your death. It allows your trustee to hold specific assets for the benefit of beneficiaries without allowing the beneficiaries to gain control of those assets. The assets held in the trust are invested and managed by the trustee of the trust (also appointed by you through your Will; often but not always your estate's executor/liquidator in Quebec), with income and capital distributed to the beneficiaries in accordance with your wishes.

Testamentary trusts may have a lifespan of a few years or may continue for many years after the initial administration of your estate has been completed.

WHY ESTABLISH A TESTAMENTARY TRUST?

There are a number of reasons that individuals choose to create testamentary trusts. You may wish to:

Ensure that your spouse will be looked after once you're gone

- Spousal trusts designed to provide for the surviving spouse throughout his/her lifetime also present an income-splitting opportunity, since the trust income is taxed at its own graduated rates (see following section).

Protect an adult child's inheritance from his/her creditors, a divorce settlement, or his/her own irresponsible money management

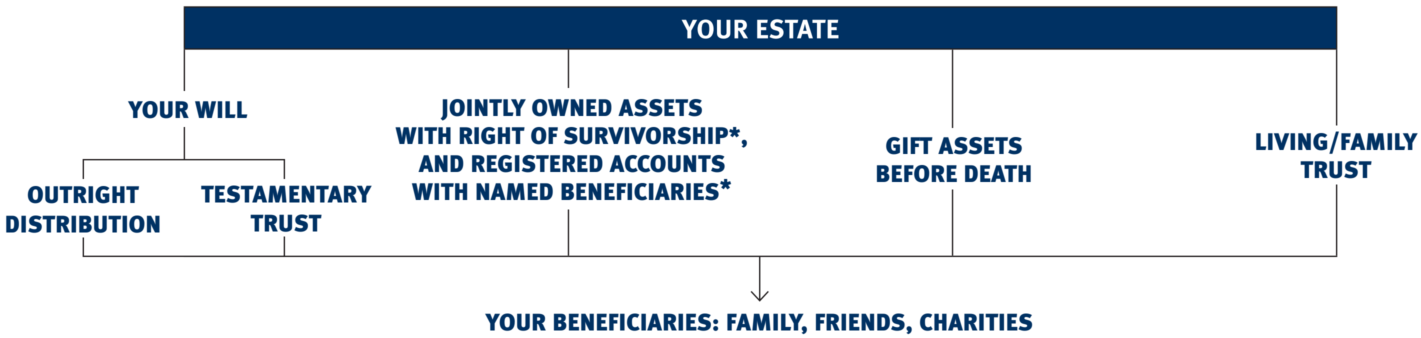
- A trust can allow you to exercise some control over the amounts and timing of income and capital distributions to your beneficiaries, ensuring their ongoing support for years to come.

Provide for the ongoing care of a special-needs beneficiary, or for minor children or adult children until they attain an age when they can properly manage money

- Establishing a trust can bring peace of mind knowing that a beneficiary's ongoing care is addressed.

Preserve assets for children from a prior marriage

- If yours is a second marriage, a testamentary spousal trust enables you to provide income (and possibly capital) from the trust's assets to look after your present spouse until his/her death, at which point the assets will pass to your children.



Meet your philanthropic goals

- There are a number of ways to use trusts to leave a lasting legacy for a chosen charity. If the trust takes effect immediately upon your death, there is also a direct tax savings in the form of a charitable tax receipt for your estate, which can be up to 100 per cent of your income for the tax year in which you pass away as well as the preceding year.

HOW IS A TESTAMENTARY TRUST TAXED?

Since the assets held by a testamentary trust flow through the estate, they are subject to provincial probate taxes (not applicable in Quebec) payable by the estate. One of the major benefits of establishing a testamentary trust, however, is the federal income tax advantages for the trust's beneficiaries.

The income earned within a testamentary trust can be taxed on the trust tax return at graduated tax rates. This creates an income-splitting opportunity for the beneficiary of the trust, and is particularly valuable to beneficiaries who are in a higher tax bracket. (Note that if the beneficiary is expected to have taxable income from all sources that places them in the lowest tax bracket threshold, then there is likely no income-splitting benefit of a testamentary trust.)

These income tax benefits are unavailable to beneficiaries who receive outright inheritances through a Will, as income from those assets will be taxed at the beneficiaries' tax rate.

WHAT DO I NEED TO DO NOW TO CREATE A TESTAMENTARY TRUST WITHIN MY WILL?

The first step is to meet with your RBC® advisor and/or an RBC Estate and Trust professional. The next step will be amending your Will to include the establishment of a testamentary trust. This amendment will involve a meeting with a lawyer or a notary (in Quebec) familiar with estate planning. As part of this process, you will need to select a trustee who will be responsible for the protection and maintenance of your trust assets, as well as the ongoing administration of the trust. Your RBC advisor or an RBC Estate and Trust professional can provide you with more information about RBC's wide range of corporate trustee services.

Choosing the right trustee

Determining who should manage your testamentary trust is one of the most important decisions you will make in creating your estate plan. Choosing the right trustee is essential to your peace of mind and to the preservation of the trust's assets.

Trustees must be impartial, have excellent judgment, and able to assume significant management and administrative responsibilities. For these reasons and others, many clients feel more comfortable engaging the services of a corporate trustee, such as RBC Estate and Trust Services. RBC Estate and Trust professionals are backed by the strength and stability of RBC, and offer:

- Expert knowledge of trusts and provincial trust law
- Extensive expertise in all aspects of trust administration
- Understanding of the unique requirements of investing trust assets
- Integrity, sound business judgment and the ability to develop empathetic relationships with beneficiaries
- A commitment to invest the time required to fulfill the obligations of the trust, and to be available to beneficiaries whenever needed and for many years to come

CONTACT YOUR RBC ADVISOR FOR MORE INFORMATION

For more information about our trustee and executor services, please speak with your RBC advisor. You may also contact an RBC Estate and Trust Professional at 1-888-656-2741 or visit us online at **www.rbc.com/estateandtrustservices**.

This information is also available in French.

* In Quebec, right of survivorship is not applicable, and named beneficiaries outside a Will apply only to certain insurance products and to registered plans meeting the criteria of a trust or an annuity according to Quebec law. Where right of survivorship exists, account documents signed by the deceased with a financial institution might only deal with the legal ownership (and not the beneficial ownership) of the account. Therefore upon death, if it is determined that the account should be beneficially owned by the estate, steps may have to be taken by the executor to recover the funds from the surviving owner(s) on behalf of the estate.

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