



**MULCAHY & CO**  
LEGAL

## **Mulcahy & Co Legal – Wills and Testamentary Trusts**

### ***Introduction:***

Having a legal will is the first essential measure in Estate Planning. It sets out how you wish your assets to be provided following your death and without one you risk the Government via intestacy laws providing your property incorrectly, as well as additional expense to those you leave behind.

However, all wills are not created equal. There are basic wills, as are provided by most Solicitors for often less \$100 per will and via legal will kits, but are these basic no frills wills best for you? What else is out there? The answer for most people is to invest in a properly drafted Will including a discretionary testamentary Trust.

### ***What is a Testamentary Trust?***

A trust is a legal relationship where one person holds assets on behalf of one or more people. A testamentary trust is a type of trust created via the will of a deceased person. It does not come into being until the will maker passes away, but following administering the Estate it allows benefits that leaving assets directly to parties does not allow. For instance, it allows you to leave assets on trust for minors until they reach a certain age.

### ***Better Still?***

The testamentary trust we create for you in our wills is a type of discretionary family trust. This means that whilst assets will be provided on trust for a particular person (your spouse or children for instance), for asset protection purposes, they do not “legally own” these assets, meaning they are often very difficult for third parties to access in the event of bankruptcy or litigation against that beneficiary.

Equally as impressive and perhaps more useful in most circumstances is the enormous tax savings that your family will receive via a testamentary trust. With a discretionary testamentary trust, the beneficiary can allocate income received from your Estate to any family member of theirs, meaning they can allocate income to children who otherwise would not be using their tax free thresholds, or lower income earners in the family.

For example, Richard dies suddenly leaving \$100,000 in cash and \$500,000 in life insurance. His wife, Maria, works and has a marginal tax rate of 30%. They have two minor children who do not work. Assuming Maria invests this money wisely and earns \$50,000 in the first year.

	<u>Taxed To:</u>	<u>Tax Payable:</u>
Regular Will	Maria (no discretion on this)	\$50,000 x 30% = \$15,000
<b>Mulcahy &amp; Co Testamentary Trust Will</b>	Maria can elect for the income to be directed to the children	Child 1 = \$1,350 Child 2 = \$1,350  Total Tax Paid: \$2,700

That's a tax saving of over \$12,000 every year for Maria!

***The next step?***

Don't risk the unfortunate happening without having an effective properly drafted will.

**Contact the experts at Mulcahy & Co today to begin your Estate Planning.  
Ph: 03 5330 7200**