

PG Press

Perpetual Guardian Newsletter



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Kia ora koutou katoa,

Trusts are fantastic tools for asset separation and protection – but only when properly maintained!

In March this year, the Supreme Court made a judgement in the Clayton v Clayton case which has the potential to affect many Trusts. In brief, the Court

decided the power to appoint and remove beneficiaries combined with other personal powers in a Trust Deed could amount to relationship property since the person who holds these powers is not constrained by any fiduciary duties (a duty to act solely in another party's interest). The Court found that the value of the powers Mr Clayton held in relation to the Trust was equal to the net value of the Trust assets.

Two clear points emerged from this case:

- For a Trust to be effective there needs to be a clear delineation and transfer of powers from the individual; and,
- It is strongly recommended that a section 21 'Contracting out agreement' (prenuptial agreement) be entered into, which may safeguard against claims made on Trust assets.

Trusts can get complicated but our team have the knowledge and expertise to offer you advice at every stage of your Trust – from setting it up, to making sure your Trust meets your goals as well as compliance standards. With our new TrustGuard service, we will do a comprehensive review of your Trust and provide advice to help make sure your Trust is doing what you want it to do and is complying with best practice.

Ngā mihi,
Grant Kemble,
Perpetual Guardian CEO

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What's been happening?

Andrea Hewitt: Going for gold!

We are really pleased to announce our sponsorship of Olympic triathlete, Andrea Hewitt.

Andrea is competing for the gold medal at the Rio de Janeiro Olympics in August and we are all rooting for her.

Sadly, Andrea's partner, Laurent Vidal, passed away from a heart attack in November 2015 at the young age of 31. Unfortunately, he did not have a Will and Andrea will be helping us spread the message about how important it is to make a Will at any age.

We are proud to be her principal sponsor and look forward to working with her both now and after the games.

'As seen on TV'

If you watch TV3's 'The Café', you've most likely spotted our consumer advocate, Charlotte Lockhart, on the show.

As sponsors of the programme's Money Matters segment, we're on each week discussing financial issues as well as estate planning.

You can catch 'The Café' and our Money Matters segment by tuning into TV3, Mondays 9am - 10am.



Triathlete Andrea Hewitt (Photographer: Martin Putz)

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interesting Will facts

1. Approximately 50% of New Zealanders don't have a Will.
2. According to the Greek historian Plutarch, Solon – an Athenian statesman, lawmaker and poet – invented the Will.
3. Will and testament both mean the same thing.

The phrase comes from a time when, in English law, English and French terms were used together for maximum understanding (*testament* meaning Will in French).

4. The Nobel Prizes were established by Alexander Nobel's Will. He left a large portion of his estate in trust to fund the prizes.
5. The longest probated Will belongs to Frederica Evelyn Stillwell Cook who died in 1925 – it was 1,066 pages long and had to be bound in four volumes.
6. The shortest Will belonged to German man, Karl Tausch, and simply said "vse zene" in Czech, or "all to wife".
7. William Shakespeare snubbed his wife, Anne Hathaway, in his Will. He left her his "second-best bed" and gave the majority of his estate to his daughter, Susanna. (Although in Elizabethan times, a good bed was nothing to sniff at).
8. A Will is a great way to specify your funeral wishes – Star Trek creator, Gene Roddenberry, asked that his ashes be scattered in space.
9. ...in a similar vein, the inventor of Pringles, Fred Baur, was so proud of his iconic packaging design that he asked to be cremated and buried inside a Pringles can. (The family chose 'original' flavour, in case you were wondering).
10. In 2014, the Supreme Court of Australia declared a Will typed on an iPhone as valid.

Legal update

Changes to relationship property legislation

Most New Zealanders have a little knowledge and some understanding of our relationship property legislation.

The Property (Relationships) Act 1976 is legislation which sets out the rules for how relationship property is dealt with in different situations, including separation and death. In 2002, this was amended in a number of important ways, including extending its application to *de facto* relationships.

However, the law has not been comprehensively reviewed within the last ten years and the Law Commission has now been given the task of reviewing the Act to ensure it continues to operate effectively.

At Perpetual Guardian, we will closely follow the Law Commission's review and will be making submissions to the Commission as there are a number of areas within the review which are of particular interest. Amongst other matters, the Law Commission will be reviewing how the Act deals with property held in trust and the powers of the courts in this area. It is also tasked with reviewing the provisions relating to the division of property on death. It is understood that the Law Commission will issue its report in November 2018.

Review of EPA processes

In 2014 the Minister for Senior Citizens conducted a review of the laws governing Enduring Powers of Attorney.

Specifically, she was asked to review the effectiveness of changes made in 2007 to the Protection of Personal and Property Rights Act (PPPR) 1988.



EPA forms should be more straight-forward in the future

As a result of her review, the Minister recommended various amendments to the Act. She recognised a concerning trend that, in recent years, there has been a steady reduction in the number of people signing Enduring Powers of Attorney.

There are simple reasons for this. Strict requirements were enacted in 2007 requiring proper legal advice and strict rules for witnessing an Enduring Power of Attorney.

As a result, the time taken to give clear and understandable explanations increased, as did the cost – as frequently more than one witness, often lawyers, needed to be involved in the witnessing process.

Unfortunately, this had the effect of putting some people off making EPAs. The Minister's recent recommendations are intended to make the EPA forms and processes simpler, easier and cheaper.

Many of the proposals are technical changes. They relate to areas such as who can witness the donor and the attorney (potentially now the same person), revoking earlier EPAs, and the information to be provided in medical certificates. These changes are welcomed by Perpetual Guardian.

We are very mindful of the potential for family and other people to abuse their position of power when appointed as attorney. The team at Perpetual Guardian will continue to make full enquiries and take adequate time to provide a proper explanation of the terms of an Enduring Power of Attorney. We will ensure a person understands how it can be tailored to their own unique family situation and what the risks and benefits are.

How is your property co-owned?

Many people co-own their homes with their spouse or partner as 'joint tenants', especially at the outset of their relationships. This means that, on the death of one, the property passes to the survivor, regardless of the terms of their Will.

The alternative arrangement is a 'tenancy in common', in which each spouse or partner owns a defined share of the property, which is passed on according to the terms of their Will when they die.

Sometimes, people wish to change the way in which their co-ownership arrangements are structured. For example, a husband might decide in the final months of his life that he doesn't want his wife to receive the whole of the property on his death – which she would otherwise receive with a joint tenancy. He has children from an earlier marriage to whom he would like to leave a portion of the house.

There are standard methods in which the joint tenancy arrangement can be changed to a tenancy in common, but these are generally by mutual consent of both parties. What would happen if, in these circumstances, the husband didn't get around to severing the joint tenancy arrangement before he died? Could the husband's executor attempt to rectify the situation after his passing?

A 2013 case, *Harvey v Gateshead Investments*, discussed the law in this area. Mr Harvey jointly owned his home with his wife when he died. Mrs Harvey had been made bankrupt and Mr Harvey's executor argued that the property should not pass to Mrs Harvey (and consequently to the Official Assignee). They claimed that prior to Mr Harvey's death the joint tenancy had been severed by their conduct and was now a tenancy in common. If that claim was upheld, only Mrs Harvey's half of the property would pass to the Official Assignee, and the other half would pass according to Mr Harvey's Will. The Court agreed with the executor. It found that Mr Harvey and his wife had a common intention to sever the joint tenancy, even though the paperwork had not been fully completed.

While in this case, the executor successfully managed to bring half the property back "into the estate", the best course is to put your property affairs into order before you die.

Do
you
know?



The way you co-own a house affects how you can gift it.

Winter break: 3 things to do before you travel

Aside from the usual sage advice (buy travel insurance, check your passport), there are a few estate planning things you should take care of if you've lined up a big trip away. You can relax more knowing you've got all your affairs taken care of.

1. Appoint a guardian (if you haven't already)

If you have young children, it's highly recommended that you appoint a guardian for them in your Will should anything happen to you. A guardian will make important decisions about how your child is brought up – so make sure it's someone you trust and is up for the job.

2. Set up an Enduring Power of Attorney (EPA)

An EPA for property is a great document to have when you travel because you can appoint someone to manage your finances and investments back home on your behalf.

3. Share your documents with loved ones

Regardless of whether you're travelling or not, it's a good idea to let your next of kin know where your estate planning documents are kept. Let your family know where your important documents are stored – and use online tools (like WILLplus) to give them access to digital copies.

Beyond the office

The WOW Factor

Debby Aston is our Client Assistant in New Plymouth. In addition to being an administration whiz, she is also a qualified fashion designer!

After three years of study, Debby completed her Diploma in Fashion Design in 2002. As a course requirement, Debby was tasked with entering a creation into the World of WearableArt (WOW) competition, at the time based in Nelson. Now an annual event in Wellington, WOW is a leading international design competition which attracts entrants from all over the world.

Debby decided to enter her design into the Oceania category.

"I had to design the pattern from scratch, have all the conceptual drawings in order then sew and put the garment together."

After five months of hard work, it was finally time for the big exhibition.

"The name of my entry was 'Juxtaposition' – I contrasted Pasifika culture and Edwardian style within my design".

Her entry was a resounding success – it made the front page of the newspaper and was prominently displayed in the 2003 WOW programme. After the awards, her garment was sent to the World of WearableArt museum in Nelson. After being on display for over a decade, her entry has recently been returned to her.



Debby with her WOW garment

Aside from her WOW entry, Debby has also worked on the 'Last Samurai' film (starring Tom Cruise), with the majority of filming taking place in the Taranaki region.

Angela and Anita

Angela Wharekura, a Client Manager in our Rotorua branch, clearly remembers the day that Devon walked into the office.



It was 24 May 2000 and Devon's father had passed away that day. Devon's mother suffered from dementia and would not leave her home. Devon cared for her as much as he could. Devon was single-handedly raising his daughter, Anita, – who at the time was 9 years old – after her mother had passed away six years earlier. Anita attended Te Kura Kaupapa Māori o Te Koutu and was fluent in Te Reo – Devon was extremely proud of her.

Devon's father's estate included a farm and Perpetual Guardian became involved in the estate, arranging the lease of the property and ongoing administration. Anita and Devon made regular visits to the Rotorua branch.

When Anita was 16, her father was diagnosed with cancer and she became his caregiver – a huge responsibility for someone so young but Anita was very strong. Her half-siblings had all left home and offered as much support as they could but this was limited as most of them had their own families to care for. Anita always felt supported by Angela and the Perpetual Guardian team, and always knew they were there – anytime she needed it.

On 12 May 2006 – the day after Anita's 17th birthday – Devon lost his battle with cancer. She was devastated. After trying a few different career paths and receiving encouragement about her potential, Anita undertook study and gained a Bachelor in Early Childhood Education. She now works for her iwi, Ngati Whakaue, at Te Puna Akoranga o Ngati Whakaue in their early childhood centre.

"I feel very proud of her achievements. Seeing her grow into such a lovely young lady, attending her 21st birthday and her graduation – being able to feel part of her success is one of the fantastic things about my job", says Angela. "Making sure that we are there to give advice when she needs it is very fulfilling".

3 life-changing legacies

Three diverse gifts from Perpetual Guardian managed Trusts have buoyed a number of causes – from giving South Auckland pupils a step-up to success, through to providing a reprieve to a Nelson not-for-profit and enabling the purchase of a new guide dog vehicle.

Chromebooks are boosting kids' learning in Papakura



1 Building pathways to success

Mana-ā-riki is a programme by Middlemore Foundation which holistically addresses issues in health, housing and education for some of New Zealand's most vulnerable children. As part of the programme, The Ted and Mollie Carr Endowment Trust, proudly managed by Perpetual Guardian, will give \$150,000 over three years to Edmund Hillary School in Papakura – one of six schools participating in the programme.

The programme places a strong focus on digital learning. In June, pupils in three classrooms at the school received Chromebooks.

As a result of the notebooks, principals of participating schools have said they "can feel the difference walking into the classrooms."

"Children are more engaged in their learning and their behaviour has improved."

Find out how you can leave a legacy in your Will – email philanthropy@pgtrust.co.nz

Northern Regional Manager, Yunus, poses with a puppy



2 Funding a new puppy-mobile

Nesta Harriett Taylor, a widow with no children who resided in Auckland, established the N H Taylor Trust by deed in 2000. Throughout her life, Mrs Taylor gave generously to a number of charities which were relevant to her own life in various ways. Her legacy supports various charities from the Blind Foundation through to Alzheimers New Zealand.

During her lifetime, she had sponsored a number of guide puppies and gained a great deal of personal satisfaction in being able to assist people to live better lives with a guide dog at their side.

This year, funds donated by the N H Taylor Trust were used to purchase a new van for the Blind Foundation, which will transport guide dog puppies to and from their various training areas.

3 Saving an essential service

When Nelson Client Assistant Julia Higgs and Client Manager Mike Elson-Brown learned the Postnatal Support Network (PND) Nelson was in financial difficulty, they wanted to do something about it.

Mike manages the Hilda Bottomley Charitable Trust. Mrs Bottomley was an English woman who settled in Nelson in the 1960s. When she passed away in 2006, she gifted the majority of her estate to the Trust she established.

"We saw a local need and a very important one", said Mike. "It is an organisation women can go to directly for free counselling – they don't have to wait to go through the whole system".

PND Nelson received a \$5,000 gift from the Hilda Bottomley Charitable Trust. "This has been a wonderful stepping stone," said PND Nelson Chairwoman, Harriet Denham.

28 August – 4 September

MS Awareness Week



MS, or multiple sclerosis, is a disease that is not widely known or heard about. This year for Annual Awareness Week, MS Societies aim to increase public knowledge about the disease.

Even though it was discovered in 1868, there is still no known cause or cure and it appears to be affecting growing numbers of people. Part of the problem lies in explaining MS, as it has unpredictable symptoms and each individual experiences MS differently and with different intensity. The disease affects the central nervous system and happens when your immune system attacks the myelin, which is the fatty material protecting your nerve fibres. Without the protection of the myelin, the nerves become damaged and your brain is unable to send signals correctly through your body.

Symptoms usually appear when people are between the ages of 20 to 40 and will depend on where the nerve damage occurs. Some common symptoms experienced are:

- Visual problems – blurred, double or loss of vision;
- Tingling and numbness in the face, arms, legs, or fingers;
- Fatigue and weakness;
- Bladder, bowel and sexual dysfunction;
- Pain;
- Cognitive problems – including memory, attention span, language, and difficulty staying organised; and,
- Depression.

See your doctor if you experience any of the first warning signs. The diagnosis is made by a specialist neurologist, who will check for damage to the central nervous system. With treatments now available, early diagnosis can slow down the progression of MS.

MS Societies provide valuable services to people living with MS and their family members. They are a vital health service, yet they rely on fund-raising to be able to continue to operate. Awareness Week starts on 28 August. If you see street collectors during this week please give generously. Donations can also be done through their Givealittle page: givealittle.co.nz/donate/org/msaucklandregion



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Prefer email? Send us your email address and receive updates from us in your inbox instead of your letterbox.

Send your full name to hello@pgtrust.co.nz, along with your address and date of birth (so we can match your records).



Timaru team got the whole building involved in Pink Shirt Day to take a stand against bullying.

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