



# A matter of trust **Managing your FINANCIAL AFFAIRS**

IT IS IMPORTANT TO HAVE AN UP-TO-DATE WILL



**S**quabbling siblings, parents cutting children out of their wills, bitter second marriage inheritance fights – Greg Kelly has pretty much seen it all in his 38-year career as a lawyer.

A specialist in wills, estates and trust law, Greg says dying without a will can lead to a messy, time-consuming and expensive process for family members.

Despite that, only about half of us have wills.

Life changes such as marriage, divorce, the death of a family member and the birth of children or grandchildren are often what prompts many people to have a will drawn up.

Procrastination – just never “getting around to it” – is the most common excuse for not having one, but if a person dies without a will, the courts step in, distributing any assets to a strict formula that may be the antithesis of the wishes of the deceased.

“If you don’t have a will and you die intestate, the process is more complicated and more expensive, and the estate gets administered according to a regime you may not really want,” says Greg.

However, having a will doesn’t always mean things will go smoothly either, he adds.

“There might be arguments among the family about whether the deceased should be buried or cremated, or where they are to be buried, or how they want the funeral service run.”

“It can be very helpful if you have a will that says I want to be buried or I want to be cremated and have my ashes scattered wherever, or I appoint so-and-so to do this. Otherwise, you can have a free-for-all.”

While we like to think families will work amicably together when a loved one has died, that’s not always the case.

“People think their kids are never going to fight,” says Greg. “But that’s often misplaced. It’s very common. There might be three or four kids, they’ve all got equal rights, they might all have very different views about the how funeral should be conducted, and there’s

arguments about the chattels and memorabilia.

“You can say in a will that you want your rings to go to a particular daughter or, ‘I want the old armchair to go to that son.’ If there isn’t a will, people will come up with all sorts of things. Dad said this, Mum said that. A will is a useful way to sort those things out.”

The increasing numbers of people living in de facto relationships or remarrying – and the subsequent tangle of blended families – bring their own problems. Late-life love affairs can be a minefield when it comes to dividing an estate and there are competing claims over a property.

Greg has plenty of war stories.

“You can get horrendous fights... it’s amazing sometimes how much people dislike each other.”

“I had a case recently where a woman separated from her first husband. They had two children from their marriage. She took

**‘We managed to settle the case, but nobody was particularly happy with the outcome’**

the family home, paid off his debts and a few years later a bloke moved in with her as a boarder. He started paying rent; a relationship formed over time.

“She became sick and died, and he claimed he was in a de facto relationship with her and should therefore get half the house. The children from her first marriage, who were her beneficiaries under the will, were really upset. They argued it was the family home, their parents owned it so why should he get half the house, but under the law, he had a reasonable claim to half the property.

“We managed to settle the case, but nobody was particularly happy with the outcome. It created a lot of unpleasantness.”

Greg’s advice to clients is to keep their wills as simple as possible. He also recommends there be at least two executors – the person or people who are

responsible for seeing the instructions in your will are carried out.

If possible, one should be a non-beneficiary (they will not receive anything under the terms of the will) and, ideally, the executors should be able to work together.

You can write your own will – around four percent of us do – but while it may be a cheaper option, lawyers generally advise against it because it’s easy to make simple mistakes that can later makes things extremely complicated if anyone decides to contest the will.

There is no fixed price for writing a will. A lawyer will charge you for the time that they spend advising you and writing it, but if it is a very basic will, they may charge you a set fee.

You can also draw up a will through the Public Trust, which has been in the business of estate administration for 140 years. The Public Trust also offers a service called Executor Assist, which can take care of some or all of the work required of executors.

Wills should be reviewed and updated after any significant life changes, such as having a baby, beginning or ending a relationship, buying or selling a home or starting or closing a business.



**Greg has overseen many difficult disputes as a lawyer specialising in wills, estates and trust law.**

## TRUSTS

For many older people, the fear that rest-home fees will eat into their life’s savings is very real.

You can get help with those fees thanks to a Residential Care Subsidy, but to be eligible you cannot have assets worth more than \$219,889. With average property values now often a lot more than that, more people are being forced to sell their home and watch their wealth erode.

Until 2011, when changes were made to rules around gifting, putting a property into a trust was a popular way to avoid having to pay fees. However, these days trusts are more likely to be set up by people starting their own businesses or remarrying, says Greg Kelly.

“Trusts are still popular, but the reasons for setting them up have changed. In the 1940s through to the 1960s, they were set up to avoid estate duty, then they were used because New Zealand had very high personal tax rates. They were commonly used in the 1990s to avoid rest-home fees – to have your assets in a trust was an effective way to qualify for a subsidy.

“But estate duty has gone, tax rates are lower and the government has tightened up the rules around rest homes. People going into business could put their home into



← a trust to protect it against claims by creditors if the business didn't work out.

"A trust could also protect money or other assets inherited before the start of a new relationship, which could be subject to the equal sharing regime under the Property (Relationship) Act, and was

'Trusts are still popular, but the reasons for setting them up have changed'

often easier to organise than a pre-nuptial agreement," he says.

"When it comes to rest home fees, the Ministry of Social Development now looks carefully at whether someone, by having assets in a trust, is depriving themselves of income, and whether the gifted assets would have generated income that the person (in care) could have used.

On the other hand, if you own your own home, you may be able to pay for your care by getting a loan against the value of your property. The loan is generally repaid when the property is sold or when you die.

"The government has taken the view that you can keep some assets, but if you're in that unfortunate position where costs are being incurred and you have assets, then the assets should be used to pay for it," says Greg.

If you're considering setting up a family trust, make sure you get legal advice. If you decide to go ahead, you'll need to decide what assets should be in the trust and get valuations of those assets, who the beneficiaries and trustees will be and what, if any, special rules there will be about how the trust will be run. Remember, when a property is put in a trust, it's not yours to claim on – it's owned by the trust.



Get more than one opinion about who to appoint as an enduring power of attorney, advises Hanny.

## Enduring power of attorney

There's an old adage about how parents should be nice to their kids because they'll be the ones choosing what to do with Mum or Dad when they're in their dotage.

And as New Zealand's population ages and more of us are living longer, it's become something of a truism. Leaving the management of our financial and health affairs to chance is, according to most lawyers, asking for trouble.

Dementia and Alzheimer's may develop over a period of time, but other unforeseen health issues such as a stroke or a serious accident or other illness can incapacitate a person in an instant.

It's why appointing an enduring power of attorney (EPA) – which lets someone you designate make decisions for you when you can no

longer do so – at the time you make a will is a sensible idea, even if the thought of having someone else taking over your bank account horrifies you at the time.

Many people mistakenly think that if a loved one loses mental capacity, their next of kin automatically has the authority to take over their affairs. Not so – without an EPA, you need to apply to court to get the necessary permissions.

There are two types of EPA – personal care and welfare, and property. A personal care and welfare attorney is concerned with issues such as where you live and whether you are being properly cared for. An EPA for personal care and welfare only comes into effect if you (the donor) become mentally incapable, as certified by a doctor. A property EPA lets you appoint someone to manage

financial and property decisions for you, including managing your bank account, paying bills and buying or selling assets, and can come into effect at any stage.

Of course, just because you have an EPA doesn't mean things can't go awry. They can, and do, though disputes and abuse of the powers are exceptions rather than the rule.

Hanny Naus, an advisor at Age Concern, hasn't come across anyone quite as brazen as the 26-year-old Scottish woman who last month was reported as spending her grandmother's \$38,700 life savings on, among other things, a hot tub, a sex toy, jewellery and a drone, but she has seen some extremely upsetting examples of abuse of attorney.

"Most of the cases we see are where the person who has enduring power of attorney acts in their own interests. They might want the person to go into a rest home because the

assets are in a trust and can't be touched, and their inheritance is safe, or they will keep them in their home because if they go into care, then some of the inheritance will be lost because it will be required to pay for that care."

She says people with financial EPA often don't see the needs of the donor as priorities. "I have seen cases where the son who is 'good at business' has been made financial EPA, and the so-called wonderful son with great business acumen is just furious at having to spend money on their parent. They forget it is the parent's money to use for things they need while they are alive.

"Another example is Mum might need hearing aids because it's very hard having a conversation with her, but the person who holds financial EPA might think that's a waste of \$3000

because she's old. They may be small things but they are often the ones that cause the most problems."

Age Concern has also seen more people wanting their inheritance early, usually to pay for a deposit on a first home.

"There's a huge cultural expectation in this country that you will leave something for your children and that children will receive.

"In the face of increasing housing costs particularly, there's often a lot of pressure on older people to release funds – to sell their house or take out a mortgage – to pay for a deposit on a home for the child. That is quite pervasive."

Older people are often isolated, and many feel embarrassed and ashamed at the actions of their children, or people they had put their trust in, Hanny says.

Banks are far more proactive than they used to be and will generally act if they see any unusual activity or anything untoward.

She adds, "It could be that a person who used to come in regularly on their own is now coming in with another person who seems to be doing all the organising, or big amounts are being withdrawn, or there's suddenly a new car for someone who no longer drives."

While EPAs can offer substantial benefits – and most of them work well – anyone thinking about assigning an EPA should ensure they know exactly what they need to do for their own protection.

"And they should take advice from more than one source so they are not making spur of the moment decisions," says Hanny. →

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## CHOOSING ATTORNEYS

When it comes to future-proofing for retirement, you'll need to make choices around your enduring power of attorney (EPOA).

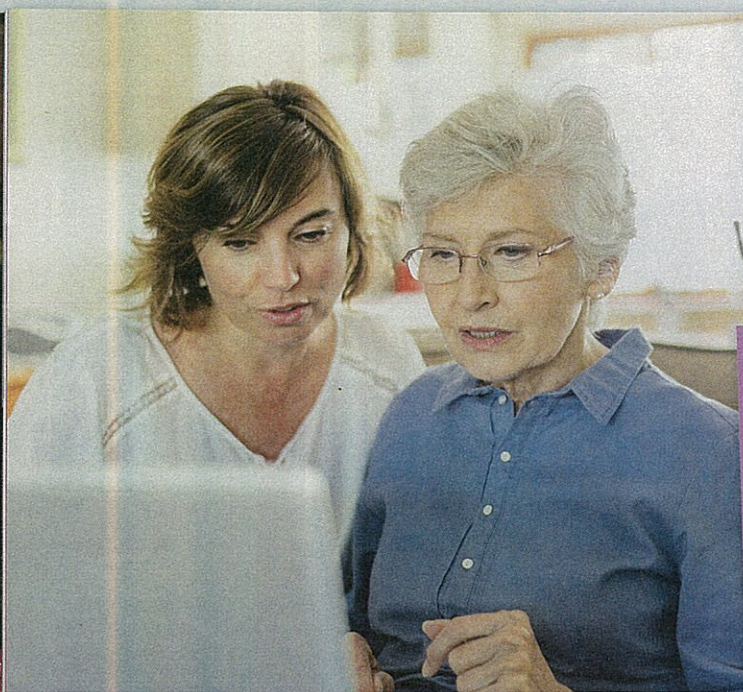
You can appoint different EPOA for different areas of your life. A personal care and welfare EPOA can only be used at a time when the person has become mentally incapable, while the property EPOA can be used while the person still has capacity, as well as if their mental health fails and they become incapable of making decisions.

One mistake people often make is not allowing for a change in circumstances for the EPOAs they appoint. "For instance, there's no point just naming your marriage partner and no-one else," says Ryman Healthcare Senior Registered Legal Executive Pam Harliwich. "What happens if that person's health fails?"

Everyone gets older, so it is wise to appoint an EPOA who is likely to be around when you need help. "We would always recommend to clients to have at least one or two successor attorneys," says Pam.

**RYMAN HEALTHCARE**





## Death in the digital age

**D**espite cyberspace now holding most of our personal and business information, like some great filing cabinet in the cloud, many of us neglect our digital estate.

But our virtual lives won't just delete themselves when we die. Medical records, airpoints, family photographs, LinkedIn and Facebook profiles will survive long after we expire, and information you store online could also be vital for settling your estate. The advice is that we need to treat digital assets as we would any other asset and nominate someone we trust to be our "digital executor".

Lawyer Greg Kelly says important reasons to protect or make provision for your digital estate are that it may have financial or sentimental value; there could be security or financial threats; and if incorrectly managed, liability may result.

"One of the key decisions is who should manage and have control over your digital estate when you die or if you lose

mental capacity. Another important decision you'll have to make is who will receive or benefit from your digital estate.

For example, 'Can you transfer or gift your airpoints and, if so, who should you give them to?'

Decisions about which digital accounts should be closed, which digital devices – laptops, smartphones, PCs – should be cleared of content and whether printouts of certain digital

**'One of the key decisions is who should manage and have control over your digital estate'**

information should be provided to specified people, also need to be considered, he says.

Deborah Wilkinson-Gray, author of *Where's the Password?*, a guide to coping with life's online administrative tasks after losing a loved one, suggests creating a log to record important information such as logins and passwords, bank

account numbers, insurance details, loyalty points, even gym membership details.

Other information to note down could include driver's licence details, passport number, telco provider and the name of your lawyer and healthcare providers.

"Setting down the information is not hard," says Deborah, "but it is vital that you do it. One of the things I discovered in writing the booklet is the surprising difference between what you assume your significant others may know about your affairs and what they actually do."

"Once you have completed your personal information log, you can relax knowing that it has been taken care of and people will be able to find the information they need. It is one of the best things you can do for the people in your life."

Deborah stores all of her information in a protected document on Dropbox, which can be accessed by one of her



Deborah says setting down your digital information isn't hard, but it is vital you do it.

children. When the document has been transferred or finished with, the "executor" can then resave it or delete whatever is relevant.

Julie Jacobson

### Where's the password?

A guide to help bereaved families deal with a little less grief.



*Where's the Password?* is for sale online at [gettingyouorganised.co.nz/wheres-the-password-book](http://gettingyouorganised.co.nz/wheres-the-password-book) for \$15 each and hardcopy versions are \$20 each, plus postage and packing.

## ARE YOU future-proof?

HAVE YOU PUT SORTING YOUR LEGAL AFFAIRS ON YOUR TO-DO LIST?

**M**uch like dental check-ups, making sure our legal affairs are in order is rarely top of the list of important tasks.

While it can seem like a chore, making sure the right people have been nominated to act on your behalf if your health fails is a good idea as you get older.

"It will give you a secure feeling that your affairs are sorted and also take a lot of stress about the future from your families," says Ryman Healthcare's Senior Registered Legal Executive, Pam Harliwich.

Pam has been a registered legal executive for almost 30 years and has given thousands of New Zealanders advice on how to get their affairs in order.

She says moving into a retirement village is often the

perfect excuse to get on top of the paperwork. "A lot of families find themselves in a situation where Mum and Dad are getting older, and there are health clouds on the horizon."

"It makes sense for them to know what's required and have everything they need in place before it gets too late."

The good news is that it's not too hard and there is plenty of good advice around.

***'It will give you a secure feeling that your affairs are sorted'***

Key requirements for most retirement operators are that residents moving in have a current will and enduring powers of attorney (EPOA), especially if they are requiring rest home or hospital care.

"You actually need two enduring powers of attorney – one for property, and one for personal care and welfare," explains Pam.

While the same person can

do both on your behalf, there are two separate documents that need to be completed.

"The property EPOA covers financial and property matters, such as village agreements, real estate matters, shares, and bank accounts.

"The personal care and welfare EPOA covers any medical or health-related decisions that need to be made if you become mentally incapable of making them."

If a person needs to be admitted into the rest home and is mentally incapable of making their own decisions, the EPOA will come into force. The person they have appointed will make the

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decision and sign all the documentation.

Not having an EPOA in place will make what is already a stressful situation for families more difficult. "It could result in delays and extra cost if a person loses capacity and family members have to apply to the family court to appoint a property manager or personal welfare guardian," Pam warns.

An up-to-date will is also important, with executors who are able to fulfil their duties.

To find out more about living in a Ryman Retirement Village, visit [rymanhealthcare.co.nz](http://rymanhealthcare.co.nz) or call 0800 000 290.

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The Edmund Hillary Village in Auckland.