

Enduring Power of Attorney (EPA)

In relation to personal care and welfare

Notes to enduring power of attorney

Please read these notes BEFORE completing the form.

In these notes, attorney includes a successor attorney whose appointment has come into effect. (See the glossary of terms at the end of these notes for the meaning of this term and other terms set out in ***bold italics***.)

Setting up your EPA	1	Your <i>EPA</i> in relation to <i>personal care and welfare</i> authorises the <i>attorney</i> that you (the <i>donor</i>) have appointed to make decisions on your behalf about your personal care and welfare if you become <i>mentally incapable</i> . You can appoint only 1 personal care and welfare attorney, but you can appoint a <i>successor attorney</i> to be your attorney if the previous attorney's appointment <i>ends</i> . You can appoint more than 1 successor attorney.
	2	Your attorney can be anyone you trust to understand and respect your wishes and feelings and who is able to make decisions about your personal care and welfare, provided they are aged 20 or older, not bankrupt, and not mentally incapable themselves. Usually, this is a friend, family member, or work colleague. Preferably, your attorney should live in the same area as you so that they can attend personally to your care and welfare.
	3	Your EPA should be filled in, signed, and witnessed in the presence of your lawyer or another <i>authorised witness</i> who must explain the effects and implications of the EPA and answer any questions you may have. The signature of the attorney (and each successor attorney) you appoint needs to be witnessed by someone other than you or your witness. The witness must be an adult and should not be a relative of the attorney or the attorney's spouse or partner or live at the same address as the attorney.
	4	Your EPA will not be valid until signed by all parties. This includes you and your attorney.
Options in your EPA	5	There are various options that you can have in your EPA. For example, you can appoint successor attorneys, cancel (<i>revoke</i>) previous EPAs, determine the extent of your attorney's authority to act, and say who they must <i>consult</i> . See sections B to H of the EPA form for these options.
You and your attorney need to understand what an attorney's role is	6	An attorney's authority under the EPA is governed by both the EPA and the Protection of Personal and Property Rights Act 1988 (the <i>Act</i>). These notes are a summary of the main requirements of the Act. Attorneys and successor attorneys should ask a lawyer for legal advice on their role if they are unclear about how to act.
When an attorney can act	7	Your attorney can act under the EPA only if you become mentally incapable.
	8	Your attorney can act or make a decision on any <i>significant matter</i> relating to your personal care and welfare only if a <i>medical certificate</i> states, or the Family Court decides, that you are mentally incapable in relation to that matter.
	9	Your attorney can act and make decisions without a medical certificate on any matter relating to your personal care and welfare that is not a significant matter if the attorney has reasonable grounds to believe you are mentally incapable.

	10	Your mental capacity must be assessed: • at the time your attorney proposes to make or makes a decision on a matter; and • in relation to the matter concerned.
	11	However, if a medical certificate states that you are mentally incapable because of a health condition that is likely to continue for a specified period or indefinitely, no further medical certificates are required for any matters that arise during the certified period.
	12	Your attorney cannot act after they receive notice that the EPA is terminated, their appointment is ended, or their authority to act is suspended (see note 20).
What an attorney must do	13	Your attorney's overriding concern is the promotion and protection of your welfare and best interests. This includes: • encouraging you to make and communicate your own decisions about your personal care and welfare and to understand and see how decisions about your personal care and welfare will affect you • encouraging you to act on your own behalf where possible and remain part of your community • seeking your advice when making decisions, and consulting anyone else named in your EPA for that purpose and any attorney acting under any other EPA you have given (other than a successor attorney whose appointment has not come into effect) • taking into account the financial implications of any decision about your personal care and welfare.
	14	If you have appointed someone else to be your attorney for your property, your attorneys must regularly consult each other to ensure that your interests are not disadvantaged by any breakdown in communication between them. Your property attorney should provide your personal care and welfare attorney with any financial support (out of your property) needed for your personal care and welfare.
	15	Your attorney may follow any advice received through consultation or in an advance directive you have given if your attorney does so in good faith and with reasonable care, unless the attorney is asked to do something listed in note 17.
	16	If you have named someone in section G of your EPA to be given information, your attorney must promptly give them that information when asked for it.
What an attorney cannot do	17	Your attorney cannot: • make a decision about you marrying or entering into a civil union • make a decision about your marriage or civil union being dissolved • make a decision about any of your children being adopted • refuse consent to any standard medical treatment or procedure intended to save your life or prevent serious damage to your health • consent to you receiving electro-convulsive treatment (ECT) • consent to any brain surgery or treatment designed to change your behaviour • consent to your taking part in any medical experiment except for the purpose of saving your life or preventing serious damage to your health.

Cancelling or suspending an EPA	18	While you are mentally capable, you can cancel (revoke) your EPA or an attorney's appointment at any time by giving written notice to your attorney (you should also give notice to any successor attorneys).
	19	If you choose to revoke any previous EPA in relation to personal care and welfare, but do not give notice of revocation to the previous attorney, your attorney under this EPA or your lawyer can give your previous attorney that notice by providing them with a copy of this EPA before or after you become mentally incapable.
	20	If you become mentally incapable but recover your mental capacity, you can suspend your attorney's authority to act by giving them written notice. The EPA is only put on hold by the suspension, which means your attorney cannot act under it again unless a medical certificate states, or the Family Court declares, that you are mentally incapable again.
	21	If you are mentally incapable and your attorney's authority is questioned, the attorney can certify on a prescribed form (available on the Ministry of Justice website) that they have not received any notice that the EPA is terminated, their appointment is ended, or their authority to act is suspended. This means they can continue to act as your attorney.
Involving the Family Court	22	The Family Court can be asked to review your attorney's actions under the EPA if you or someone else has concerns about them. An application to the court is required for this purpose. The court must appoint a lawyer to represent your interests.
	23	Your attorney may apply to the Family Court for directions if they are not sure about the most suitable action to take in your best interests (for example, where consultation has resulted in conflicting advice or questions about whether to follow an advance directive).
	24	For matters involving the Family Court, an application to the Family Court is required. The application form can be found at the Ministry of Justice website.
Glossary of terms		
Act		The Protection of Personal and Property Rights Act 1988. Part 9 of the Act sets out the law on EPAs.
Advance directive		A written or oral directive: • by which a person makes a choice about a possible future health care procedure; and • that is intended to be effective only when the person is not competent. See the Code of Health and Disability Consumers' Rights set out in the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996.
Attorney		A person appointed by the donor to act for the donor on some or all of the donor's personal care and welfare matters if the donor becomes mentally incapable. This includes a successor attorney whose appointment has taken effect (unless the context makes it clear that this is not intended).

Glossary of terms continued

Authorised witness	A person who witnesses the donor's signature to an EPA. The signature must be witnessed by one of the following: • a lawyer • a legal executive who is a member of, and holds a current annual registration certificate issued by, The New Zealand Institute of Legal Executives Incorporated, has 12 or more months' experience as a legal executive, and is employed by and supervised by a lawyer • an authorised officer or employee of a trustee corporation. If the attorney is a lawyer appointed in his or her capacity as a lawyer, the witness may belong to the same firm as the attorney. In any other case, the witness must be independent of the attorney and any successor attorney named in the EPA. The requirement that the witness must be independent of the attorney is modified where 2 people appoint each other as attorney in order to allow: • the witnesses to belong to the same legal firm or the same trustee corporation • the same person to witness both donors' signatures if the witness is satisfied and certifies that doing so does not constitute more than a negligible risk of conflict of interest.
Consult	To ask for advice and give that advice proper consideration before making a decision in the donor's best interests. This includes making sure the person being asked for advice has all the information they need to base their advice on.
Donor	The person setting up the EPA giving the appointed attorney(s) authority to act for them.
Ends	An attorney's appointment under the EPA ends when any of the following events occurs: • the donor (while mentally capable) revokes the attorney's appointment by written notice to the attorney • the attorney gives written notice to the donor (or to the Family Court if the donor is mentally incapable) that the attorney disclaims the right to act under the EPA • the attorney dies or becomes bankrupt • the attorney becomes subject to compulsory treatment or special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992 • the Family Court makes a personal or property order under the Act in respect of the attorney • the attorney becomes unable to act (for example, because of serious illness) • the Family Court makes an order revoking the attorney's appointment.
EPA	An enduring power of attorney in relation to personal care and welfare made under Part 9 of the Act (unless the context makes it clear that another kind of enduring power of attorney is intended).
Medical certificate	A certificate given by a relevant health practitioner on whether the donor is mentally incapable. The certificate must contain the information required by regulations under the Act.

Glossary of terms continued

Mentally incapable	Under the Act, donors are mentally incapable if, in relation to their personal care and welfare, they lack the capacity to: • make a decision; or • understand the nature of decisions; or • see the likely result of decisions or of any failure to make decisions; or • communicate decisions. Everyone is presumed to have the capacity to do these things until the contrary is shown, and is not to be presumed to lack capacity just because the person makes imprudent decisions, is subject to compulsory treatment, or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
Personal care and welfare	The donor's health, well-being, and enjoyment of life, including matters such as where the donor lives and medical treatment they may need.
Prescribed form	A form set out in the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008.
Relevant health practitioner	A health practitioner in New Zealand who is authorised to make assessments of mental capacity (for example, a New Zealand general medical practitioner (GP)). In relation to a medical certificate given overseas, a registered medical practitioner in the country where the certificate is issued who is authorised to make assessments of mental capacity.
Revoke	To cancel (end the validity of) an EPA or an attorney's appointment: • by sending a written notice to the attorney stating that the EPA or the appointment is revoked; or • by an order of the Family Court.
Significant matter	A matter having a major effect on the donor's health, well-being, or enjoyment of life (for example, a permanent change to where they live, entering residential care, or undergoing a major medical procedure such as an operation).
Successor attorney	A person appointed by the donor to be their attorney if a previous attorney's appointment ends.
Suspend	The donor of an EPA who was, but is no longer, mentally incapable may suspend the attorney's authority to act by giving written notice to the attorney. The EPA is not revoked by the suspension but the attorney cannot act again unless and until a relevant health practitioner has certified, or the court has determined, that the donor is (again) mentally incapable.
Terminated	An EPA is terminated by any of the following events: • the donor (while mentally capable) revokes the EPA by written notice to the attorney • the donor dies • the attorney's appointment ends, and there is no successor attorney who can act.
Trustee Corporation	The Māori Trustee, Public Trust, and every trustee company within the meaning of the Trustee Companies Act 1967.

Enduring Power of Attorney (EPA)

In relation to personal care and welfare

Under the Protection of Personal and Property Rights Act 1988

My details (donor)

A

Title:

☐

Mr

☐

Mrs

☐

Miss

☐

Other

Full name:

First and middle names

Surname or family name

Any other name(s) by which I am known

Address:

Flat/House number

Street name

Suburb

Town/City

Email

Phone

Previous EPAs— revocation, continuance

If you have 1 or more previous EPAs in relation to your personal care and welfare, you may choose to revoke them, or specify that they will continue. If you specify here that you want a previous EPA to continue, you need to make sure the authority to act under the previous EPA is not inconsistent with your attorney(s) authority to act under this EPA, otherwise it may not be clear what each attorney's duties are. If the EPAs relate to different matters in relation to your personal care and welfare, this will not be a problem.

B**Do you want to continue any previous EPA(s)?** (tick first box only, or both)☐

I revoke all previous EPAs in relation to my personal care and welfare that I may have given except those specified below (if any).

☐

I want to continue only the previous EPA(s) in relation to my personal care and welfare that are specified below.

List details of any personal care and welfare EPA that is to continue. If none, you may leave the space blank or specify "None"

Note: If you have a previous EPA that is being revoked, you should send notice to the attorney(s) named in the EPA that you have done this. Until notice is received, the attorney(s) named in the EPA can continue to act.

Attorney Details

In any EPA in relation to personal care and welfare, you can appoint only 1 person to be your attorney under that EPA. An attorney must be at least 20 years old and not bankrupt or mentally incapable themselves (see paragraph 2 of the notes to this form).

C

I appoint as my attorney:

Title:

☐ Mr ☐ Mrs ☐ Miss ☐ Other

Full name:

First and middle names Surname or family name Relationship to donor

Address:

Flat/House number Street name Suburb Town/City Email Phone

What your attorney can act on

Your attorney can act for you on all matters relating to your personal care and welfare, or only some matters. If you want your attorney to act on only some matters, you must list what those matters are. You can also state any conditions or restrictions you wish to place on your attorney's authority to act.

D

My attorney can act on my behalf on: (tick one)

☐ all my personal care and welfare matters☐ only the matters relating to my personal care and welfare I have listed:

My attorney's authority to act is subject to the following conditions and restrictions: (optional)

[List any conditions or restrictions. If none, you may leave the space blank or specify "None".]

Successor attorney details (optional)

E

You have the option to appoint 1 or more successor attorneys to act if your attorney's appointment ends. This form allows for 2 successor attorneys, but you can name as many as you like.

Do you want to appoint a successor attorney? (tick one)

- ☐ No – go to section F.
- ☐ Yes – if the appointment of the attorney named in section C ends, I appoint as my first successor attorney the person named below.

First successor attorney:

Title:

☐ Mr ☐ Mrs ☐ Miss ☐ Other

Full name:

First and middle names

Surname or family name

Relationship to donor

Address:

Flat/House number

Street name

Suburb

Town/City

Email

Phone

Do you want to appoint a second successor attorney? (tick one)

- ☐ No – go to section F.
- ☐ Yes – if the appointments of the attorney named in section C and my first successor attorney end, I appoint as my second successor attorney the person named below.

Second successor attorney:

Title:

☐ Mr ☐ Mrs ☐ Miss ☐ Other

Full name:

First and middle names

Surname or family name

Relationship to donor

Address:

Flat/House number

Street name

Suburb

Town/City

Email

Phone

[Provide similar details for any further successor attorney.]

Consultation (optional)

You have the option to name 1 or more people who, as far as is practicable, your attorney must seek advice from (consult) about your personal care and welfare before making decisions. Your attorney can consult only on the matters you specified in section D.

This form allows for 2 names, but you can name as many people as you like.

You also have the option to limit the consultation requirement to your successor attorney(s).

Do you want to name any person(s) that your attorney or successor attorney must consult about your personal care and welfare matters? (tick one)

☐ No – go to section G.

☐ Yes – the person(s) I have named below are to be consulted about the matters I have indicated.

The duty to consult applies to: (tick one)

☐ both my attorney and my successor attorney.

☐ my successor attorney only.

Person 1:

Title:

☐ Mr ☐ Mrs ☐ Miss ☐ Other

Full name:

First and middle names

Surname or family name

Relationship to donor

Address:

Flat/House number Street name

Suburb

Town/City

Email

Phone

Person 1 must be consulted about: (tick one)

☐ all the personal care and welfare matters listed in section D.

☐ only matters relating to my personal care and welfare listed here:

Person 2:

Title:

☐ Mr ☐ Mrs ☐ Miss ☐ Other

Full name:

First and middle names

Surname or family name

Relationship to donor

Address:

Flat/House number Street name

Suburb

Town/City

Email

Phone

Person 2 must be consulted about: (tick one)

☐ all the personal care and welfare matters listed in section D.

☐ only matters relating to my personal care and welfare listed here:

[Provide similar details for any other person.]

Providing information (optional)

G

Do you want to name a person or people your attorney needs to give information to about how they are carrying out their role as your attorney? (tick one)

☐ No – go to section H.

☐ Yes – my attorney must give to the person(s) I have named below the information I have indicated.

You have an option to name 1 or more people to keep an eye on your attorney's actions.

This form allows for 2 names, but you can name as many people as you like.

Your attorney must provide them with the information (as listed) about how they are carrying out their EPA duties.

This information must be provided straight away when requested.

Person 1:

Title:

☐ Mr

☐ Mrs

☐ Miss

☐ Other

Full name:

First and middle names

Surname or family name

Relationship to donor

Contact details

Flat/House number

Street name

Suburb

Town/City

Email

Phone

Information to be given to Person 1:

Person 2:

Title:

☐ Mr

☐ Mrs

☐ Miss

☐ Other

Full name:

First and middle names

Surname or family name

Relationship to donor

Address:

Flat/House number

Street name

Suburb

Town/City

Email

Phone

Information to be given to Person 2:

[Provide similar details for any other person.]

Additional terms and conditions (optional) You have the option to specify additional terms and conditions of your EPA.	H My EPA is subject to the following additional terms and conditions:
Signatures The donor's signature must be witnessed by an authorised witness (a lawyer, a legal executive who meets certain requirements, or an authorised officer or employee of a trustee corporation). An attorney's (or successor attorney's) signature can be witnessed by any person who is not the donor or the person who witnessed the donor's signature.	I Donor: I am the donor. I appoint the attorney and any successor attorney(s) described in this EPA as my attorney to act in relation to my personal care and welfare for the purposes of Part 9 of the Protection of Personal and Property Rights Act 1988, the appointment of any successor attorney being conditional upon the ending of the appointment of my attorney and, if more than 1 successor attorney is described, any prior successor attorney Date: Signature of donor: Witness for donor: I confirm that I am an authorised witness, that the donor signed this EPA in my presence, and that I have completed the relevant certification (attached). Witness signature: Full name: Occupation: Address: Attorney: I am the attorney named in section C of this form. I accept the appointment as attorney in this EPA. I have read and understood the notes about what is expected of me in this role. Signature of attorney: Witness for Attorney: In the presence of: Witness signature: Full name: Occupation: Address:

First successor attorney (If applicable):

I am the first successor attorney named in section E of this form. I accept the appointment as successor attorney in this EPA. I acknowledge that my appointment does not come into effect unless the appointment of the attorney named above ends. I have read and understood the notes about what is expected of me in this role.

Signature of first successor attorney:

Witness for first successor attorney:

In the presence of: Witness signature:

Full name:

Occupation:

Address:

Second successor attorney (If applicable):

I am the second successor attorney named in section E of this form. I accept the appointment as successor attorney in this EPA. I acknowledge that my appointment does not come into effect unless the appointments of the attorney and the first successor attorney named above end. I have read and understood the notes about what is expected of me in this role.

Signature of second successor attorney:

Witness for second successor Attorney:

In the presence of: Witness signature:

Full name:

Occupation:

Address:

[Provide similar details for any further successor attorney appointed.]

Certificate of witness to donor's signature on enduring power of attorney (EPA)

Section 94A(7), Protection of Personal and Property Rights Act 1988

Section A Authorised witness details	Full name Address Occupation
Section B Qualification of witness	I am: (tick one) ☐ a lawyer holding a current practising certificate as a barrister or as a barrister and solicitor issued by the New Zealand Law Society. ☐ a legal executive: • who is a member of, and who holds a current annual registration certificate issued by, The New Zealand Institute of Legal Executives Incorporated, with at least 12 months' experience as a legal executive; and • who is employed by and under the direct supervision of a lawyer holding a current practising certificate as a barrister or as a barrister and solicitor issued by the New Zealand Law Society. ☐ an officer or employee of the following trustee corporation and am authorised by the corporation to witness the signatures of donors of EPAs. Name of trustee corporation
Section C Name of donor in attached EPA	Donor's full name
Section D Mutual appointment	Is the attached EPA 1 of 2 EPAs where 2 people appoint each other as attorney? (tick one) ☐ No — go to section E. ☐ Yes — the name of the other donor is set out below. Full name of other donor
Section E How the donor signed EPA	The attached EPA was: (tick one) ☐ signed personally by the donor described in section C of this certificate—go to section F ☐ signed by the person named below in the presence of and under the direction of the donor described in section C of this certificate. Full name of signatory

Section F Certification	I certify the matters set out in paragraphs 1 to 7 below.
Identity	1 I am the person described in sections A and B of this certificate.
How EPA was signed	2 I witnessed: (tick one) ☐ the signature of the donor described in section C of this certificate. ☐ the signature of the person described in section E of this certificate in the presence of and at the direction of the donor described in section C of this certificate.
Independence or exceptions: <i>Exception - section 94A(8)(b) of the Protection of Personal and Property Rights Act 1988</i> <i>Exception - section 94A(8)(a) of the Protection of Personal and Property Rights Act 1988</i> <i>Independence (without needing to rely on any special rule)</i> <i>Independence (relying on special rules)</i> Section 94A(4A)(a) of Protection of Personal and Property Rights Act 1988 Section 94A(4A)(b) of Protection of Personal and Property Rights Act 1988 <i>Independence from other attorneys and successor attorneys</i>	3 Tick all of the following that apply: ☐ I am a lawyer in the same firm as the person named below (the appointed lawyer), who is appointed in his or her capacity as a lawyer as an attorney or successor attorney in the attached EPA. Name of appointed lawyer: ☐ I am a legal executive who meets the requirements of section 94A(9) of the Protection of Personal and Property Rights Act 1988 and is in the same firm as the person named below (the appointed lawyer), who is appointed, in his or her capacity as a lawyer, as an attorney or a successor attorney in the attached EPA (see section 94A(8)(b) of the Protection of Personal and Property Rights Act 1988). Name of appointed lawyer: ☐ I am an officer or employee of the trustee corporation described in section B of this certificate that is appointed as attorney or successor attorney in the EPA and am authorised by the corporation to witness the donor's signature. ☐ I am independent of each of the attorneys, including successor attorneys, named in the attached EPA, without any need to depend on the special rules in subsection 94A(4A) (concerning independence in certain situations where 2 people appoint each other as attorney). ☐ I am a witness in a context where 2 people have appointed each other as attorney and rely on one of the special rules in section 94A(4A) of the Protection of Personal and Property Rights Act 1988 to be considered independent. I am independent: (tick one) ☐ even though I am a lawyer in the same firm as the witness to the signature of the other donor described in section D of this certificate. ☐ even though I am a legal executive in the same firm as the witness to the signature of the other donor described in section D of this certificate. ☐ even though I am an officer or employee of the same trustee corporation as the witness to the signature of the other donor described in section D of this certificate. ☐ even though I have also witnessed the signature of the other donor described in section D of this certificate, because I am satisfied, having regard to the matters in section 94A(7)(a) to (c) of the Protection of Personal and Property Rights Act 1988, that no more than a negligible risk of conflict of interest arises. ☐ Even though I have relied on an exception or special rule in relation to 1 attorney or successor attorney named in the attached EPA, I am independent of every other attorney or successor attorney named in the attached EPA.

Explanation of effects and implications	4 Before the donor signed the attached EPA, I: (tick one) ☐ explained the effects and implications of the enduring power of attorney to the donor ☐ gave the donor a copy of the prescribed form of standard explanation of the effects and implications of an enduring power of attorney, followed the instructions in the form for giving a verbal explanation to the donor, and explained to the donor any effects and implications not covered by the standard explanation and instructions.
Advice	5 Before the donor signed the EPA, I advised the donor of: - the matters referred to in the notes to the prescribed form of enduring power of attorney; and - the donor's right to revoke the entire EPA, to revoke the appointment of any attorney or successor attorney, or to suspend the attorney's authority to act under the EPA. Tick the following statement if the EPA is in relation to property: ☐ I also advised the donor of: - the donor's right to appoint more than 1 attorney, or a trustee corporation, as attorney; and - the donor's right to stipulate whether and, if so, how the attorney's dealings with the donor's property are to be monitored.
Donor's understanding	6 I believe on reasonable grounds that the donor: - understands the nature of the instrument creating the enduring power of attorney; and - understands the potential risks and consequences of the instrument; and - is not acting under undue pressure or duress.
Capacity of donor	7 I have no reason to suspect the donor was or may have been mentally incapable at the time the donor signed the instrument.
Section G Signature	Signature Date