



Who gets your KiwiSaver if you die?

The answer surprises most people. A plain-English guide to wills, enduring powers of attorney, and where your assets actually go. Written for everyone who thought this was a problem for later.

First, the answer

KiwiSaver has no beneficiary nomination in New Zealand, so you cannot name who receives it. When you die, your balance is paid to your estate. If it is over \$40,000, it is frozen until someone obtains authority from the High Court, and it then passes under your will, or, if you have no will, under a fixed legal formula that decides for you. Your partner does not automatically receive everything.

That answer surprises most people, and it is why this guide exists. KiwiSaver is the clearest example of a wider point: what happens to what you own is already decided by law, unless you decide it yourself.

Estate planning is deciding, while you are well, two things: what happens to what you own when you die, and who can act for you if illness or injury means you cannot act for yourself.

Done properly, it is a small set of documents prepared once and reviewed as life changes. Where it is left undone, your family is left to sort it out through court processes that are slower, more expensive and more public than the documents that would have avoided them.

This guide explains what a complete estate plan includes in New Zealand, what happens if you do nothing, and the details that decide where your assets actually go, including how your property is owned.

Who this guide is for

Almost every adult with assets or dependants. You do not have to be wealthy for estate planning to matter. If you own something, or someone depends on you, it applies to you.

The \$40,000 threshold

Once any single asset in your name exceeds \$40,000, whether a bank account, a KiwiSaver balance or an investment, your family must go through formal estate administration when you die. A will makes that process significantly simpler, faster and cheaper. Most working adults cross this threshold through KiwiSaver alone.

It matters even more if you own property, have children, are in a second relationship, run a business, have a family trust, or hold assets overseas. Each of these adds a layer your plan needs to deal with specifically.

What a complete estate plan includes

1. A will

Your will names an executor to administer your estate, sets out who inherits what, records who you wish to be guardian of your children, and can cover funeral wishes and specific gifts. A well-drafted will also anticipates the harder questions: what happens if a beneficiary dies before you, how a blended family is provided for, and how claims against the estate can be minimised.

2. Two enduring powers of attorney

New Zealand has two separate enduring powers of attorney: one for your **property and finances**, and one for your **personal care and welfare**. They let a person you choose make decisions for you if you lose the capacity to make them yourself. A complete plan covers both.

Signing the documents is only the first step. The powers are activated separately. A health practitioner must certify that you have lost capacity before your attorney can act on welfare matters, and property powers can be set up to operate immediately or only on incapacity, as you choose.

3. A family trust, where appropriate

Trusts are the right tool in some situations, such as protecting assets for children from a previous relationship, managing succession for a family business, or holding property across generations. They are not for everyone, and an existing trust that no longer serves its purpose can create cost and compliance work without a corresponding benefit. If you already have a trust, reviewing it belongs in your estate plan.

What happens if you do nothing

Without a will

If you die without a will, the Administration Act 1969 decides who inherits, applying a fixed statutory formula that ignores your circumstances and your wishes. The result often surprises families. If you have a partner and children, your partner does not automatically receive everything. If you are in a newer de facto relationship, your partner may have to prove the relationship qualified at all.

The formula is not a stand-in for your wishes. It applies precisely because you left none, which matters if you have signed a relationship property agreement: that agreement may already have decided what your partner is entitled to on your death, and the formula does not override it.

Someone must still apply to the High Court for authority to administer your estate. Without a will naming an executor, that application is more involved, and the person appointed may not be the person you would have chosen.

Without enduring powers of attorney

Many people assume their spouse or children can simply step in if they lose capacity. No one has that authority automatically, not even a husband or wife, unless valid enduring powers of attorney are in place.

Instead, your family must apply to the Family Court under the Protection of Personal and Property Rights Act 1988 for orders appointing a welfare guardian or property manager. The process takes months, costs considerably more than the documents that would have avoided it, and continues under court supervision. During the wait, bank accounts can be frozen and decisions about your care are made without clear authority.

The practical choice enduring powers of attorney represent is two signatures now, or a Family Court application later. It is the part of estate planning most often left too late, because capacity can be lost without warning at any age.

How your assets actually pass

A will only controls assets that pass through your estate. Some of your most valuable assets follow different rules, and the differences catch people out.

The family home: how it is owned decides

Property held as joint tenants passes automatically to the surviving owner, and your will has no effect on it. Property held as tenants in common passes under your will. The ownership structure determines the outcome, and we check it for every asset.

Many couples do not know which structure they have. For blended families in particular, the wrong structure can undo an entire estate plan: the home passes to the survivor outright, and the children of the first relationship inherit nothing from it.

Property covered by a relationship property agreement

If you have signed a contracting out agreement, sometimes called a prenup, or a settlement agreement on separation, that document may already record what each of you is entitled to when the other dies. Where it does, it can displace what the intestacy formula would otherwise give the survivor. The next section deals with this.

KiwiSaver

KiwiSaver has no beneficiary nomination system in New Zealand. Your balance is paid to your estate and passes under your will, or under the intestacy formula if you have none. For many people KiwiSaver is their largest asset after the family home, and it alone is usually enough to require formal estate administration.

Trust assets

Assets owned by a trust do not pass under your will at all, because the trust deed governs them. Your estate plan should deal with the roles you hold instead: who replaces you as trustee, how your power to appoint and remove trustees passes, and what your memorandum of wishes says to guide the trustees after you are gone.

Overseas assets

Property, bank accounts or investments in another country may be governed by that country's succession law, and some countries do not recognise a New Zealand will for local assets. If you hold assets overseas, or have moved to New Zealand with assets left behind, your plan needs cross-border advice.

If you have a relationship property agreement

A contracting out agreement, sometimes called a prenup, and a settlement agreement signed on separation are both relationship property documents. They are also estate planning documents, which is rarely how they were understood by the people who signed them.

The Supreme Court has confirmed that partners can, by agreement, give up the right to inherit from each other where the person who dies leaves no will. It has also confirmed that ordinary wording can achieve this. A clause recording that the agreement is in full and final settlement of all claims, read together with the rest of the document, was enough to do it. The court read that agreement as a whole, so a settlement clause does not have this effect in every case, and whether it does depends on what else the document says.

An agreement can decide who inherits

Where an agreement removes the survivor's right to inherit and there is no will, the result may be one neither of you intended, and neither of you is there to correct it.

- **An agreement with no will is the risk case.** If your agreement is comprehensive and you die without a will, your partner may receive considerably less than either of you assumed. If that is the outcome you want, it can be confirmed properly. If it is not, only a will can fix it.
- **The risk runs in both directions.** If you brought assets into the relationship and wanted them preserved for your children, the position now favours you. If you signed a settlement clause on the understanding that you would still be provided for, it may not. Two people who signed the same document can be affected in opposite ways.
- **A separation agreement can do the same thing.** There is no material difference between an agreement made at the start of a relationship and a settlement made on separation. So if you separated, signed a full and final settlement, never dissolved the marriage and never made a new will, your legal spouse may still inherit a substantial share of your estate, or the settlement may have removed that. Which of the two applies turns entirely on the wording.
- **Some claims survive an agreement.** An agreement does not close every route to an estate. Long-standing law holds that the Family Protection Act 1955 cannot be contracted out of, so a survivor left without adequate provision may still be able to claim, and claims based on promises made during a lifetime or on contributions to property owned by the other partner are unaffected. A court can also set an agreement aside altogether where giving effect to it would cause serious injustice, taking into account how long ago it was signed and how much has changed since.

The practical step is to have the agreement read alongside your will, or to make a will if you have none. You each need your own lawyer for that. Independent advice is a legal requirement for these agreements.

When to make or review your plan

An estate plan is current on the day you sign it, and circumstances change from there. Each of the events below should prompt a review, and some of them change your documents automatically, whether you review them or not.

- **Marriage or civil union.** Marrying generally revokes an existing will unless the will was made in contemplation of that marriage. Many people are unaware they have been intestate since their wedding day.
- **A de facto relationship reaching three years.** At that point the Property (Relationships) Act 1976 generally applies as it does to a marriage, with equal-sharing consequences for the family home and other relationship property.
- **Separation or divorce.** Ending a relationship changes what your former partner can receive and claim. Your will, enduring powers of attorney and any trust arrangements all need review, separately from the property settlement itself. A settlement agreement is not a substitute for dissolving the marriage and making a new will.
- **Signing a relationship property agreement.** A contracting out agreement or a separation settlement should be read against your will, and the will made or updated at the same time. Where the two documents were prepared years apart, often by different advisers, they may not agree with each other.
- **Children, whether born, blended or grown.** Guardianship wishes, provision for children from earlier relationships, and the age and terms on which children inherit all belong in the plan.
- **Buying property.** The moment to check the ownership structure is at purchase, when changing it is simple.
- **Starting or selling a business.** Business interests need a succession answer: who can run it, who inherits it, and how it is valued.
- **Receiving an inheritance.** An inheritance is generally separate property, but it can lose that protection if mixed with relationship assets. How you receive and hold it matters.
- **Assets crossing borders.** Moving countries, or acquiring assets overseas, brings a second legal system into your plan.
- **Every five years, regardless.** If nothing on this list has happened, five years is long enough for the law, your assets and your relationships to have shifted anyway.

Your estate planning checklist

Twelve questions to work through. If you can tick every box, your affairs are in good order, and each unticked box is a specific, fixable gap.

☐**I have a will**

It is signed and witnessed, and I know where the original is held.

☐**My will reflects my current relationship**

It was made, or reviewed, since my last marriage, separation or new relationship.

☐**Any relationship property agreement has been read against my will**

A contracting out agreement or separation settlement, checked so the two documents agree with each other.

☐**If I have separated, the paperwork is finished**

The marriage or civil union is dissolved and I have made a new will.

☐**I have both enduring powers of attorney**

One for property, and one for personal care and welfare.

☐**My attorneys are still the right people**

They are willing, able, and likely to outlive the need.

☐**I know how our home is owned**

Joint tenancy or tenants in common, and it matches what I want to happen.

☐**I know where my KiwiSaver goes**

It passes under my will, and my will accounts for it.

☐**My children are provided for**

Guardianship wishes are recorded and inheritance terms are set.

☐**Any trust still serves its purpose**

The deed, trustees and memorandum of wishes have been reviewed recently.

☐**Overseas assets are covered**

My plan deals with every country where I hold property or money.

☐**Someone I trust knows the plan**

My executor and attorneys know their roles and where the documents are.

The matters we help with

These seven scenarios show the kind of work that sits behind the documents, drawn from the situations we act in most often.

The scenarios are illustrative. We never describe actual client matters in our materials.

An estate with assets in two countries

A client's mother dies leaving a house in Auckland and a property and bank accounts in the United Kingdom. Each country has its own succession rules and administration process. We advise which law governs each asset, obtain the New Zealand grant, and coordinate with counsel overseas so the family deals with a single adviser throughout.

A will for a family with overseas assets

A couple settled in Auckland still own an apartment and investments in the country they emigrated from. We structure their New Zealand wills to work alongside the foreign assets, including advising whether a separate will in the other country would make the eventual administration simpler, and making sure the two documents cannot accidentally revoke each other.

A blended family home

A couple in a second marriage each have children from earlier relationships. Their home is held as joint tenants, which would pass it entirely to the survivor. We sever the joint tenancy, restructure ownership as tenants in common, and draft wills giving the survivor a right to live in the home for life while each partner's share is preserved for their own children.

A family trust that has outlived its purpose

A couple set up a trust two decades ago on advice that no longer holds. The Trusts Act 2019 has since raised the duties on trustees, and the trust now creates cost and compliance work without clear benefit. We review the deed, advise whether to keep, restructure or wind up the trust, and update the memorandum of wishes and succession of trustee roles for whatever remains.

A parent losing capacity

Adult children notice their father's memory failing. He has no enduring powers of attorney. While he still has capacity, we prepare both powers, update his will, and review his retirement village occupation right agreement before he signs. Where capacity has already gone, we act on Family Court applications under the Protection of Personal and Property Rights Act 1988 instead.

A settlement agreement and a marriage never dissolved

A client separated some years ago, signed a full and final settlement of the relationship property, and never dissolved the marriage or made a new will. Whether the former spouse still stands to inherit turns on the wording of that settlement. We read the agreement, advise on where it leaves the estate, and prepare the dissolution application and a new will so the position is settled rather than argued over later.

An inheritance worth protecting

A client in a de facto relationship is about to inherit from her parents. An inheritance is generally separate property, but it can lose that status if mixed with shared assets, for example by being paid into a joint account or put toward the family home. We advise how to receive and hold it, and where appropriate prepare a contracting out agreement so the position is settled rather than assumed.



About PK Law

PK Law is an Auckland firm specialising in private client and relationship property law: wills, enduring powers of attorney, trusts, estates, and relationship property agreements. The documents in this guide are quoted on fixed fees, in a profession that still bills by the hour. Where a matter has to be charged hourly, an estate dispute for example, you will know that, and the likely cost, before we start.

Polina Kozlova, the firm's director, has spent ten years in this one area of law. She is a full member of STEP (the Society of Trust and Estate Practitioners), holds the STEP Advanced Diploma in Trusts and Estates and the STEP Advanced Certificate in Cross-Border Estates, and has been published in the New Zealand Law Journal and the international STEP Journal.

"The care and consideration you have shown in your approach to this matter: I genuinely appreciate the clarity and strategic thought you have brought to our situation."

SHEENA, ESTATE DISPUTE

Start with a free 15-minute introduction call

The call scopes your situation and confirms the cost, and the basis of it, before you commit to anything. It also lets both sides confirm the fit is right, which matters in an area of law this personal.

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