A testamentary trust is simply a trust established through provisions in a will as opposed to a trust someone sets up with a separate document during their lifetime. To understand what a testamentary trust can do and whether you need one, it is necessary to look into the details and how they align with your current needs.

Understanding How Trusts Work

Many people think of a trust as a type of account like a bank account. Actually, trusts are a little broader than that. They are a type of legal entity that holds property. Some attorneys describe a trust as a bucket or container. A trust can hold bank accounts, real estate, cars, jewelry – whatever you want to put into them.

Trusts hold property for the use of individuals named as beneficiaries. The property in the trust is managed by a trustee, but the trustee does not get to use the property. Instead, all the benefits of property ownership belong to the beneficiary.

Setting Up a Testamentary Trust

To establish a testamentary trust, an estate planning attorney incorporates provisions in your will that set up a trust to take effect at the time of your death. For instance, your will might specify that $50,000 of your assets will go to create a trust for your nephew's college fund with your brother serving as trustee. The trust would not exist until your death, and then it is created and funded with $50,000 from your estate. Your brother would manage the assets in the trust and distribute them for educational purposes or whatever purposes you specified in the trust terms.

Uses of a Testamentary Trusts

Many parents leave their assets in a testamentary trust for their minor children. If the parents should die before the children reach a particular age, then the money goes into a trust instead of going to them directly. Children under the age of 18 are not legally able to own property, and young adults with limited experience often need guidance handling money. Distributing funds through a trustee can help keep young people safe from fraudulent practices or other pitfalls.

This type of trust is easy to establish up-front because there are no costs involved until later when the trust is officially established. However, later on, the trust may need to pay fees for management and oversight.

Determining Whether a Testamentary Trust is Right for Your Situation

Your estate planning attorney can help you determine whether you should set up a testamentary trust. It is a good idea to have a testamentary trust if you have young children, unless you have other trust provisions in place. A testamentary trust can also provide care for a loved one with special needs or even a pet. However, your attorney might be able to suggest other methods that can provide even better protection for loved ones.

To talk to the team at The Nordhaus Firm about how a testamentary trust could help meet your estate planning goals, contact us today.