



Resident Information

Pack



4 Heath Street
Mount Maunganui

Ph 07 575 5619

Email: office@malyonhouse.co.nz



Contents

Malyon House mission statement.....	4
It is our pleasure to welcome you to Malyon House	5
About Malyon House.....	5
Nursing care	5
Doctors.....	6
Medication	6
Specialist appointments	6
Ambulance services	6
Meal times	7
Laundry	7
Emergency evacuation.....	7
Visiting hours	8
Furniture.....	8
Insurance	8
Telephones, television and internet	8
Lift	9
Newspapers	9
Post.....	9
Hairdresser	9
Library	9
Activities/Recreation	9
Resident choice	10
Privacy protocol.....	10
Resident and service areas.....	10
Pets.....	10
Cultural support.....	10
Mobility scooters	10
Smoking	11
Fees and financial arrangements	11
Extra charges.....	11
Cash.....	11
Transport.....	12
Advocacy services.....	12
Allied health professionals.....	12
Voting and jury service rights and responsibilities	12
Community resources	13
Complaints procedure	13
Resident incidents	13
Consumer rights.....	13
Informed consent.....	14
Code of Residents' rights and responsibilities.....	15
Powers of attorney	16
What is a general power of attorney?	16
What is an enduring power of attorney (EPOA)?.....	17
A property EPOA	18
A personal care and welfare EPOA.....	19
Who should set up an EPOA, and when?.....	20
Who should you appoint?.....	20
How do you arrange an EPOA?.....	21
Who checks on the attorneys?.....	22

How long does an EPOA have effect?.....22
What if a person is already mentally incapable?.....23
What happens on death?23
Living wills and advance directives.....23

MALYON HOUSE MISSION STATEMENT



Malyon House is a small rest home committed to excellence in care. We welcome the opportunity to meet the needs of each resident, be available to consult and be informative with their family, and conduct our business with honesty and integrity.

Our intention is to uphold the dignity, privacy and comfort of our residents who merit the highest respect, kindness, love and encouragement.

To meet the needs of our residents, the Malyon House staff use their valuable experience and abilities to enhance the homely environment in which the elderly, frail, and/or confused can live in a friendly atmosphere and have their physical, cultural and psychological needs met.

Our staff endeavor to at all times encourage independence whilst maintaining responsibility for the safekeeping, care and health of each resident.

We serve those who served us.

It is our pleasure to welcome you to Malyon House

Our staff are here to assist you and answer any questions or queries you may have. We do understand that you will be experiencing mixed feelings about coming into our home, but we will do our utmost to help you settle in.

We will actively encourage you to continue to be involved in all those hobbies and community activities that you enjoy, and do hope that your friends and family will come and visit you as if you were still in your own home, and take you shopping and out for meals just as before.

About Malyon House

Malyon House is owned by Amy Munro and Brett Horgan, who took over from Amy's parents Cecily & David Munro in 2018. The Munros have run Malyon House since 1996.

Amy is a Registered Nurse with 20 years' experience, largely in nursing management. Amy is the Director of Malyon House, and is on site twice a week. Amy's role is primarily to support our Management team.

Claire Davey is our Facility Manager. Claire joined our team this year with many years' experience in management of large rest homes. Claire is responsible for the overall running of Malyon House and is in the office next to the front door.

Across the hall you'll find Maureen Stark, our Clinical Manager. Maureen leads our team of Registered Nurses. Both Claire and Maureen are happy to help with any questions you might have.

Rounding out our management team is Paula Davidson, our Administration Manager, who can be found in the upstairs office. Paula deals with all the paperwork around finances and is an expert on how funding works for aged care.

In our twenty-plus years we have seen Malyon House expand from a 12-bed rest home to a 57-bed rest home and hospital facility, relocating from Hinau Street to our current Heath Street location in the process.

We are proud of Malyon House's strong emphasis on quality care in a small, family-focused environment. We are members of the New Zealand Aged Care Association.

Nursing care

Our Clinical Manager, Maureen, and our team of Registered Nurses and care assistants work together to provide individualized care for all our residents. A nursing care plan will be developed over the first few weeks in conjunction with you, and your family and medical advisors.

Doctors

We have an in-house GP, Dr Anthony March; who, along with his colleague Nurse Practitioner Louise Fowler, visit twice a week. If you prefer to continue to use your usual family practitioner that is not a problem, provided family are available to transport you to appointments, and that your GP is willing to use our electronic prescription system. If we are responsible to pay for your doctor's visits, and there is a large difference in your practitioner's fee structure we may ask you to pay the difference.

Medication

Please inform us if you would like to continue taking your own medication or if you would like the staff to give it to you at allocated times. If you do wish to take responsibility for your own tablets or medicine we can assist you to ensure that they are clearly labeled in easy to use packs. You will need to assist us by keeping a record of which medication you are taking. Staff will be able to tell you about the purpose and side effects of your medication. If you lose a tablet or forget to take your medication please inform the staff as soon as possible.

If you would like us to be responsible for your medication we have a comprehensive system for undertaking this responsibility. Medications are usually given out at mealtimes, but some are also specifically prescribed prior to food and may need to be taken earlier.

Complementary medicines including herbal medicines, homeopathy, nutritional therapy, aromatherapy and health food supplements may be taken by our residents but we do ask that our staff, your medical practitioner, and our pharmacist are made aware of all such products being used by you to minimise any potential drug interactions or unexpected adverse effects.

Specialist appointments

Should specialist appointments be necessary we encourage relatives to arrange transport and accompany you as our staff are not able to accompany residents to lengthy hospital visits. Any secondary medical services are at your own cost. If staff are called on to take residents to lengthy appointment a charge will be made for the staff member's time.

Ambulance services

Residents living in aged care facilities are not able to subscribe to the St John Ambulance Support Scheme. You are welcome to still make donations.

Meal times

Our mealtimes at this facility are:

Breakfast:	in your room if you wish, or in the dining room between 7.15 and 8.00am
Morning Tea:	about 10.30am
Lunch:	the main meal of the day, served with fruit at 12 midday in the dining room
Afternoon tea:	about 2.30pm
Dinner:	a light meal and dessert is served at 5.30pm
Supper:	at 8.00pm

Cups of tea or coffee are available on request – facilities are available for those who are able to make their own.

We encourage residents to have input into menu choices and likes and dislikes. For this reason and because we wish to optimize your health, we need to know if you have any particular dietary requirements.

If you have been assessed as requiring special feeding equipment such as modified cutlery or drinking cups, please inform our staff as to what equipment you like to use.

Laundry

All personal laundry is done on site by our staff. While they will take all possible care of your clothes we do ask that any special woolen garments be taken care of by a family member. We are unable to routinely hand wash garments and we ask that you organize your own dry-cleaning. We do also ask that **ALL** clothing be clearly, and discretely labeled – sewn on name tags are the most successful way of ensuring that your clothing is readily identifiable.

Emergency Evacuation

Instructions for evacuation are on the walls adjacent to each fire alarm and inside your wardrobe doors. We hold three-monthly fire evacuations, and all staff have training in their responsibilities. Malyon House is fully fitted with sprinklers, smoke detectors and emergency lighting.

If you hear a fire alarm:

Stop what you are doing and await instructions from the staff – your assembly points are at the front of the building by the fence, and at the rear of the building adjacent to McNaughton Lane.

There is a plan in this booklet showing the location of the fire exits, hose reels and fire extinguishers. Please check that you have been shown or provided information on and know how to use:

- | | |
|--------------------------------------|--------------------------|
| Emergency Call Bell System | <input type="checkbox"/> |
| Location of Fire Exits | <input type="checkbox"/> |
| Location of Fire Extinguishers | <input type="checkbox"/> |
| Fire Drill and Evacuation Procedures | <input type="checkbox"/> |

See Appendix A for evacuation plans for each wing.

Visiting

Residents and their family may come and go as they please although we do ask that visitors sign in, and that staff be made aware when a resident goes out so that we know who is on the premises in case of fire or other emergencies. Please be aware that we do lock the doors in the evening so you will need to ring the bell if returning or visiting after dark. Please observe the 5km/hr speed limit within our property.

If you wish to spend a weekend away or go on holiday please let staff know in advance so that any medications and/or equipment can be arranged.

Furniture

You are encouraged to bring bedding, and pictures etc to personalize your room. We have hooks for our picture rails available in the office as we discourage families from hanging picture hooks on the walls. Please ensure that all such items are well marked with your name. While our staff will take all possible care of your possessions please be aware that we hold no insurance cover for them. Personal refrigerators are not encouraged due to space restrictions and food safety requirements, and these are only permitted with express permission from the Facility Manager. There are fridges available in each wing kitchen for storing personal items.

Insurance

Whilst we will take all due care to protect your personal belongings, you need to discuss with your family/whanau or Enduring Power of Attorney whether you need to take out your own personal insurance particularly for items of significant value.

Telephones, Television and WiFi

We are able to offer residents their own telephones in most rooms at competitive rates; please enquire with administration staff of the availability and costs prior to admission. There are also telephones available for residents to use on each floor – any toll calls

will need to be made with the assistance of the staff as a toll bar is in place. Should you wish to have a private conversation please arrange to use the office telephone.

All rooms have television points, and most have telephone jacks. If you would like your own telephone, or Sky installation it is at your expense. Please be considerate of others when using televisions and radios – we may ask you to use headphones if unduly loud noise disturbs others. Wifi is available throughout the building, all lounges and most bedrooms – charges may apply.

Lift

Please ask a staff member to escort you when using the lift between floors until you are fully confident about its use.

Newspapers

We get a house copy of the Bay of Plenty Times – but you are welcome to have a personal copy delivered if you wish.

Post

Mail is delivered to the site daily and the staff will arrange to have any letters posted for you.

Hairdresser

We have a hairdresser who comes to Malyon House each week – you can make appointments at reception.

Library

We have a large number of books available, many in large print – however the public library is quite close and you may wish to go there to pick out your own. Listening books are also available from the library, and in special circumstances the library can arrange to have books delivered.

Activities/Recreation

We are keen to determine your interests in the areas of arts, music, exercise, life skills development, spiritual guidance and recreation. We have staff members employed each day to facilitate activities. Their programme includes music, exercises, arts and crafts, and shopping. Other special interests can be catered for. We are keen for you to contribute any ideas for activities to the staff and we will endeavor to accommodate them.

We also have the services of a Chaplain who holds a non-denominational service regularly. Your own spiritual advisors are always welcome.

Resident Choice

We are committed to ensuring that all residents are given adequate choice in relation to quality of life and conducting activities fundamental to your daily routine. Where possible we aim to ensure that your individual values and beliefs are incorporated into the organization of the home.

Privacy & Confidentiality Protocol

We are committed to ensuring that your privacy and dignity is maintained at all times whilst you are in our care. We keep information about your well-being and lifestyle needs on file but this is confidential and available only to the people responsible for your care. We aim to achieve a balance between respecting the individual's right to choose and the privacy of other residents in our care.

We have a documented protocol for meeting all your privacy requirements including clinical treatments and procedures, family discussions and any desire for intimacy.

Resident and service areas

Our home has areas both inside and outside that may pose a danger to your health and safety. We have an outside area that has been made safe for your use and comfort. Inside, a number of areas have been designated "staff only" and we ask that you respect our need to operate the facility in such a way. Please keep out of the kitchen and laundry areas at all times.

Pets

Unfortunately, we are unable to accommodate pets at Malyon House.

Hot Water Bottles

We encourage the use of wheat packs rather than hot water bottles due to the risk of burns.

Cultural support

Cultural support is available if required, please ask the Facility Manager for further information. All rooms are blessed following the passing of a previous resident.

Mobility scooters

A limited number of scooters only can be accommodated, and tolerance with parking is requested. Mobility scooters are not to be driven inside the building. Any equipment not in use needs to be stored away from our premises.

Smoking

No smoking is permitted within the building. Residents who wish to smoke may do so in the Topaz courtyard. Please use the receptacles provided for butts.

Fees and financial arrangements

We prefer that fees be paid two-weekly in advance. All residents should nominate a family member or agent to be responsible for their business affairs if unable to do so themselves. Please read the information later in this pack about Powers of Attorney. Fees are subject to change annually.

Extra Charges

Whilst most of the services that we provide are included in your weekly fees, we are unfortunately not in a position to absorb any of the costs associated with specialist or extra products or services that you may desire or require. It is the responsibility of the resident and/or their family or whanau to ensure that the resident has their own stock of personal toiletries. However, in the event that the resident runs out of toiletries, the facility will ensure that supplies are made available at your cost.

Basic incontinence products are available within your weekly fee, but not a complete range – this may need to be discussed with Management.

The following products and services are not covered by your fees:

- Dentists, optometrists, audiologists, chaplains, hairdressers, advocacy support groups and solicitors.
- Equipment aids, medical supplies or services not covered under the Disability Issues Directorate Budget. These charges will need to be claimed under another part of the healthcare budget or in the case of a private payer the charges need to be passed on.
- We do not have staff available to escort residents to lengthy hospital appointments so need to pass the costs of this, and "after hours" visits from medical staff.

Cash

We have no trust fund facilities as such, but can hold small amounts of cash on your behalf in our safe. You will want to have some cash on hand for hairdressers, outings, and purchasing personal items. Please discuss this with the Facility Manager.

Please Note: we do not allow our staff to use EFTPOS cards on behalf of residents – you can arrange with the Facility Manager who will access a money machine on behalf of a resident in extreme circumstances only. We also strongly recommend that any cards left with residents have very

minimal balances. No PIN numbers should be written down or disclosed to staff members.

Transport

Should you require transport outside of the facility, our local taxi company is:

Mount Taxis Ltd – ph 574 7555

We can also organize half price taxi concessions if you think you would like to use a taxi service regularly – please discuss with the Facility Manager.

We have a wheelchair hoist-equipped van which we use for outings and other trips, and ask you to co-operate in the wearing of seatbelts or any other restraint devices whilst traveling.

Allied health professionals

We have a number of external health professionals that visit either regularly or as required, including a podiatrist, wound care nurse, and diabetic educator.

We have a physiotherapist, Andrea, on staff and she advises us on mobility issues for residents. Specific programmes of treatment can be accessed via external providers.

Advocacy Services

We are able to refer you to an independent advocacy service at the earliest opportunity if you have any concerns over your care or your family's involvement in your care and are not able to reach a resolution.

We have a complaints process that is easy to follow [please see the complaints section] and guarantee that all concerns are followed up within 14 days.

We have provided you with some contact people who will be able to advocate on your behalf and we are happy to discuss how the independent advocacy process works and assist in its facilitation.

Emma Ngawhare
Advocacy Network Services
Phone 577 1715 or 0800 423 638

Age Concern
Tauranga
Phone 578 2631

Social Worker
Tauranga Hospital
Phone 579 8000

Voting and jury service rights and responsibilities

You have the right to vote and participate in jury service should you be required, and if you wish to do so.

Community resources

The following community support groups are available and may be of interest to you: RSA, Stroke Foundation, Alzheimer's Society, Parkinson's Society, MS/ME Society, Senior Citizens Club.

Please see the staff if you would like to be put in contact with any of them.

Complaints procedure

All residents should understand how the complaints process works. We encourage our residents and their families/whanau to give us feedback so we can continually improve the way we do things. We are more than happy to discuss your concerns.

You have every right to be involved in decisions affecting your care and we encourage you to explain or discuss your concerns in more depth. Complaints forms are available in the reception area should you or your family or whanau have any concerns about your care. Please ask one of the staff if you would like the complaints process clarified or if English is your second language.

We ensure that all complaints are followed up within 14 days and if it is still not to your satisfaction we will continue to work to reach some compromise.

Malyon House will also keep a log of the complaint, any recommendations for improvement, a record of which staff member is assigned responsibility to rectify the problem and the date at which the solution has been implemented.

Resident incidents

Residents and their families need to understand that all incidents and accidents involving them [including neglect and abuse] need to be documented so management can ensure that solutions are found and the situation does not arise again. Please use the complaints procedure available or feel free to talk about the issue with a staff member that you trust.

Our staff encourage issues of concern to be raised so that we are able to continuously improve the care that we provide.

We are committed to a policy of open disclosure to ensure all details are made available to resident and family/whanau/advocate of any incidents involving residents.

Consumer rights

The Code of Health and Disability Services Consumers' Rights is a regulation under the Health and Disability Commissioner Act, which outlines the rights of consumers of healthcare and the duties of providers. It is important that all residents have access to

this document and receive a copy of it should they wish. We have a copy on display on the wall near reception.

Under the Health and Disability Services Code, the resident has the right to:

- Be treated with respect
- Freedom from discrimination, coercion, harassment and exploitation
- Dignity and independence
- Services of an appropriate standard
- Effective communication
- Be fully informed
- Make an informed choice and give informed consent
- Support
- Respect with regard to teaching or research
- Complain

Informed Consent

It is our role to ensure that you understand everything that is happening to you. We must obtain your informed consent for any treatment or procedures, in line with the Health and Disability Services Consumer Rights Code 1996. The process for seeking consent either from the resident or from their Enduring Power of Attorney must be provided to the resident in a form that is understood.

At the time of consent being sought, the information must be clearly outlined and the resident must be encouraged to ask questions. The resident must be informed of the following:

- A separate consent must be obtained for each proposed treatment or procedure and services will only be provided if the resident has made an informed choice and given consent. Consent must be in writing if:
 - The resident is participating in research.
 - The procedure is experimental.
 - General anaesthetic is used.
 - There is significant risk of adverse effects on the consumer.
- If a circumstance arises where there is a potential contentious issue of informed consent or if the resident and/or the agent does not consent, then all relevant information must be recorded in the records.
- Every resident is deemed competent to make an informed choice unless there are reasonable grounds for believing that the consumer is not competent. In this situation they give informed consent appropriate to their level of competence.
- Every resident has the right to withdraw consent to services or refuse services.
- Every resident has a right to express a preference as to the provider of the service.

The Health and Disability Sector Standards require us to inform each of our residents of their rights and responsibilities.

Malyon House Code of Residents' Rights and Responsibilities

You have a right to:

- Personal and health care according to your need.
- Be treated as an individual and with dignity and respect.
- View a copy of the Code of Health and Disability Services Consumer's Rights 1996.
- Privacy when for example attending to hygiene, making and receiving telephone calls, receipt of mail, receiving visitors, personal conversations with staff and residents.
- Treat the facility as your home and to regard yourself as a member of a family consisting of other residents and staff.
- Expect that your safety will be catered for in and around the facility.
- Choose and maintain contact with individuals and groups from the community through visitors to the home and outings.
- Be consulted about all matters affecting you.
- Be asked to choose from a range of activities both in the facility and in the community.
- Socialise with whomever and whenever you choose.
- To be addressed by your preferred name.
- Maintain your personal independence.
- Ensure that your possessions are not shared without permission.
- Confidentiality of any records staff may keep.
- Control over all personal matters as to your own possessions and clothes, financial matters, when you sleep.
- Be involved in decision-making about activities of daily life and have information provided in a format best suited to your needs so informed consent is assured.
- Intimacy and sexuality as long as the personal rights of others is maintained.
- Continue with cultural and religious practices and value systems which have determined your life in the past.
- Complain about anything which upsets you and if necessary have some independent person to advocate on your behalf.

You have a responsibility to:

- Treat fellow residents as members of your family.
- Remember that other residents have the same rights as you.
- Treat staff as individuals with dignity and respect.
- Assist staff in looking after your health.
- Inform staff when you are leaving the home, who will be with you and when you hope to return.
- Treat the facility with care and respect.
- Keep any financial matters current.
- Adhere to any house rules.

Powers of attorney

For the most up to date information visit

<http://superseniors.ms.govt.nz/finance-planning/enduring-power-of-attorney>

What do you do if you want someone to help look after your affairs? What if you become unable to look after yourself or make decisions about your own affairs? Who can make decisions about your welfare and who can deal with your property, operate your bank accounts, pay your bills? Who would you want taking care of you and your affairs if you were no longer able to?

A power of attorney gives someone (the attorney) the authority to act legally on your behalf to the extent specified in the power of attorney.

There are two main types of powers of attorney - a general power of attorney and an enduring power of attorney. The following describes what is involved in each of these. It also outlines what can be done if a person needs care but is not capable of granting a power of attorney, and it mentions "living wills" and "advance directives".

What is a general power of attorney?

With a general power of attorney, you appoint someone to help look after your affairs. The person could be a family member, friend, lawyer, other adviser or a trustee company. It does not prevent you continuing to look after your own affairs but simply allows the person you appoint to do so as well.

You can choose how wide the powers you grant should be. For instance, it could be a general power to look after all your money or property, or it could be more specific perhaps appointing someone to manage your bank account and letting out your house while you are overseas. You can choose more than one attorney. If you do, you need to say whether they must act together (jointly) or whether they can act separately (severally).

A general power of attorney remains valid only while you still have legal capacity - it ceases to be valid as soon as you no longer have the mental or physical capacity to instruct the attorney. If, for instance, you have an accident that leaves you with brain damage, the person could no longer act for you under a general power of attorney.

If you want someone to be able to act for you when you can no longer manage your own affairs, then, while you are still capable, you need to arrange an enduring power of attorney (see topic 3) as a general power of attorney cannot be converted into an enduring power of attorney once you are no longer capable.

A general power of attorney also ceases immediately the person who granted it dies. In that event, the power to deal with property, bank accounts, etc, passes to the executor named in the will or the person appointed to administer the estate if there is no will.

To grant a general power of attorney, you need to complete a form (available from lawyers and elsewhere) stating the extent of the powers that you (as donor) are granting. You and the attorney need to sign the form and have your signatures witnessed by other people. You can grant the power for a limited time or leave it open-ended.

You can revoke, amend or extend the power at any time. This should be done in writing with the document properly signed and witnessed. Also, people who have been relying on its authority (the attorney, banks, etc) need to be informed as they are entitled to continue acting on it until they have been advised otherwise. Signing a new power of attorney does not automatically revoke a previous one unless stated.

Remember that giving someone the ability to deal with your property is to give them an important power, so you should think carefully about the person you plan to give this power to, and how much power to give them. They are not required to consult you and you are bound by decisions they make on your behalf, so choosing someone you can trust is critical. You should seek legal advice about the effect of granting a general power of attorney.

What is an enduring power of attorney (EPOA)?

Unlike a general power of attorney, an enduring power of attorney allows the attorney to act for you if you become mentally incapable. However, you must arrange an EPOA before you become mentally incapable, otherwise the power will be invalid. If you are already incapacitated, you are deemed not capable of granting a valid power of attorney. For a definition of "mentally incapable", see section 94 of the Protection of Personal and Property Rights Act 1988 (the PPPR Act) as amended by the Protection of Personal and Property Rights Amendment Act 2007.

If you are already incapacitated, those who want to care for you and make legal decisions for you would need to apply for court orders under the PPPR Act (see "What if a person is already mentally incapable" – see topic 10). This takes longer and is more expensive than setting up an EPOA, and the person appointed might be someone you would not have chosen.

There are two types of EPOA. One gives the attorney the right to manage your financial affairs and deal with your property. The other gives the attorney the right to make legal decisions about your personal care and welfare. It is recommended that you arrange both.

These can be given to the same person or to different people, but even if you give them both to the same person, you need to grant each power specifically and separately, though this can be done in the same document.

In both cases you can authorize the attorney to act in respect of all of your affairs or only some of them, in which case you must specify which ones. You can also set conditions and restrictions about how your property should be dealt with or what you would like to happen to you. It is you as donor and not the prospective attorney who has the right to decide just what the powers should encompass.

If you want steps to be taken to determine that you are no longer able to manage your own affairs, write these into your instructions.

Remember that creating an EPOA gives considerable power over your property affairs or personal care and welfare.

However, your property attorney's paramount consideration under the PPPR Act is to use your property to promote and protect your best interests while your personal care and welfare attorney's paramount consideration is to promote and protect your welfare and best interests. Both kinds of attorney must also seek to encourage you to develop your own competence or capacity to act for yourself.

You should seek legal advice about the implications of this and you should make sure that the people you choose as attorneys are ones you can trust to act in your best interests as, at some stage, you may be relying on them absolutely. Choose your own lawyer to talk to - the lawyer advising you cannot also be your prospective attorney's lawyer.

When you sign the EPOA, your signature must be witnessed by a lawyer, a qualified legal executive or an authorised officer or employee of a trustee corporation who is independent of the attorney. That witness must give you an explanation of the effects and implications of the EPOA and advice on certain matters. The attorney's lawyer cannot fulfill this role.

A property EPOA

An EPOA for property gives the attorney the power to act on your behalf with respect to property you own. Property includes not only land and houses but also businesses, bank accounts, shares and all other possessions - that is, everything you own.

You can give your attorney a general authority to act on your behalf or you can limit it to specific circumstances or specific property. You do not have to give your attorney unlimited power - you can choose which decisions you want them to make and set the limits by specifying conditions and restrictions.

You can choose whether you want the EPOA in respect of property to take effect only if you become mentally incapable, or whether it is to have immediate effect and continue to operate if you become mentally incapable.

If you choose an EPOA that comes into effect only if you are mentally incapable, your attorney cannot act under it unless a relevant health practitioner certifies or the Family Court determines that you are mentally incapable. In assessing whether you are mentally incapable, the health practitioner will need to have regard to the presumption of competence in section 93B of the PPPR Act.

An attorney may have to make decisions about whether to sell your home or get a mortgage to pay for your care in a hospital or rest home, about how to manage any business you own, how to invest your money, when to buy or sell shares for you, and so on. This is a big commitment, and a highly responsible and powerful role.

Therefore, you might wish to choose more than one attorney to exercise an EPOA for your property - the law allows you to do this. If you decide to appoint attorneys to act jointly (and not separately) to manage your property, then they must act together and anything requiring a signature will require the signatures of all the attorneys.

Advantages of this are that the attorneys can act as a check on one another and share the weight of what can be a very responsible role.

You might also want to appoint a substitute attorney or attorneys (also known as a successor attorney or attorneys) in case your original attorney's appointment comes to an end. If you do not, the EPOA ceases to apply and an application may need to be made to the court to appoint a property manager or welfare guardian.

When you appoint your attorneys, you will need to be clear about what you want from them. You should discuss it with them and, once appointed, you should make sure they know what property you have, where you keep relevant documents and what your wishes would be in certain circumstances. For instance, you may want them to buy birthday or Christmas gifts for family members, or offer support to dependents, or make regular donations to charity. They cannot do any of these things, or do any other thing for the benefit of others or for their own benefit, unless their authority to do so is clearly specified in the EPOA.

If you are married to or in a civil union or a de facto relationship with your property attorney, and live together and share your incomes, your attorney will be able to deal with property that you jointly own unless you specify otherwise in the EPOA. This will not apply to property that you and your attorney own as tenants in common (that is, you both have separate shares in).

A personal care and welfare EPOA

An EPOA for your personal care and welfare enables your attorney to make legal decisions about your personal care in the event of your mental incapacity. For instance, your attorney can decide if you need to go into care, what home or hospital you will go to, what sort of medical treatment you should have, and so on.

You can authorize your attorney to act on your behalf either generally or only in relation to specific matters. However, even if you give a general authority, the law restricts some of the decisions that your attorney can make. For instance, they cannot make decisions in relation to marriage or civil union or adoption of children, refuse medical treatment intended to save your life or prevent serious damage to your health, or consent to certain medical treatment (some brain surgery, medical experiments or electroconvulsive treatment).

You can appoint only one person to act as your attorney in relation to personal care and welfare at any one time, but you can nominate a substitute or successor attorney to act if the first person is no longer able to. You cannot appoint a trustee corporation as your attorney for personal care and welfare.

The appointment operates only when you become mentally incapable - that is, when you no longer have the ability to make or understand a decision about your personal care and welfare or to communicate your wishes in this regard.

Your attorney will not be able to act on a significant matter relating to your personal care and welfare unless a relevant health practitioner has certified, or the Family Court determines, that you are mentally incapable. A significant matter is one that has, or would be likely to have, a significant effect on your health, well-being or enjoyment of

life, such as a permanent change in your residence, entering residential care or undergoing a major medical procedure.

Your attorney cannot act on any other matter relating to your personal care and welfare unless the attorney has reasonable grounds to believe you are mentally incapable. Your mental capacity must be determined when the decision about your personal care and welfare matter is being made, and in relation to the matter concerned.

If you are certified by a relevant health practitioner as mentally incapable because of a health condition likely to continue for a specified period or indefinitely, no further certificates will be required during that time.

Who should set up an EPOA, and when

Everyone 18 or older - and whether young or old - should establish an EPOA for both their property and their welfare. And, as you need to do it while you are still mentally capable, you should do it now.

People tend to think only the elderly are likely to need someone to manage their affairs but anyone can become mentally incapable at any age. An accident may leave you with brain damage, a stroke can leave you mentally and physically disabled, conditions such as Alzheimer's disease or senile dementia can strike people at relatively young ages.

So, just as we should all have a current will, it is advisable for all of us to set up an EPOA- "just in case". The personal care and welfare EPOA cannot take effect until you are mentally incapable and you can also stipulate that the property EPOA not take effect until you are mentally incapable. A good time to arrange the EPOAs is when you are making your will, especially as an attorney may have to make decisions affecting property dealt with in your will.

Like a will, an EPOA can be revoked, replaced or varied by you at any time before you become mentally incapable. This should be done in writing and be properly signed and witnessed, and people who have been relying on the EPOA authority need to be notified. As different procedures are involved depending on how you want to change your EPOA, you should seek legal advice.

After you have become mentally incapable, only the court can change the terms of an EPOA.

Who should you appoint?

You can appoint any individual as an attorney provided he or she is over 20 years of age, is not a bankrupt and is not mentally incapable. It could be but does not have to be a lawyer. You can appoint a friend, a member of your family or other trusted adviser. A trustee corporation can be appointed attorney in respect of property but not for personal care and welfare.

A lawyer or trustee corporation is likely to expect remuneration for their services in this regard. As there are serious responsibilities involved that can take a lot of time and work, you may also wish to provide remuneration for anyone else that you appoint as

an attorney. Unless you specifically provide otherwise, your attorney will be able to be paid out-of-pocket expenses (but not lost wages or remuneration) though an attorney who has accepted appointment or done work in a professional capacity (for example, a lawyer) will be able to be paid professional fees and expenses.

The powers granted to deal with your property and your care can be very wide. They include, for instance, a property attorney's power to make a will for you with court approval if you lack capacity to make a will (though you can negate this power or set limits). Therefore, you need to be able to trust the people to whom you give these powers. It is a big commitment, so you should talk it over with the people you propose to appoint.

The serious nature of the duties and powers involved mean you should think carefully about who you appoint. It is preferable that they don't have any interest that might conflict with their duties to you when you are mentally incapable. For instance, if they are likely to benefit from your will, this could affect how they deal with your property or the sort of care they choose for you. Also, they need to have the skills to manage your affairs well and to keep proper records of financial transactions under an EPOA for property.

If you appoint different attorneys for property and for welfare, remember that they will need to be able to work together. The attorney for property has to give the personal care and welfare attorney the financial support required to carry out that attorney's duties in relation to your personal care and welfare, subject to the EPOA and any order of the court. The personal care and welfare attorney, in turn, is required to consider the financial implications of decisions relating to your personal care and welfare. Both attorneys are also required to consult each other regularly to ensure your interests are not prejudiced by any breakdown in communications between them.

How do you arrange an EPOA?

Your lawyer will have forms that can be prepared quickly at a reasonable price. Your lawyer will also be able to advise you about the legal implications of what you propose and what is required to make sure that your wishes will be enforceable.

It is possible to draw up an EPOA without going to a lawyer. For instance, there are standard forms for both types of EPOA set out in the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms) Regulations 2008. However, you and anyone nominated as attorney must each sign the form. In addition, your signature must be witnessed by a lawyer, a qualified legal executive or an officer or employee of a trustee corporation who has explained the effects and implications of the EPOA and advised you of certain other matters. Also, someone other than you or your witness must witness your attorney's signature. A lawyer or legal executive will generally charge a fee for providing the advice, witnessing the EPOA and completing the certificate.

As you will be signing over some very important legal powers, it is advisable to speak to your own lawyer so you can be sure that you and whomever you are appointing as attorneys clearly understand what is involved.

Your attorneys will need access to the original EPOA documents as evidence of authority to act on your behalf once it takes effect. You should also keep a copy for your own

records and give a copy to others who may need to know your wishes. The signed EPOAs will need to be produced to those being asked to accept their authority (bank, etc).

Who checks on the attorneys?

Although there is no automatic check on how well the attorneys are exercising their powers, the attorneys do have a legal duty to consult you as far as practicable and anyone else specified in your EPOA. You can also require your attorneys to provide, on request, to people you name, specified information about their actions under the EPOA while you are mentally incapable. This enables the named people to monitor your attorneys' actions.

The Family Court can also monitor the performance of your attorneys and can vary the EPOA terms, but it will do so only if an application is made to the court. It can be asked to review decisions attorneys make. Attorneys themselves can ask the court for directions if they are having difficulty carrying out any of your instructions or deciding what to do (for example, if they receive conflicting advice).

The court can give directions about matters relating to the exercise of the EPOA, can require an attorney to produce accounts, records and information, and can modify the scope of the EPOA. It can even revoke an attorney's appointment if it feels the attorney is not acting in your best interests or is failing or proposes not to comply with the consultation or information-providing obligations placed upon them.

However, someone needs to apply to the court for that to happen so you may wish to instruct your attorneys to report regularly to your lawyer or to someone else who could apply to the court if they felt the powers were not being exercised properly. You would need to get your lawyer's agreement to do this and remember that there would be a cost involved.

How long does an EPOA have effect?

An EPOA ceases to have effect when:

- the donor, while still mentally capable, revokes the power by notice in writing to the attorney;
- the attorney gives notice in writing to either the donor (if still mentally capable) or the court (if the donor is no longer mentally capable) that she or he no longer wishes to act as attorney;
- the donor dies;
- the attorney (or a joint attorney) dies, becomes a bankrupt, becomes mentally incapable or otherwise incapable of acting as attorney; or
- the court revokes the power because the attorney is not acting in the donor's best interests, or the attorney exerted undue influence or fraud to obtain the EPOA, or is not suitable to be the donor's attorney.

If you have been mentally incapable but have recovered capacity, you are entitled to suspend your attorney's authority to act by giving written notice to the attorney. The suspension does not revoke the EPOA and your attorney will be able to act again if a relevant health practitioner certifies, or the court determines, that you are again mentally incapable.

What if a person is already mentally incapable?

When someone is already mentally incapable and so unable to authorize someone else to act on their behalf, a relative, social worker, medical practitioner or certain other classes of people (as listed in the PPPR Act) can apply to a Family Court for orders appointing people to act as a manager of the person's property and as a personal welfare guardian.

The same person could be appointed to take care of both property and personal welfare but it is also possible to have separate appointees. The appointee must be prepared to act in the best interests of the person for whom the application is being made.

The act places some limits on the sort of decisions a welfare guardian can make, especially in relation to medical treatment and decisions about marriage or civil union or adoption of children. While a welfare guardian cannot get paid, they are entitled to have reasonable expenses paid out of the property of the person for whom they are acting. A property manager is also entitled to expenses and can be paid, but only if the court authorizes that. The lack of remuneration can make it difficult to find people willing to take on these responsibilities so it is much better to have property managers have a duty to consult others interested in the welfare of the person for whom the order was made and they must submit annual statements to the court. There are some restrictions on what a property manager can do - for instance they need the court's permission to buy or sell a property worth more than \$120,000.

In cases where a full property manager or welfare guardian is not warranted but some assistance may be required, the court can make various personal orders. If you are caring for someone who may need particular help, ask the Family Court or a lawyer about what orders are available.

What happens on death?

A power of attorney (general or enduring) ceases to have effect immediately the donor dies. The person holding the power can no longer act. For instance, they would not be able to sign a cheque to pay the funeral expenses. The powers transfer to whomever is named executor in the will or appointed as administrator of the donor's estate. Similarly, any authority granted by court order for the care and welfare of a mentally incapable person or management of their property expires immediately the person dies.

Living wills and advance directives

A living will or advance directive is a written or oral instruction made while you are in good health and of sound mind. It gives directions as to what you would want to happen should you suffer an illness or accident that leaves you incompetent to make or communicate decisions about your health care.

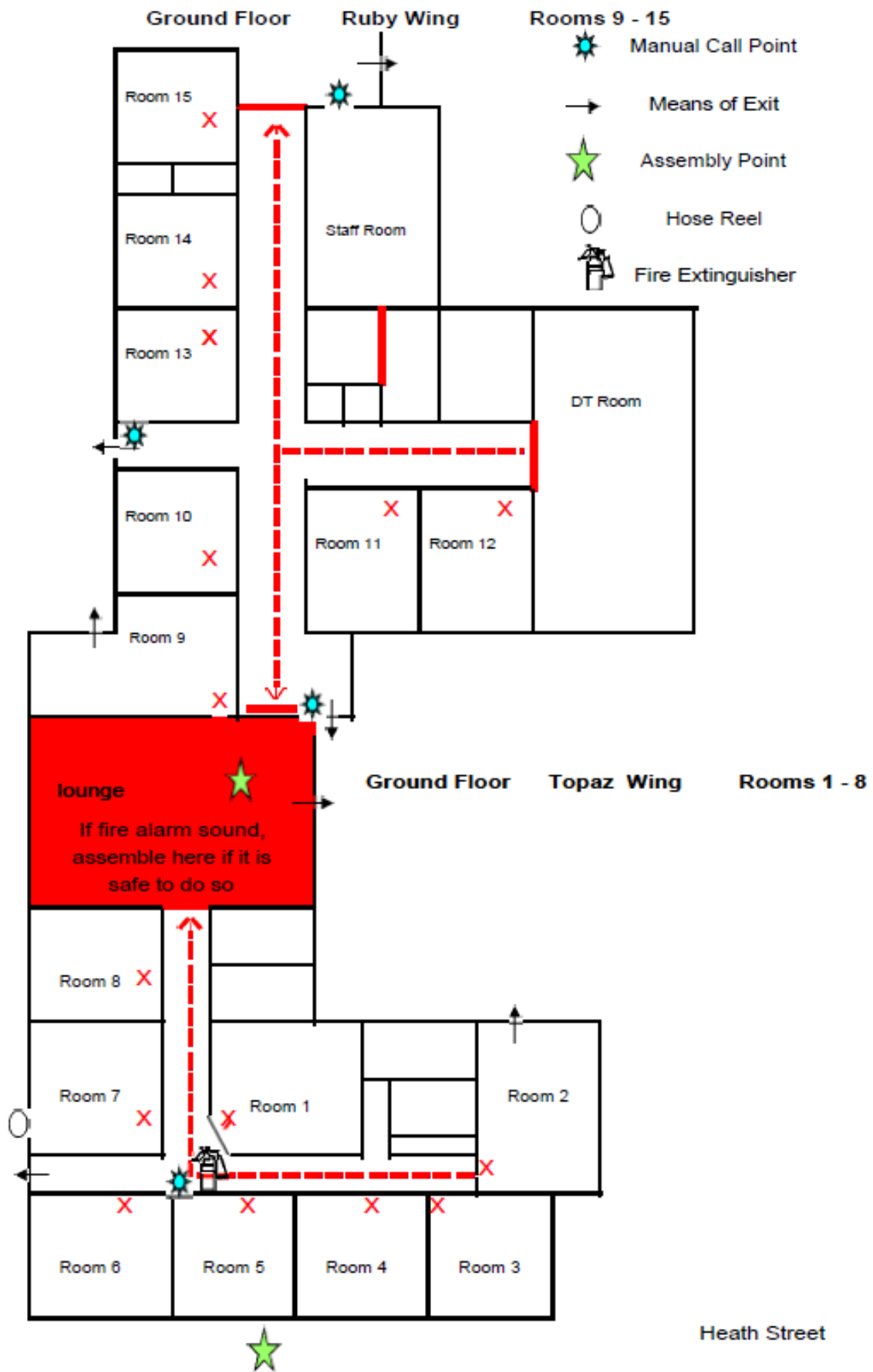
A living will or advance directive is not an alternative to enduring powers of attorney, which give people the legal power to act for you in whatever way they think fit while you are alive but incapacitated.

The living will or advance directive may not be legally effective but may give your family and the medical profession an indication of your wishes (it may be described as 'a statement of wishes regarding health treatment'). If it covers the particular circumstances that have arisen and expresses your true wishes, then it would be lawful to rely on the directive and possibly unlawful to ignore it. The Code of Health & Disability Services Consumers' Rights (Rights 7(5) and 7(7)) refers to advance directives. If you are drawing up a living will, advance directive or statement of wishes, it is advisable to discuss it with your lawyer and doctor.

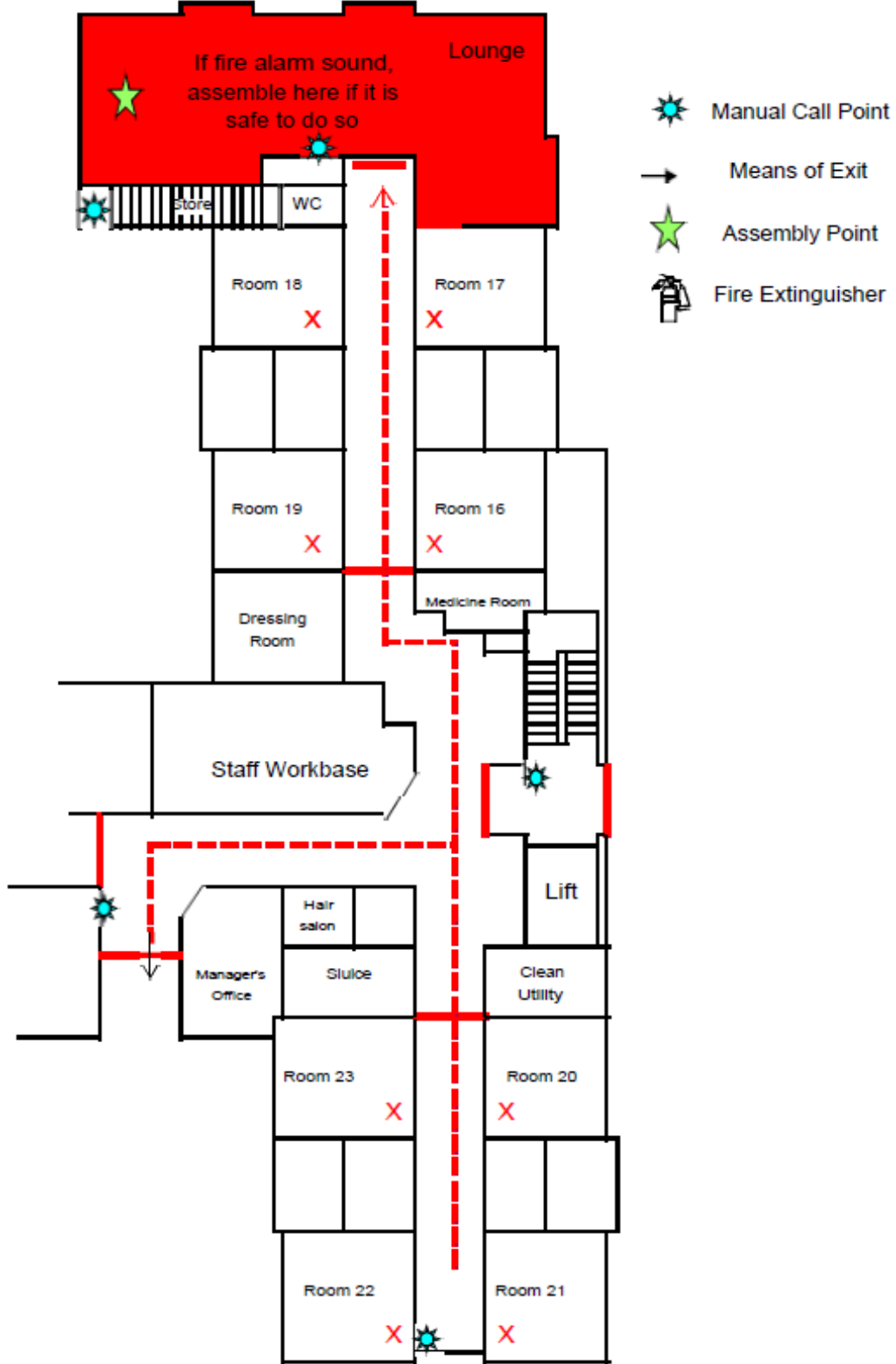
An attorney acting under an EPOA for personal care and welfare may, after consultation with you and any other people you have nominated in the EPOA, act on an advance directive to the extent that it does not require the attorney to do anything the PPPR Act prevents a personal care and welfare attorney from doing (see topic 5).

This information is taken from the booklet "Powers of Attorney"; prepared by the New Zealand Law Society October 2008 - www.familylaw.org.nz

Appendix A



Ground Floor Jade Wing Rooms 16 - 23



Ground Floor

Sapphire Wing

Rooms 24-35





