1. Advance Directives/Advance Care Plans (ACP)

These are also known as "living wills". They are all about giving or refusing of consent to treatment in the future. They are statements to others, usually in writing, setting out treatment (or non treatment) preferences if you are unable to make that decision yourself.

In NZ they are not legally binding but provide guidance and allow doctors to make decisions which respect your wishes and underlying values without having to go to court for approval.

The objective of an advance directive or ACP is to minimise distress or indignity caused as a direct result of that illness and thereby spare your medical advisors or relatives the burden of making difficult decisions on your behalf.

The Advance Directive can also be made if you do not have an incurable illness but there are particular treatments you do not wish to be given (e.g. blood transfusions).

The most important thing is to remember that whilst you are able to give permission and make decisions for yourself the Advance Directive will have no effect. It only becomes effective when you are medically assessed as being unable to make a decision of your own.

If you wish to have some more information about this contact your GP, your Arohanui Hospice social worker, Palliative Care Coordinator or lawyer and they will be able to give you some more information.

2. Enduring Power of Attorney

The Protection of Persons and Property Rights Act was passed in 1988 to protect and promote the personal and property rights of people who are not fully able to manage their own affairs. It deals separately with personal welfare and property issues.

Unlike an Advance Directive in which you decide about your own future options, the ACP allows you to appoint an EPOA to make those decisions on your behalf.

Personal Care and Welfare EPOA:

Like the Advance Directive it only becomes effective once you are mentally incapable.
It does not give authority for marriage, adoption of a child, life-saving treatments or participation in medical experiments or ECT.

You can put in restrictions that limit what the EPOA can do. You can only have one welfare EPOA at a time but you can also appoint a back up one.

Property EPOA:

It authorises property and financial management if you are unable to do so. It can be restricted to cover certain types of property (e.g. family home only).
It can become operative immediately or only if you become mentally incapable.
More than one EPOA can be appointed for property.

The property and welfare EPOAs cease to have effect:

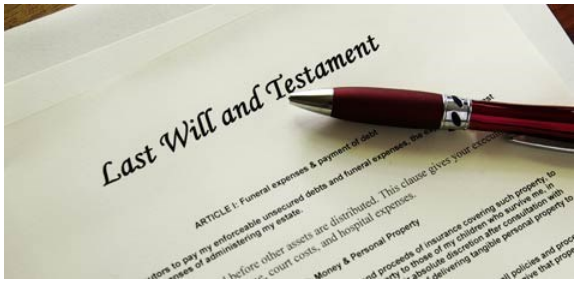
- When you die
- If you are mentally able and choose to revoke the EPOA
- If the chosen EPOA wishes to resign the role
- If the chosen EPOA dies, becomes bankrupt or mentally incapable
- If revoked by the court
- If a jointly appointed EPOA dies

A law change in September 2008 means you are now required to have these documents completed by a lawyer or legal executive. These legal representatives must ensure that you and your chosen EPOAs understand the implications of the orders.

3. Wills

A will is one of the most important documents you can have. It is about the distribution of your assets and how your affairs should be managed after your death. If you die without a will, after your debts are paid your estate is divided between your relatives. It does not go automatically to your partner.

Indeed your partner may not get any of your property unless assets are jointly owned. Sometimes assets will have to be sold so the estate can be divided up.



Without a will the following could happen:

MARRIED OR CIVIL UNION?

YES

Partner gets some
Children get remainder

NO CHILDREN?
Partner and parents share

PARENTS DEAD?
Partner gets all

NO

Everything to children

NO CHILDREN?
Everything to parents

PARENTS DEAD?
Your grandchildren or other relatives get it

NO RELATIVES?
The Government gets it

A surviving partner may be able to make claims under the Property (Relationships) Act if they have been in the relationship for longer than three years, but does not come under the above law of succession.

If you have an existing will, it is very important to make sure this is up to date as there are a number of things that make your will (or parts of it) invalid:

- If you have married or divorced since the will was made.
- If it is not signed and witnessed properly (There is a particular format that is required and you need two independent witnesses).
- If there was some pressure or influence on you to bequeath your property in the way that you did.
- If you were not of sound mind or if you were under-age when you made it.

It can also happen that certain parts of the will might be considered invalid if they are unclear. You cannot leave gifts to the witnesses of the will, or their spouses or partners.

As long as you are of sound mind you can change your will at any time simply by making a new one or you can make a small change by adding an amendment – this is called a codicil.

You should also update your will if anyone named in the will (executor, trustee or beneficiary) dies.
It is really good policy to update it every few years as law changes can have an impact on how your estate is considered.

This information has been produced as a 'guide only' to help you and your family plan for difficult times. Please consult your legal representative for advice.

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AROHANUI HOSPICE

Taking Control

Advance Directives / ACP / EPOA / Wills

This brochure provides guidelines to help you make a plan so that if you are unable to communicate, your family/whānau, friends and medical advisors will be in a better position to know what you want in relation to your care.

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