

PRESENTERS



Kathryn Lellman, Hollister-Jones Lellman, Tauranga

Kathryn specialises in family law, divorce law, disputes around Estates and child care issues. This includes pre nuptial and post nuptial agreements, challenges to wills, child care issues including national and international relocation and getting orders for property and welfare issues when someone is incapacitated.



Dr Darren Malone, Lakes District Health Board, Rotorua

Darren is a psychiatrist and psychogeriatrician. He has undertaken private medicolegal work for the past 10 years. Darren is the clinical director of Mental Health Services, Lakes DHB.

The statements and conclusions contained in this paper are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

CAPACITY AND THE PPPR ACT	1
INTRODUCTION	1
PRINCIPLES OF ASSESSMENT	2
CAPACITY TESTS IN PPPRA.....	3
THRESHOLDS	4
THE PPPRA TESTS.....	4
<i>Test 1: “Partly” lacks capacity: For making a personal order and appointing a property manager</i> .	4
<i>Test 2: “Wholly” lacks capacity : for the appointment of a welfare guardian</i>	5
<i>Test 3: “Not wholly competent” : for activating a property EPOA</i>	5
<i>Test 4: “Lacks the capacity” - for the activation of a care and welfare EPOA</i>	6
PROCESS OF ASSESSMENT	7
ASSESSMENT STEPS.....	7
PRACTICAL ASSESSMENT FOR THE DIFFERENT TESTS	9
<i>Capacity to appoint an enduring power of attorney (EPOA)</i>	9
<i>Capacity to revoke an EPOA</i>	9
<i>Financial capacity</i>	9
<i>Capacity to make decisions regarding their health and welfare</i>	10
TESTAMENTARY CAPACITY	10
<i>Common pitfalls</i>	11
COMMON PSYCHIATRIC CONDITIONS THAT CAN AFFECT CAPACITY	11
EPOA AMENDMENTS 2016	12
FUTURE ISSUES/CONCERN	13
APPENDIX 1	17
PROTECTION OF PERSONAL AND PROPERTY RIGHTS (ENDURING POWERS OF ATTORNEY FORMS AND PRESCRIBED INFORMATION) REGULATIONS 2008	17
5 <i>Prescribed information for certificates of mental incapacity</i>	17