What Is a Testamentary Trust and Does New Jersey Law Require One?



Our New Jersey Estate Planning Lawyers Can Guide You Through the Process

When someone writes a last will and testament, they often create a document that simply lists who receives certain assets. But what many people might not realize is that a will can also include something known as a testamentary trust. This particular type of trust is created inside a will and takes effect after the person who created the will dies. Often, individuals create wills with a testamentary trust to provide greater control over how someone's inheritance is managed and distributed.

A testamentary trust can serve many different kinds of beneficiaries. A person might use one to provide for a child, spouse, family member with a disability or anyone who might benefit from receiving an inheritance gradually rather than all at once. The will itself names a trustee and sets the terms for distribution. That way, the trust is ready to go into effect the moment probate is complete in New Jersey.

Our New Jersey estate planning attorneys at Williams Law Group, LLC have helped parents build testamentary trusts into their wills. This work can help provide for the orderly management and distribution of someone's inheritance while reducing unnecessary court involvement after the trust takes effect. We can also help families decide whether a trust belongs inside a will or as its

own separate document. We can patiently walk you through the pros and cons of each option before you make important legal decisions.

What is a Testamentary Trust?

A testamentary trust is a trust that a person creates through the terms of a will. It only takes shape after the person dies, not during the person's lifetime. Unlike a living trust, it does not exist as a separate legal document. It exists only as a set of instructions written inside the will.

A testamentary trust has no legal effect until the person who created the will dies. The will must also be admitted to probate, the court process that confirms a will is valid. Until the will is admitted to probate, the trust is simply language on a page. Nothing has been funded and no trustee has any authority to act.

Once probate is complete, the named trustee steps into the role the will describes. The trustee then manages the inherited assets for the beneficiary. The idea behind a testamentary trust is to create clear instructions that reflect someone's wishes.

Who Can Benefit From a Testamentary Trust?

A testamentary trust can be tailored to fit many different beneficiaries. Common examples include:

- **Minor Children** – A trust can hold and manage an inheritance until a child reaches an age the parent chooses, rather than handing over full control at 18.
- **A Beneficiary With a Disability** – Assets can be managed carefully so an inheritance does not interfere with eligibility for government benefit programs.
- **A Spouse From a Second Marriage** – A trust can provide for a surviving spouse during that spouse's lifetime while preserving what remains for children from an earlier relationship.
- **An Adult Who Struggles With Money Management** – Distributions can be spaced out or tied to specific needs instead of paid as a single lump sum.
- **Any Beneficiary Who Should Inherit Gradually** – A trust can release funds at specific ages or milestones, such as finishing college, rather than all at once.

Choosing the right beneficiary structure depends on a family's specific goals and relationships. An estate planning lawyer can help identify which of these situations applies and draft trust terms that reflect the person's actual wishes.

How Is a Testamentary Trust Different From a Living Trust?

A living trust is created and funded while a person is still alive. Assets are formally transferred into the trust name during the person's lifetime. The trust can often continue operating with little interruption after the person who created it dies.

A testamentary trust does not exist until death. Nothing is transferred into it during the person's lifetime. The trust is simply a plan written into the will, waiting to be activated once probate begins after someone's death.

This difference carries real consequences. A living trust generally avoids probate for the assets placed inside it. A testamentary trust does not, since the assets funding it pass through the will first. Many families use both tools together within one estate plan.

What Happens to a Minor's Inheritance Without a Testamentary Trust?

New Jersey law does not allow a minor to directly receive and control a significant inheritance. These rules are outlined in state statutes like N.J.S.A. 3B:15-16 ("Deposit and investment") and N.J.S.A. 3B:15-17 ("Investment by surrogate"). Specifically, a will can leave property to a minor outright, without any trust. When that happens, the funds are generally held by the Surrogate's Court until the child turns 18 years old.

A parent does not automatically gain the right to manage that inheritance. Being the child's parent is not enough on its own. A parent or guardian must formally qualify with the court instead. In some cases, the parent must apply for permission to place the funds into a court-supervised trust for the child's benefit.

That court supervised trust can still be tailored to some extent. Distributions can happen at specific ages rather than in a single lump sum at 18. Even so, the process adds legal fees and delay. It also brings court oversight that a testamentary trust could have avoided from the outset.

When Should You Consider a Testamentary Trust in New Jersey?

New Jersey law does not use the word require in a strict sense. No statute forces every parent to include a testamentary trust in a will. Several common situations exist, however, where skipping one creates the exact court involvement a testamentary trust is designed to prevent.

Leaving assets to a minor child is the clearest example. Without a trust, the inheritance often lands in Surrogate's Court custody. A separate court application may be needed before the funds can be properly managed on the child's behalf.

A beneficiary with a disability presents a similar concern. An outright inheritance can interfere with eligibility for certain government benefit programs. A blended family raises its own issues too. A parent may want a spouse to benefit during that spouse's lifetime while still preserving assets for children from an earlier relationship.

What Provisions Should a Testamentary Trust Include?

A testamentary trust should never be treated as a single sentence added to a will as an afterthought. Several specific provisions determine whether the trust actually works as intended once it becomes active:

- **Named Trustee and Successor Trustee** – The will should name a primary trustee along with at least one backup, so the trust can continue if the first choice cannot serve.
- **Distribution Terms** – The trust should state whether the beneficiary receives assets in stages, such as at specific ages, or whether distributions are left to the trustee's discretion.
- **Permitted Uses of Trust Funds** – Clear language addressing health, education, maintenance, and support helps a trustee make decisions without constant court involvement.
- **Trust Termination Provisions** – The trust should specify what happens to any remaining assets once its purpose has been fulfilled or the beneficiary reaches a certain age.
- **Trustee Powers and Compensation** – The will should spell out what authority the trustee holds over investments and expenses, along with any fee the trustee may collect.

Leaving any of these provisions vague can force a trustee back into court. A judge may need to decide what the person who created the will actually intended. Precise language at the drafting stage often prevents these disputes and delays.

Who Serves as Trustee of a Testamentary Trust?

The trustee named in a testamentary trust takes on a fiduciary duty. A fiduciary duty is a legal obligation to act in the beneficiary's best interest, not the trustee's own interest. This role often continues for years, sometimes until a child reaches a specified age well beyond 18.

Many parents name a family member as trustee because of the personal relationship involved. A family member may not have the financial background such a role demands. This can leave a well-intentioned trustee overwhelmed by recordkeeping and reporting obligations.

Other families choose a professional trustee instead, such as a bank or trust company. Some name a family member alongside a professional advisor. Either approach can work. The will should clearly state the trustee's authority and any support the trustee is expected to seek from professionals.

Does a Testamentary Trust Avoid Probate?

A testamentary trust does not avoid probate. The trust exists only within the will. The will itself must still be admitted to probate before the trust can take effect and the named trustee can act.

This distinction often surprises clients. Many assume any trust automatically bypasses the probate process. A living trust can avoid probate for the assets placed inside it. A testamentary trust cannot, since it depends entirely on the will being validated first.

For many families, this tradeoff is acceptable. A testamentary trust can still deliver meaningful protection for a minor or vulnerable beneficiary. That protection exists even though the estate passes through probate first. The real question is whether that tradeoff fits a family's specific goals.

What Steps Are Involved in Setting Up a Testamentary Trust?

Setting up a testamentary trust involves more than adding a paragraph to an existing will. A careful process helps ensure the trust actually accomplishes what the person creating it has in mind:

- **Identify the Purpose of the Trust** – The person creating the trust should decide whether the goal is protecting a minor, providing for a beneficiary with a disability, or controlling the pace of a large inheritance.
- **Select a Trustee and Backup Trustee** – The chosen trustee should be someone capable of handling recordkeeping, distributions, and communication with beneficiaries over time.
- **Draft Clear Distribution Terms** – An estate planning lawyer can help translate the person's wishes into language a court and trustee can apply consistently.
- **Coordinate With Other Estate Planning Documents** – The will, any existing trusts, and beneficiary designations on retirement accounts or life insurance should all work together.
- **Review the Trust Periodically** – Family circumstances change. The trust terms should be revisited whenever a major life event occurs.

Skipping any of these steps can leave a testamentary trust technically valid but poorly matched to a family's actual needs. Working through each step with legal guidance can help prevent problems later.

How Can a New Jersey Estate Planning Lawyer Help Set Up a Testamentary Trust?

Building a testamentary trust into a will involves more than filling in a template. The terms must reflect a family's actual circumstances. They must also hold up under New Jersey probate rules. Our New Jersey estate planning attorneys at Williams Law Group, LLC take the time to understand a family's full picture before recommending any particular structure.

We can help you weigh a testamentary trust against a living trust or other legal options. We advise you on potential trustees and clearly explain different distribution terms aimed at reducing future court involvement.

If you are not sure whether to include a testamentary trust in your will, we can clearly explain your options. Contact us to schedule a consultation. Together we can build a plan that reflects your actual wishes rather than generic instructions.