PIER LAW

NEW BRIGHTON | KAIAPOI | NORTHWOOD

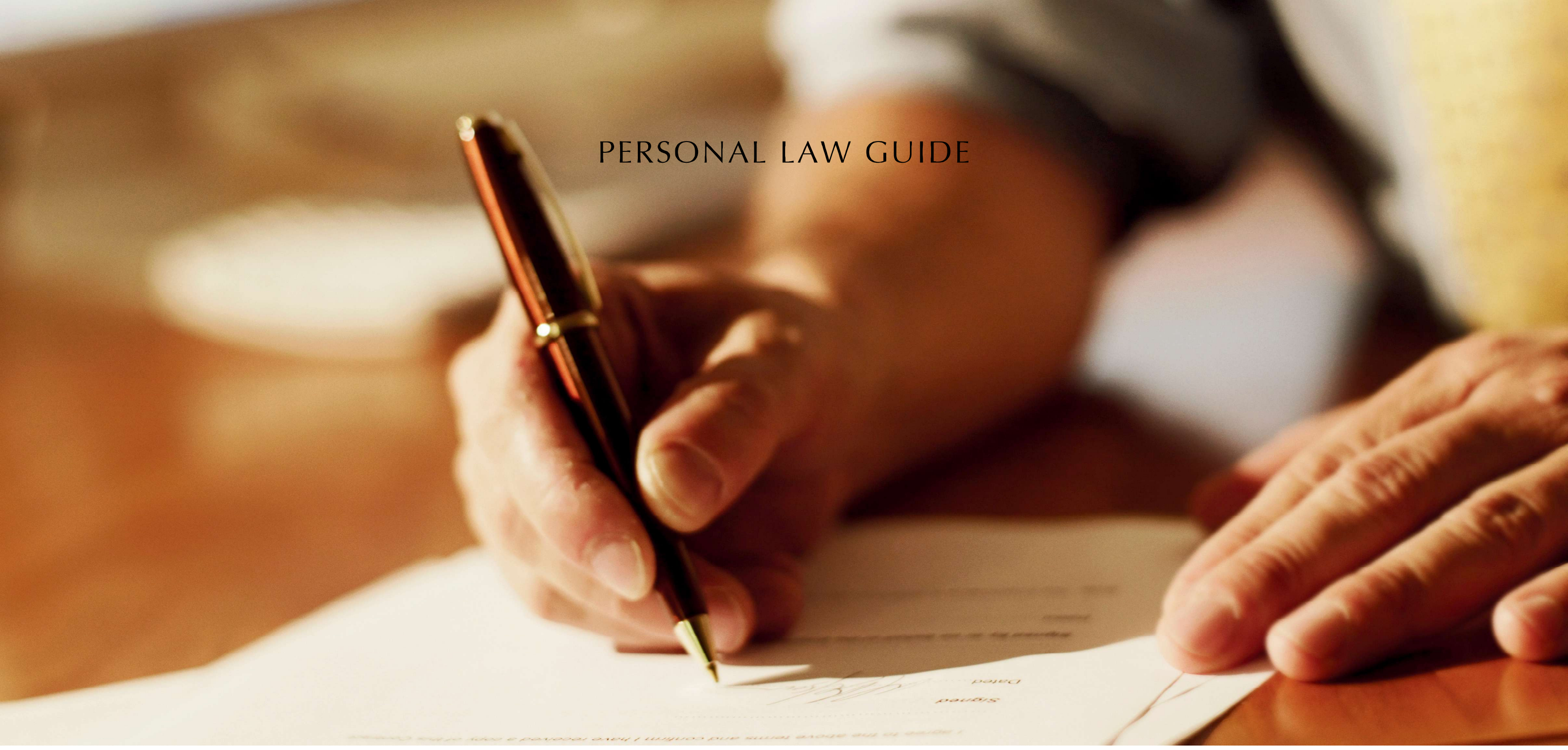
PERSONAL LAW GUIDE

www.pierlaw.co.nz

CONTENTS

Wills

The main purpose of having an up-to-date Will is to ensure your wishes are properly carried out. It provides your family and loved ones with protection and peace of mind at what is often a difficult time, while also helping to minimise the risk of disputes or other complications arising after your death. Keeping your Will current can also help reduce costs and ease the emotional and administrative burden placed on your family. We always remind our clients that a Will should never be seen as final, as life circumstances inevitably change over time.



Important checks

It is important to make sure that your WIll is up to date, and that all of the details in the Will are accurate. Make sure that you check the following:

- Spelling of executor or beneficiary names. This is important as it may cause delays during the estate administration.
- That the signing of your Will has been done properly. If you have had your Will prepared and signed by a lawyer then this shouldn't be an issue. If you have completed your own Will then we would strongly recommend you check this and ensure yourself and two independent witnesses have initialled and signed the Will.

The Executor

An executor is the person or persons that you appoint to administer your estate. They will ensure that your estate is administered correctly and your assets are distributed as per your wishes, such as:

- Making sure your funeral is carried out as per your wishes
- Collecting and distributing any assets, such as jewellery, personal belongings, furniture, or money
- Signing off any paperwork associated with the estate

An executor should ideally have the following:

- a good understanding of family dynamics and your current assets to allow for smooth administration of the estate.
- live in New Zealand. Although not impossible, having an overseas executor can create issues and delays when it comes to taking instructions, communications and signing estate paperwork.
- be someone younger than you, who you know can handle the responsibility. It is important to have the right person appointed. We suggest someone younger for incapacity reasons as well. You may want to appoint your husband or wife but we would strongly suggest you appoint a backup also, as your spouse may not be in a position to do the job.

Some of you may have Trustee Companies or law firms appointed in your Will and we would remind you to check that these are still up to date and current – for example you would probably want your current law firm acting rather than one that acted for you many years ago.

Beneficiaries of Wills

There are a few important checks to consider when adding beneficiaries and gifts to your Will. Such as:

- Are the beneficiaries still alive? When a person passes, if they are still a beneficiary, the benefits will go into their estate and be distributed as per that person's Will.
- If you still want certain beneficiaries to be included as relationships could have changed since your last Will was made.
- If you still have the car, jewellery or house that you wanted to leave a certain person.

It is a good idea to regularly review what you want to give and to whom you want to leave things.

Beneficiaries of Wills cont.

Dynamics and relationships change and we understand how common family discord is these days with second and third marriages and blended families.

It is important to think about whether any beneficiaries such as a spouse, partner or children are being excluded from your Will and whether you have a written statement to go along with this. You may or may not be aware of the moral and legal obligation you have to provide for a spouse/partner/children.

You will not be here in the event that a claim is made against your Estate, so instead we would have you prepare a Statement to Accompany to go with your Will which is your explanation as to why you have excluded somebody or given them a lesser share. This will act as evidence should a claim be made.

Funeral wishes

Lastly, another important part of your Will is funeral wishes.

Check that these are up to date. Things can change and it is important your executor knows what you want to happen to you after you pass. If your executor is not made aware, then you run the risk of your executor arranging a funeral completely different to what you would have wanted as the executor may not see your Will in time. It is also a good idea to let your lawyer know if you have a prepaid funeral or funeral insurance and they can log this information into the system with your Will.

Enduring Powers of Attorney

What are Powers of Attorney?

There are two types of Power of Attorney documents - one in relation to your finances which is referred to as your **Property Enduring Powers of Attorney** and the other in relation to your health and well-being which is referred to as your **Personal Care & Welfare Enduring Power of Attorney.**

The basis of a Power of Attorney is for someone to step into your shoes to manage your affairs and make decisions on your behalf when you are unable to make these decisions for yourself.

Your powers of attorney are in place for your lifetime and cease upon the date of your death in which instance your Will would take effect. At any time whilst you have capacity, you are able to revoke your powers of attorney, although we would strongly recommend that new ones are prepared to replace your existing ones.

Immediate appointment or upon losing capacity?

In most instances, both Powers of Attorney only come into effect once you have been assessed by a medical practitioner and in their medical opinion, they consider you to have lost mental capacity. However, for the Power of Attorney for finances, you can elect for it to come into effect immediately/while you still have capacity.

This option is only recommended if:

- You need help managing bills or finances, or
- You're close to losing capacity.

The benefit of having your finance power of attorney effective immediately is that your attorney will have no delays in assisting you with your financials and even though appointment is immediate, your attorney must still at all times consult with you when carrying duties on your behalf.

Appointment of attorney and consideration

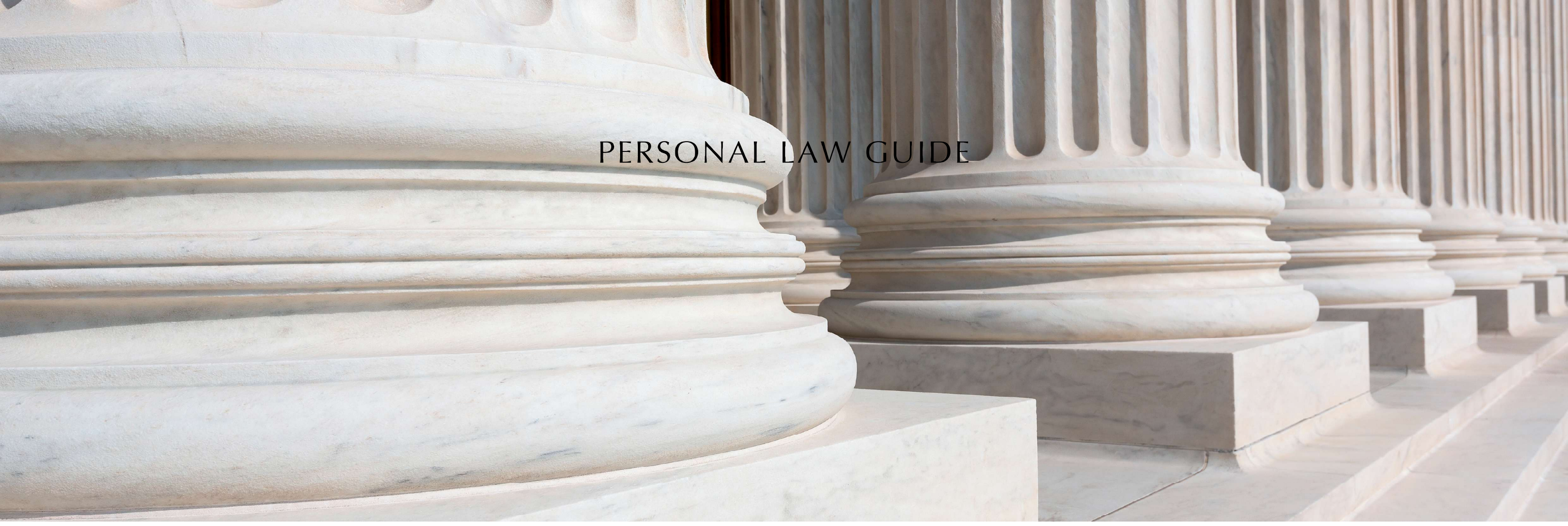
When creating your Enduring Powers of Attorney, it is very important that you appoint someone who you can wholeheartedly trust, as this person will be the one acting in your best interest when you are unable to do so.

There is no obligation that your appointed attorney has to be a family member or relative. If there is someone else whom you trust more, for example a friend, we would encourage you to choose them in the first instance and not to someone simply based on them being a family member.

In general scenarios, it is often that we have spouses who appoint one another as attorneys for each other. Whilst there are no issues with this, we do ask you to consider the possibility that something could happen to both of you and you both may lose capacity on or around the same time in which case there is no one to step in at this stage.

It is important to consider a possible backup attorney or attorneys who we refer to as the successor attorney. Their role is to step up as attorney only if the appointed attorney is unable to do so.

Another thing to consider is the age of your attorney. Appointing someone younger than you is advisable as hypothetically speaking they should retain capacity longer than you and they should outlive you.



Dangers of no/outdated documents

It is very important to ensure that your appointed attorney is still alive. If they pass away or lose capacity, you should update your Power of Attorney to name someone else.

If the time comes when your powers of attorney need to be activated and you have no living attorney to take appointment or they have also lost capacity, then your powers of attorney are treated as if you do not have any. At this stage, it becomes a Court application, and your family would be required to apply to the Court requesting to be appointed as welfare guardian and property manager for you.

If your attorney is no longer able to act and you haven't named a successor, it’s treated as though you have no Power of Attorney at all.

In that case, your family would need to go to Court to be appointed as your welfare guardian and property manager. This process can be complicated, time-consuming and expensive.

Being appointed as an attorney is an onerous job on its own, and by adding in the additional factor of reporting to the Court on a yearly basis, it makes things even more difficult for the attorney.

Concerns about your attorney

If at any stage you, your family, or your doctor are concerned about the way your attorney is carrying out their duties, they are able to make an application to the Court requesting for your attorney's appointment to be reviewed. The Court will take into account all avenues and make a determination as to whether they consider your attorney's appointment should be revoked, and if a new attorney should be appointed.

Whilst it is important to have powers of attorney in place, we reiterate how important it is to ensure you trust your appointed attorney to manage your affairs and should you have any queries or concerns at all, please let us know.

Estates

Your assets and belongings

What happens to your assets and belongings when you die?

Here are the key things to know:

- Jointly owned assets (like bank accounts, property, or investments) automatically go to the surviving co-owner. These do not form part of your estate.
- Joint ownership means both people own the whole asset together.
- If the property is owned as “tenants in common” meaning one person owns a half share of the property in their sole name and someone else owns the other half share in their sole name. This type of ownership is recorded on the title, and this can be searched if you are uncertain as to how your property is held.

After any jointly owned assets are passed on, everything else you own becomes part of your estate. You can use your Will to say who gets your personal belongings—such as furniture, jewellery, vehicles, or clothes. Many people in residential care have already downsized but may still have some belongings, bank accounts, or investments.

This is where your Will steps in and becomes one of the most important documents you will ever sign. Your Will provides instructions on how you would like your assets and belongings to be distributed.

Your Will and burial wishes

Your Will covers many important matters, including your funeral and burial wishes. It is very important to make sure your executor and family know what those wishes are in advance. This is because families often do not contact the law firm holding the Will until after the funeral has already taken place. By that stage, it may be too late for your wishes to be followed.

Most Wills allow funeral and estate-related expenses to be paid from your estate. However, there can often be a delay between when funeral costs need to be paid and when estate funds become available. The person arranging the funeral is usually personally responsible for the costs upfront and can only be reimbursed from the estate if there are sufficient funds available.

In some cases, banks may release money directly from the deceased's bank account to assist with funeral expenses. However, banks will usually require:

- A certified copy of the death certificate; and
- The funeral invoice.

Keep in mind that the death certificate can take approximately two to three weeks to arrive, and funeral accounts are often due before it is available.

Gifts, specific items or assets

You may have specified who will receive your engagement ring, or provided for each of your grandchildren to receive a specific sum of money, or even left a gift to a charity of your choice. Any specific monetary gifts listed in your Will, are paid to the gift recipients before any residual distributions to your beneficiaries.

For example: Mary provides for a gift of $10,000 to each of her 5 grandchildren and lists her 3 children as the equal residual beneficiaries in her Will. When Mary drafted her Will, her assets were worth approximately $300,000. At the time of Mary's death her assets had been significantly reduced, leaving only $60,000 in Mary's estate.

In this example, the gifts will be paid to the grandchildren, and the residual beneficiaries of her estate will divide the remaining $10,000 between them equally.

Important information to provide to your executors

There are many other provisions that can be included in a Will, and the right structure will depend on your personal circumstances. As modern life becomes increasingly complex, particularly with blended families, digital file storage, online accounts, and cryptocurrency, there are practical steps you can take to make things much easier for your executors after your death, including:

- Letting your executors know they have been appointed and advising them where your original Will is held, including which law firm holds it.
- Keeping an up-to-date list of your assets and liabilities with your Will to help your executors identify and manage your estate more efficiently.
- Creating a secure record of passwords and login details for important online accounts, such as social media platforms, email accounts, cloud storage, and cryptocurrency wallets, so these digital assets can be accessed and dealt with appropriately after your death.

Administration and Probate

Your executors are responsible for carrying out the wishes in your Will.

In most cases, they need to apply for something called a Grant of Probate to access your assets.

Probate is required if:
- You have a valid Will, and
- You own property or have any asset in your sole name worth over $40,000.

Your executors must apply to the High Court in Wellington with your original Will. Once approved, the court issues the Grant of Probate.

Until probate is granted:
- Your bank accounts are frozen, and
- Your executors cannot access or manage your assets.

Wait times for probate vary depending on how busy the court is.

Once probate is granted, the executors can:
- Collect your assets
- Close accounts
- Pay off any debts
- Find the people named in your Will to receive gifts or inheritance

The full estate administration process usually takes around 6 months after probate is granted, before everything can be distributed.

ABOUT US

Pier Law is a general practice firm in Christchurch with offices in three convenient locations.

Our team of lawyers is small enough to work closely with you to get an in-depth understanding of your specific needs, but large enough to have the expertise, knowledge, and skills required for your ongoing legal concerns.

Don't hesitate to get in touch with any question, to book an appointment, or to find out more about our firm and services.

NORTHWOOD

1 Radcliffe Road
Northwood Supa Centa

T: 03 366 5540

NEW BRIGHTON

184 Shaw Avenue
New Brighton

T: 03 388 1639

KAIAPOI

1 Williams Street
Kaiapoi

T: 03 327 0590

PO Box 76134
Christchurch 8641

E: info@pierlaw.co.nz