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Putting Your Family Wealth In Trust

The basic function of a trust is to separate control and ownership. The result of using a trust is that assets are protected and profits are distributed in the most tax-effective way. There is no 'one-size-fits-all' type of trust. The trust you use depends on many factors, such as the type of asset or business, financing, income type, marriage status, susceptibility to being sued - just to name a few.

Whilst there are many types of trusts the two most commonly used are:

1. Testamentary trust – set up through a directive left in a will, which takes effect after the will-maker's death;
2. Discretionary trust – set up by a 'trust deed', which commences during the life of the individual(s) establishing the trust.

Both types allow for income and capital to be flexibly distributed to beneficiaries, while those beneficiaries have no legal entitlement or interest in the trust's property until the trust deed declares it so.

The trustee is the legal owner of the trust property and is responsible for managing the trust fund on behalf of the beneficiaries. The trustee has a legal duty to obey the terms of the trust deed and to always act in the best interests of the beneficiaries. A trust can operate for up to 80 years in Australia, though it is common to have a clause within the trust deed to allow the trustee the option to wind it up earlier if considered appropriate.

Benefits of using trusts to manage family wealth include:

- **Protection of assets:** Under certain conditions, family assets may be protected from creditors in the event of bankruptcy or insolvency.
- **Cost:** For a straightforward structure, the costs of establishment are relatively low. Specialist advice should be sought for more complicated family scenarios.
- **Effective family tax management:** Income can be directed to members of the family on lower tax rates. It also allows different types of income to be directed to different family members.
- **Simplified regulation**: Trusts are less complicated than operating a company structure.
- **Tailoring**: Most modern day trust deeds are flexible in their operation and can often cater for a wide variety of beneficiary classes and investments.
- **Geographical flexibility:** A trust established under Australian law can operate effectively in every Australian state. Where potential beneficiaries live overseas, specialist advice should be sought to determine the optimal structure.

Trusts allow considerable estate planning benefits providing more certainty in how your assets will be dealt with after your death. Most of the wealthy people in Australia use family trusts to gain some peace of mind that their loved ones will be looked after financially when they no longer can.