

Making sure your affairs are in order



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Legal Matters

Have you planned for your estate? Sometimes the failure to have a will and/or an Enduring Power of Attorney has led to serious unwanted consequences for the family.

In one case a business co-owner had no will, so her shares in the business went to her estranged husband.

In another example, a wife was unable to deal with the matrimonial home when her husband became too unwell to make decisions.

A spouse cannot sign for their partner, if they are incapable, without a court order unless they have an Enduring Power of Attorney.

It is therefore important while you are fit and healthy you prepare for all possible eventualities.

Most people are aware of the importance of making a will. However, that is only the first step when planning for your estate.

Estate planning may involve

the establishment of a trust, gifting, and creating Enduring Power of Attorneys.

What are these documents and why should they form part of your estate plan?

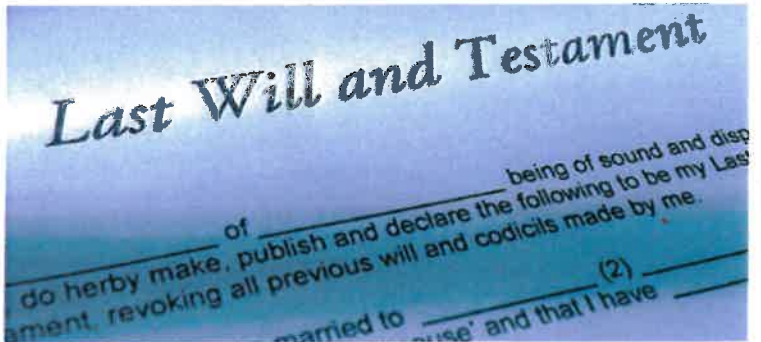
TRUSTS
Trusts are an effective way of protecting and managing your assets for the benefit of your loved ones.

To establish a trust you must form a trust deed, which should include:

- What assets you wish to transfer into the trust (eg, family home, shares, business assets).
- The names of the trustees responsible for managing the trust assets.
- The names of the beneficiaries who will benefit under the trust.
- Any rules for the administration and management of the trust.

It is important to seek legal advice when establishing a trust because the trust deed needs to be carefully drafted to properly reflect your wishes.

GIFTING
When you put assets into a trust, the trust becomes the legal owner of that property. In return, the trust will owe a debt back to you, the settlor. Most people forming trusts want to "gift" the property to their loved ones and do not wish for them to be burdened by a



debt.

As the settlor, you can forgive the trust's debt through a process called gifting. Since 2001, there is not a requirement to pay gift duty, so you can forgive a debt straight away.

ENDURING POWERS OF ATTORNEY
This is a document that nominates a person to make decisions about your property (eg, bank accounts, land and investments) and/or personal welfare if you become mentally incapable or are unable to act.

You can nominate more than one attorney, and can even specify that they are to act on

your instructions while you are mentally capable.

A property attorney can pay bills and buy and sell property on your behalf.

However, you can nominate only one personal welfare attorney, who will be responsible for making medical decisions and choices regarding your health care. That may include deciding what rest home you should go into, but will exclude deciding whether to unplug life support systems.

It is worthwhile having Enduring Powers of Attorneys in relation to both property and personal care and welfare.

If something happens and you

did not have them in place your family members would need to apply to the Family Court to have a welfare guardian and property manager appointed on your behalf, sometimes a costly and lengthy process.

To avoid unnecessary stress, you should plan for your estate so that if an unfortunate event occurs you can rest assured everything is in place for you, your family is fully provided for and your estate protected.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 723484 or raineycollins.co.nz. If you have an inquiry, email aknowsley@raineycollins.co.nz.