



Donor name: FRANCES MARSICH

A SOLICITOR OF THE HIGH COURT OF  
NEW ZEALAND

## Notes to Enduring Power of Attorney (EPA) in relation to personal care and welfare

*Protection of Personal and Property Rights Act 1988*

**Important:** This Enduring Power of Attorney form has been prepared with some departures from the exact format prescribed under the Protection of Personal and Property Rights Act 1988 (as amended March 2017) (Act). ADLS is of the view that these departures fall within the scope of the exceptions stated in section 95(2)(a) and (b) of the Act, but it is the user's obligation to assess the compliance of this Form with the Act. ADLS accepts no responsibility or liability in this regard. If in doubt you should seek advice from a practising lawyer.

Please read these notes **before** completing the form.

In these notes, attorney includes a successor attorney whose appointment has come into effect. (Refer to the glossary of terms at the end of this form for the meaning of key terms set out in bold.)

### Setting up your EPA

1. Your EPA in relation to **personal care and welfare** authorises the **attorney** that you (the **donor**) have appointed to make decisions on your behalf about your personal care and welfare if you become **mentally incapable**. You can appoint only 1 personal care and welfare attorney, but you can appoint a **successor attorney** to be your attorney if the previous attorney's appointment **ends**. 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 **authorised witness** 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 (subject to certain exceptions). 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 (**revoke**) previous EPAs, determine the extent of your attorney's authority to act and say who they must **consult**. 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 **Act**). 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 **significant matter** relating to your personal care and welfare only if a **medical certificate** 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:
  - o 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;
  - o encouraging you to act on your own behalf where possible and remain part of your community;
  - o 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); and
  - o 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:
  - o make a decision about you marrying or entering into a civil union;
  - o make a decision about your marriage or civil union being dissolved;
  - o make a decision about any of your children being adopted;
  - o refuse consent to any standard medical treatment or procedure intended to save your life or prevent serious damage to your health;
  - o consent to you receiving electro-convulsive treatment (ECT);
  - o consent to any brain surgery or treatment designed to change your behaviour; or
  - o 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.

**Enduring Power of Attorney (EPA) in relation to personal care and welfare**  
*under the Protection of Personal and Property Rights Act 1988*

**A. My details (donor)**

Title: MRS  
Full name: FRANCES MARSICH  
Any other name(s) by which I am known: BILLIE  
Address: 19 Waioatemarama Gorge Road, Opononi 0473, RD3 Kaikohe  
Telephone: 09 405 8089 Email: \_\_\_\_\_

**B. Previous EPAs—revocation, continuance**

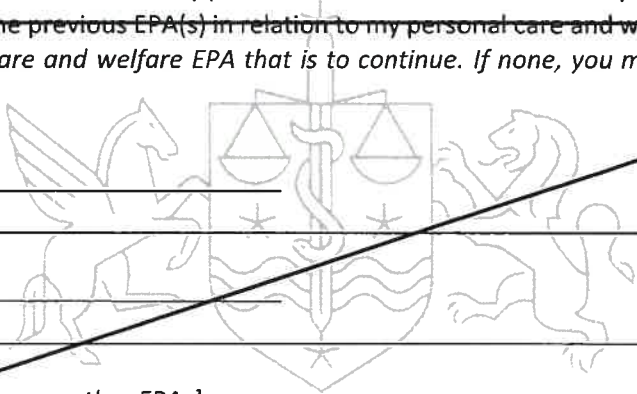
*If you have 1 or more previous EPAs in relation to your personal care and welfare, you may choose to revoke them or specify below that they will continue. If you specify that you want a previous EPA to continue, you need to make sure the authority to act under the previous EPA is not inconsistent with 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. **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.*

**Do you want to continue any previous EPA(s)?** *(cross out options that do not apply)*

- ~~• I have no previous EPAs.~~
- I revoke all previous EPAs in relation to my personal care and welfare that I may have given.
- ~~• 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".]~~

~~Date of EPA: \_\_\_\_\_  
Attorney details: \_\_\_\_\_  
Date of EPA: \_\_\_\_\_  
Attorney details: \_\_\_\_\_~~

~~[Provide similar details for any other EPAs]~~



**C. 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).*

Title: MR  
Full name: GAVIN JOHN MARSICH (also known as ARIKI NUI KAWENATA MARSICH CROWN)  
Relationship to donor: SON  
Address: 19 Waioatemarama Gorge Road, Opononi 0473, RD3 Kaikohe  
Telephone: 0226976166 Email: MARSICH.CROWN.KINGDOM@GMAIL.COM

**D. 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.*

**My attorney can act on my behalf on:** *(cross out option that does not apply)*

- all my personal care and welfare matters
- ~~• only the matters relating to my personal care and welfare that I have listed: *[list matters]*.~~

**My attorney's authority to act is subject to the following conditions or restrictions (optional):** *(cross out option that does not apply)*

- none
- ~~• the following conditions or restrictions:~~

**E. Successor attorney details (optional)**

*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 any successor attorneys?** *(cross out option that does not apply)*

- 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: \_\_\_\_\_  
Full name: \_\_\_\_\_  
Relationship to donor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**Do you want to appoint a second successor attorney?** *(cross out option that does not apply)*

- 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: \_\_\_\_\_  
Full name: \_\_\_\_\_  
Relationship to donor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

*[Provide similar details for any further successor attorney]*

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**F. 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?** (cross out option that does not apply)

- 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:** (cross out option that does not apply)

- both my attorney and my successor attorney
- my successor attorney only.

**Person 1:**

Title: \_\_\_\_\_

Full name: \_\_\_\_\_

Relationship to donor: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Person 1 must be consulted about: (cross out option that does not apply)

- all my personal care and welfare matters listed in section D
- only the matters relating to my personal care and welfare listed here: [list matters].



**Person 2:**

Title: \_\_\_\_\_

Full name: \_\_\_\_\_

Relationship to donor: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Person 2 must be consulted about: (cross out option that does not apply)

- all my personal care and welfare matters listed in section D
- only the matters relating to my personal care and welfare listed here: [list matters].

[Provide similar details for any other person]

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**G. Providing information (optional)**

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.

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? (cross out option that does not apply)

- ~~No—go to section II.~~
- Yes—my attorney must give to the person(s) I have named below the information I have indicated.

**Person 1:**

Title: MR

Full name: IVAN JASON MARSICH

Relationship to donor: SON

Address: 7 Cooke Street, Whangarei, Northland, New Zealand

Telephone: 027 2900377 Email: dogfacedgodeater@gmail.com

Information to be given to person 1: [list items]

- All decisions of my attorney
- ~~• Information relating to the following: [list items]~~

**Person 2:**

Title: \_\_\_\_\_

Full name: \_\_\_\_\_

Relationship to donor: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Information to be given to person 2: [list items]

- All decisions of my attorney
- Information relating to the following: [list items]

[Provide similar details for any other person]

**H. Additional terms and conditions (optional)**

You have the option to specify additional terms and conditions of your EPA.

~~My EPA is subject to the following additional terms and conditions: [list any additional terms and conditions]~~

*J.M.*  
*5*

**I. 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.

**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: 12 May 2023

Signature of donor: Francisco Marsial

**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: [Signature]  
Full name: John Graham Macaulay Day  
Occupation: Solicitor  
Address: Kerikeri

**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: [Signature]

**Witness for attorney**

In the presence of:

Witness signature: [Signature]  
Full name: Rachel Halliwell  
Occupation: Police Employee  
Address: KERIKERI POLICE  
P.O. BOX 31  
102, KERIKERI ROAD  
KERIKERI  
PH: (09) 407-9211  
Rachel Halliwell  
A person authorised to take  
Statutory Declarations  
12/05/2023

~~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: \_\_\_\_\_~~

[Handwritten initials]

**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]*



Handwritten signature and initials, including a checkmark above the signature.



# Notes to Witness for Enduring Power of Attorney in relation to personal care and welfare

Protection of Personal and Property Rights Act 1988

## About this document

This document is intended to assist a witness for an enduring power of attorney (EPA) in relation to **personal care and welfare**. It has four parts:

1. Instructions for an **authorised witness** (refer page 9);
2. Standard explanation for a witness of the effects and implications of an EPA (refer page 10);
3. Glossary of terms for an EPA in relation to personal care and welfare (refer page 16); and
4. Certificate of witness to donor's signature on an EPA (refer page 13).

The witness should review the first three parts before witnessing the donor's signature and completing the certificate in part 4.

Key terms in bold are defined in the Glossary of terms.

Should the witness have any concerns they should seek legal advice before witnessing the donor's signature and completing the certificate in part 4.

## Instructions for authorised witness

This form will help you explain the effects and implications of an EPA in relation to personal care and welfare to a **donor** before witnessing the donor's signature. You may give the explanation required by section 94A(6) of the Act by giving this form to the donor and following the instructions below. This explanation should be read in conjunction with the glossary below.

You must be one of the persons mentioned below to be authorised to witness an EPA. You may also need to be independent of the attorney and each successor attorney appointed by the EPA (see the definition of **authorised witness** in the glossary of terms). The persons who may witness an EPA are:

- a lawyer;
- an officer or employee of a **trustee corporation** authorised by the corporation for the purpose; or
- a legal executive who is a member of and holds a current registration certificate issued by The New Zealand Institute of Legal Executives Incorporated, has at least 12 months' experience as a legal executive, and who is employed by and under the direct supervision of a lawyer.

Take the donor through these notes and tailor your explanation to their individual needs and circumstances. You will also need to explain the effect of any aspect of the EPA that is not covered by the standard explanation.

Ask the donor whether they already have an EPA (a **previous EPA**). If they do, ask them if they want to cancel it under section B of the form. If they do, ensure that the attorney (and any successor attorney) named in the previous EPA is notified that it is revoked. Until they receive a notice of revocation, an attorney under a previous EPA may continue to act (see section 103C of the Act). However, even after the donor is mentally incapable, notice of revocation can be given by providing the attorney under the previous EPA with a copy of the new EPA in which section B specifies the previous EPA is revoked (see section 95A(2) of the Act).

You must certify that, before the donor signed the EPA, you:

- explained the effects of the EPA using these notes;
- advised the donor of the matters referred to in the notes to the EPA form;
- advised the donor of their right to suspend or revoke the EPA; and
- have no reason to suspect the donor may be mentally incapable.

You must also certify that you believe on reasonable grounds that the donor understands the nature of the instrument, understands the potential risks and consequences of the instrument, and is not acting under undue pressure or duress.

**A copy of the standard explanation should be given to the donor along with a copy of the signed EPA.**

**Note:** If you have any reason to suspect that the donor may be mentally incapable, you should not witness the donor's EPA. You should refer the donor to a relevant health practitioner for an assessment of whether he or she is mentally capable of setting up an EPA.

- ◆ Refer to the ADLS Form 4995 – Health Practitioner's Certificate (Personal Care & Welfare).

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J.M.

# Standard explanation of effects and implications of an EPA

## What does it mean to have an EPA?

Your EPA authorises the person you name as your **attorney** to make decisions on your behalf about your personal care and welfare if you become **mentally incapable**.

Your attorney can make decisions only on the personal care and welfare matters you specify in the EPA. In making decisions, your attorney has to follow any conditions and restrictions set out in your EPA and the **Act**.

Unlike an ordinary power of attorney, an EPA comes into force only if you lose mental capacity. Your attorney's decisions apply as if you had made them and had full capacity to make them.

## When does your EPA take effect?

Your EPA takes effect only if you become mentally incapable.

Your attorney can make decisions on a **significant matter** relating to your personal care and welfare only if a **relevant health practitioner** has issued a **medical certificate** stating that you are mentally incapable or if the **court** has decided that you are mentally incapable.

If you are certified as mentally incapable because of a health condition that is likely to continue for some time (or indefinitely), additional decisions on significant matters can be made without getting another certificate during the certified time.

Your attorney can make decisions about any matter related to your personal care and welfare that is not a significant matter (for example, common medical treatment) if they have reasonable grounds to believe that you are mentally incapable.

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.

Anyone can rely on decisions or actions made by your attorney if they are dealing with your attorney in good faith and do not know that the EPA has been **terminated**, the attorney's appointment has **ended**, or the attorney's authority to act has been **suspended**. Your attorney can give people who are dealing with them a certificate stating that they have not received any notice that the EPA is terminated, their appointment is ended, or their authority to act is suspended.

## What are your attorney's responsibilities?

When acting under the EPA, the overriding consideration of your attorney is to promote and protect your welfare and best interests.

Your attorney must encourage you to develop your own competence to act on your own behalf as much as you possibly can, and to be part of the community. They must consider the financial effects of any decision about your personal care and welfare.

Your attorney must follow any court orders under the Act that relate to your EPA and any personal order or property order under the Act, even if there is a conflict between the order and your EPA.

## Is there anything your attorney cannot do?

Yes. There are some things that the law says can only be done personally (for example, making an oath or a declaration). No one can do those things on your behalf. Your attorney is also restricted by any conditions and restrictions that you specify in your EPA. Even if there are no conditions or restrictions in your EPA, there are certain things that your attorney cannot do. Your attorney cannot:

- make a decision entering you into a marriage or civil union, or dissolving your marriage or civil union;
- make a decision about the adoption of any of your children;
- refuse consent to you having medical treatment that might save your life or prevent serious damage to your health;
- consent to you having electro-convulsive treatment, or any surgery or treatment on your brain that's meant to change your behaviour; or
- consent to you being part of a medical experiment, unless it is to save your life or prevent serious damage to your health.

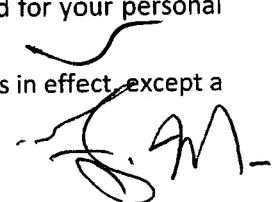
Your attorney also cannot act for their own benefit or for the benefit of anyone else other than you.

## Who does your attorney need to consult?

When acting under the EPA your attorney must, as far as is practicable, seek advice from you and from anyone you have named in your EPA to be **consulted** (either on all matters, or on the specific matters you have stated in your EPA).

If you have appointed someone else to be your property attorney, 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.

Your attorney must also consult any other attorney you have appointed under any other EPA that continues in effect, except a **successor attorney** whose appointment has not yet taken effect.



Your attorney may follow any advice received in consultation, provided that they act in good faith and with reasonable care. Your attorney has the option to apply to the court for **directions** if the attorney receives conflicting advice from consultation.

### **What happens to any advance directives you have given?**

Your attorney may follow any **advance directive** you have given. They must do so in good faith and with reasonable care. Before doing so, they must first consult you and anyone you have specified in your EPA that you want to be consulted.

Your attorney cannot follow an advance directive that asks them to do something that they are prohibited from doing (see “**Is there anything your attorney cannot do?**”). You may wish to seek further advice about the effect of an advance directive.

Your attorney has the option to apply to the court for directions about any advance directive.

### **Your attorney’s actions can be supervised**

You can name a person or people in your EPA to oversee your attorney’s actions and state what information about the exercise of your attorney’s powers is to be given to them. Your attorney must promptly give this information to them when they ask for it.

### **Your attorney’s actions can be challenged**

Some people have the automatic right to apply to the court to review any decision your attorney makes while acting under your EPA.

These people include:

- you;
- any **relative** of yours;
- medical practitioners;
- the manager of any hospital, rest home, or residential care facility you are receiving care in;
- a person from a government-funded abuse and neglect prevention service; and
- a social worker.

Any other person can apply to the court to review your attorney’s decisions, but they need the permission (leave) of the court to do so.

An application for review of your attorney’s decisions can be made at any time, including after the EPA has ceased to have effect. If an application for review is made, you will need a lawyer to represent you. The court will appoint a lawyer to act for you if you do not already have one.

The court can make any order it thinks fit.

### **What other powers does the court have in respect of the EPA?**

Your attorney has the option to apply to the court at any time for directions about how they should use their powers.

The court can also decide whether your EPA is valid and whether you are mentally incapable.

If you have become mentally incapable, the court can also;

- decide the meaning or effect of your EPA, if it is unclear;
- decide if your EPA has ceased to have effect;
- give directions on any matter relating to your personal care and welfare;
- alter the scope of the personal care and welfare matters or powers in your EPA;
- order your attorney to provide any information they hold as your attorney;
- give consent on your behalf (for example, to medical treatment, provided it is not treatment of the kind referred to in the section entitled “Is there anything your attorney cannot do?”);
- decide if the EPA was obtained by fraud or **undue influence**;
- decide if your attorney is suitable to be your attorney; and
- **revoke** your attorney’s appointment, especially if they are not complying with their obligations to act in your best interests, consult, or provide information. If the court decides that your EPA was obtained by fraud or undue influence or that your attorney is not suitable, it must revoke your attorney’s appointment.

### **How can you suspend your attorney’s authority to act?**

If you were mentally incapable but recover your mental capacity, you can suspend your attorney’s authority to act by giving written notice to your attorney.

Once your attorney’s appointment is suspended, the attorney may not act again until you are certified or declared mentally incapable again (see “**When does your EPA take effect?**”).

Suspending your attorney’s authority to act does not revoke your EPA.

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J.M.

### **How long may an attorney act under an EPA?**

Once your EPA has come into effect, your attorney may continue to act until your attorney receives notice that the EPA is terminated, their appointment is ended, or their authority to act is suspended.

Anything your attorney does in accordance with the EPA and in good faith before receiving such a notice still has effect.

If your EPA appoints a successor attorney, they will become your new attorney for all purposes if your attorney's appointment ends, whether your EPA has already taken effect or not. The successor attorney has the same authority to act as your attorney had. If you have appointed a second successor attorney, they will become your attorney only after the appointments of 2 of your previous attorneys have ended.

### **Validity of your EPA**

Even if your EPA is invalid because of a failure to meet any of the requirements of the Act relating to its creation, anything done by your attorney in good faith with no knowledge of the failure is valid.

### **Implications of your EPA**

Your EPA gives your attorney control over your life and living circumstances if you become mentally incapable, subject only to conditions and restrictions you have set, the requirements to consult, and the powers of the court to review your attorney's actions. That is why you need to trust the person you choose as your attorney to act in your best interests.



✓  
J.M.

**Certificate of witness to donor's signature on Enduring Power of Attorney (EPA)***Section 94A(7), Protection of Personal and Property Rights Act 1988***A. Authorised witness details**Title: MRFull name: JOHN GRAHAM ALEXANDER DAYAddress: 93 KERIKERI ROAD, KERIKERIOccupation: LAWYER**B. Qualification of witness**I am: *(cross out options that do not apply)*

- 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; or~~
- ~~• 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: \_\_\_\_\_~~**C. Name of donor in attached EPA**Donor's full name: FRANCES MARSICH**D. Mutual appointment**Is the attached EPA 1 of 2 EPAs where 2 people appoint each other as attorney? *(cross out option that does not apply)*

- No—go to section E.
- ~~• Yes—the name of the other donor is set out below.~~

~~Full name of other donor: \_\_\_\_\_~~**E. How the donor signed EPA**The attached EPA was: *(cross out option that does not apply)*

- 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: \_\_\_\_\_~~**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.

L

F.M.

## How EPA was signed

2. I witnessed: *(cross out option that does not apply)*

- the signature of the donor described in section C of this certificate; or
- ~~• 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.~~

## Exceptions and independence

3. Cross out all of the following that do not apply.

### 3.1 Exceptions

#### ~~3.1.1 Exception section 94A(8)(b) of the Protection of Personal and Property Rights Act 1988~~

- 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: \_\_\_\_\_

#### ~~3.1.2 Exception section 94A(8)(a) of the Protection of Personal and Property Rights Act 1988~~

- 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.

### 3.2 Independence

#### 3.2.1 Independence (without needing to rely on any special rule)

- 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 section 94A(4A) of the Protection of Personal and Property Rights Act 1988 (concerning independence in certain situations where 2 people appoint each other as attorney).

#### ~~3.2.2 Independence (relying on special rules)~~

- 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:

*Per section 94A(4A)(a) of Protection of Personal and Property Rights Act 1988*

- 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; or
- 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

*Per section 94A(4A)(b) of Protection of Personal and Property Rights Act 1988*

- 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.

#### ~~3.2.3 Independence from other attorneys and successor attorneys~~

- 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

5  
J. J. J.

**Explanation of effects and implications**

4. Before the donor signed the attached EPA, I:
- explained the effects and implications of the EPA to the donor; and/or
  - 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 an oral 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 EPA; 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.

**Donor’s understanding**

6. I believe on reasonable grounds that the donor:
- understands the nature of the instrument creating the enduring power of attorney;
  - understands the potential risks and consequences of the instrument; and
  - is not acting under undue pressure or duress.
7. I have no reason to suspect that the donor was or may have been mentally incapable at the time the donor signed the instrument.

**G. Signature**

Date:

Signature:



4  
J.M.

# Glossary of terms for an EPA in relation to personal care and welfare

**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 he or she is not competent.

See the Code of Health and Disability Services 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).

**Authorised witness:** a person who witnesses a 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; or
- 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; or
- 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.

**Court:** the Family Court.

**Directions:** instructions to your attorney.

**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 occur:

- 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); or
- 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.

◆ Refer to the ADLS Form 4995 – Health Practitioner's Certificate (Personal Care & Welfare).

**Mentally incapable:** under the Act, you are mentally incapable if, in relation to your personal care and welfare, you lack the capacity to:

- make a decision;
- understand the nature of decisions;
- 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 or is subject to compulsory treatment, or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

**Personal care and welfare:** your health, well-being, and enjoyment of life, including matters such as where you live and medical treatment you receive.

**Prescribed form:** a form set out in the Protection of personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008.

**Relative:** a relative of yours includes your spouse, civil union partner, or de facto partner and your or their:

- parent or grandparent;
- child or grandchild;
- brother or sister, whether of full-blood or half-blood;
- aunt or uncle; and
- nephew or niece.

**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 court.

◆ Refer to the ADLS form 4998 – Notice of Revocation

**Significant matter:** in relation to the donor's personal care and welfare, 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

◆ Refer to the ADLS form 4996 – Notice of Suspension.

**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; or
- the attorney's appointment ends, and there is no successor attorney who can act.

◆ Refer to the ADLS form 4998 – Notice of Revocation

**Trustee corporation:** the Māori Trustee, Public Trust, and every trustee company within the meaning of the Trustee Companies Act 1967.

**Undue influence:** when one person takes advantage of their power over another person to the disadvantage of the other person.

◆ Refer also to the ADLS form 4997 – Certificate of Non-Revocation

# Standard explanation of effects and implications of an EPA

**Best practice: Provide an extra copy of the *Standard explanation of effects and implications of an EPA* and *Glossary of terms for an EPA in relation to personal care and welfare* to the donor and all attorneys prior to their signing the EPA in relation to personal care and welfare.**

**These pages do not form part of the form and thus are not numbered. They are intended to be copied and provided to the donor and all attorneys referred to in the EPA.**

## What does it mean to have an EPA?

Your EPA authorises the person you name as your **attorney** to make decisions on your behalf about your personal care and welfare if you become **mentally incapable**.

Your attorney can make decisions only on the personal care and welfare matters you specify in the EPA. In making decisions, your attorney has to follow any conditions and restrictions set out in your EPA and the **Act**.

Unlike an ordinary power of attorney, an EPA comes into force only if you lose mental capacity. Your attorney's decisions apply as if you had made them and had full capacity to make them.

## When does your EPA take effect?

Your EPA takes effect only if you become mentally incapable.

Your attorney can make decisions on a **significant matter** relating to your personal care and welfare only if a **relevant health practitioner** has issued a **medical certificate** stating that you are mentally incapable or if the **court** has decided that you are mentally incapable.

If you are certified as mentally incapable because of a health condition that is likely to continue for some time (or indefinitely), additional decisions on significant matters can be made without getting another certificate during the certified time.

Your attorney can make decisions about any matter related to your personal care and welfare that is not a significant matter (for example, common medical treatment) if they have reasonable grounds to believe that you are mentally incapable.

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.

Anyone can rely on decisions or actions made by your attorney if they are dealing with your attorney in good faith and do not know that the EPA has been **terminated**, the attorney's appointment has **ended**, or the attorney's authority to act has been **suspended**. Your attorney can give people who are dealing with them a certificate stating that they have not received any notice that the EPA is terminated, their appointment is ended, or their authority to act is suspended.

## What are your attorney's responsibilities?

When acting under the EPA, the overriding consideration of your attorney is to promote and protect your welfare and best interests.

Your attorney must encourage you to develop your own competence to act on your own behalf as much as you possibly can, and to be part of the community. They must consider the financial effects of any decision about your personal care and welfare.

Your attorney must follow any court orders under the Act that relate to your EPA and any personal order or property order under the Act, even if there is a conflict between the order and your EPA.

## Is there anything your attorney cannot do?

Yes. There are some things that the law says can only be done personally (for example, making an oath or a declaration). No one can do those things on your behalf. Your attorney is also restricted by any conditions and restrictions that you specify in your EPA. Even if there are no conditions or restrictions in your EPA, there are certain things that your attorney cannot do. Your attorney cannot:

- make a decision entering you into a marriage or civil union, or dissolving your marriage or civil union;
- make a decision about the adoption of any of your children;
- refuse consent to you having medical treatment that might save your life or prevent serious damage to your health;
- consent to you having electro-convulsive treatment, or any surgery or treatment on your brain that's meant to change your behaviour; or
- consent to you being part of a medical experiment, unless it is to save your life or prevent serious damage to your health.

Your attorney also cannot act for their own benefit or for the benefit of anyone else other than you.

### Who does your attorney need to consult?

When acting under the EPA your attorney must, as far as is practicable, seek advice from you and from anyone you have named in your EPA to be **consulted** (either on all matters, or on the specific matters you have stated in your EPA).

If you have appointed someone else to be your property attorney, 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.

Your attorney must also consult any other attorney you have appointed under any other EPA that continues in effect, except a **successor attorney** whose appointment has not yet taken effect.

Your attorney may follow any advice received in consultation, provided that they act in good faith and with reasonable care. Your attorney has the option to apply to the court for **directions** if the attorney receives conflicting advice from consultation.

### What happens to any advance directives you have given?

Your attorney may follow any **advance directive** you have given. They must do so in good faith and with reasonable care. Before doing so, they must first consult you and anyone you have specified in your EPA that you want to be consulted.

Your attorney cannot follow an advance directive that asks them to do something that they are prohibited from doing (see “Is there anything your attorney cannot do?”). You may wish to seek further advice about the effect of an advance directive.

Your attorney has the option to apply to the court for directions about any advance directive.

### Your attorney’s actions can be supervised

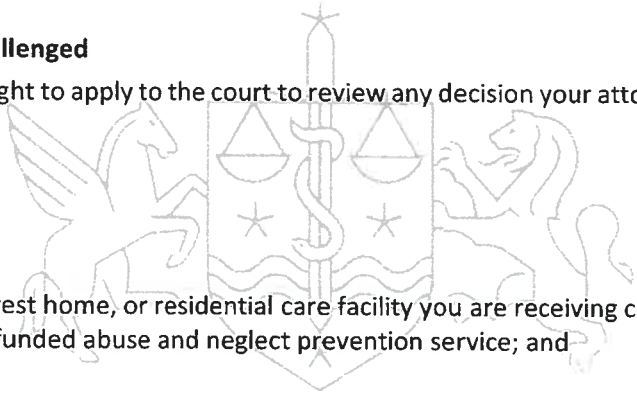
You can name a person or people in your EPA to oversee your attorney’s actions and state what information about the exercise of your attorney’s powers is to be given to them. Your attorney must promptly give this information to them when they ask for it.

### Your attorney’s actions can be challenged

Some people have the automatic right to apply to the court to review any decision your attorney makes while acting under your EPA.

These people include:

- you;
- any **relative** of yours;
- medical practitioners;
- the manager of any hospital, rest home, or residential care facility you are receiving care in;
- a person from a government-funded abuse and neglect prevention service; and
- a social worker.



Any other person can apply to the court to review your attorney’s decisions, but they need the permission (leave) of the court to do so.

An application for review of your attorney’s decisions can be made at any time, including after the EPA has ceased to have effect. If an application for review is made, you will need a lawyer to represent you. The court will appoint a lawyer to act for you if you do not already have one.

The court can make any order it thinks fit.

### What other powers does the court have in respect of the EPA?

Your attorney has the option to apply to the court at any time for directions about how they should use their powers.

The court can also decide whether your EPA is valid and whether you are mentally incapable.

If you have become mentally incapable, the court can also;

- decide the meaning or effect of your EPA, if it is unclear;
- decide if your EPA has ceased to have effect;
- give directions on any matter relating to your personal care and welfare;
- alter the scope of the personal care and welfare matters or powers in your EPA;
- order your attorney to provide any information they hold as your attorney;
- give consent on your behalf (for example, to medical treatment, provided it is not treatment of the kind referred to in the section entitled “Is there anything your attorney cannot do?”);
- decide if the EPA was obtained by fraud or **undue influence**;
- decide if your attorney is suitable to be your attorney; and
- **revoke** your attorney’s appointment, especially if they are not complying with their obligations to act in your best interests, consult, or provide information. If the court decides that your EPA was obtained by fraud or undue influence or that your attorney is not suitable, it must revoke your attorney’s appointment.



### **How can you suspend your attorney's authority to act?**

If you were mentally incapable but recover your mental capacity, you can suspend your attorney's authority to act by giving written notice to your attorney.

Once your attorney's appointment is suspended, the attorney may not act again until you are certified or declared mentally incapable again (see "**When does your EPA take effect?**").

Suspending your attorney's authority to act does not revoke your EPA.

### **How long may an attorney act under an EPA?**

Once your EPA has come into effect, your attorney may continue to act until your attorney receives notice that the EPA is terminated, their appointment is ended, or their authority to act is suspended.

Anything your attorney does in accordance with the EPA and in good faith before receiving such a notice still has effect.

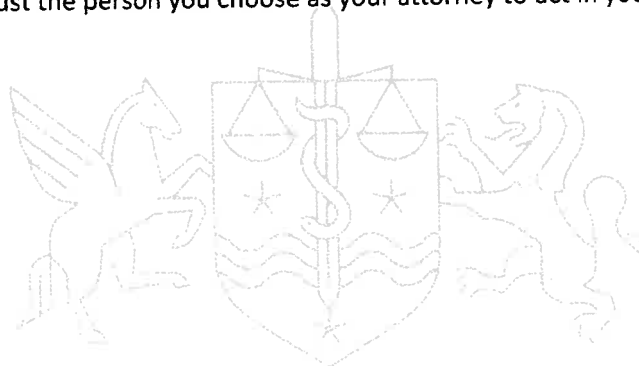
If your EPA appoints a successor attorney, they will become your new attorney for all purposes if your attorney's appointment ends, whether your EPA has already taken effect or not. The successor attorney has the same authority to act as your attorney had. If you have appointed a second successor attorney, they will become your attorney only after the appointments of 2 of your previous attorneys have ended.

### **Validity of your EPA**

Even if your EPA is invalid because of a failure to meet any of the requirements of the Act relating to its creation, anything done by your attorney in good faith with no knowledge of the failure is valid.

### **Implications of your EPA**

Your EPA gives your attorney control over your life and living circumstances if you become mentally incapable, subject only to conditions and restrictions you have set, the requirements to consult, and the powers of the court to review your attorney's actions. That is why you need to trust the person you choose as your attorney to act in your best interests.



# Glossary of terms for an EPA in relation to personal care and welfare

**Act:** the Protection of Personal and Property Rights Act 1988. Part 9 of the Act sets out the law on EPAs.

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- by which a person makes a choice about a possible future health care procedure; and
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- 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; or
- an authorised officer or employee of a trustee corporation.

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In any other case, the witness must be independent of the attorney and any successor attorney named in the EPA.

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**Directions:** instructions to your attorney.

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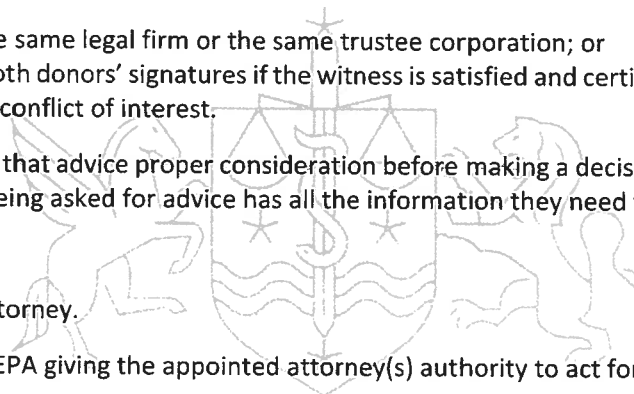
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◆ Refer to the ADLS form 4996 – Notice of Suspension.

**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;
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- the attorney's appointment ends, and there is no successor attorney who can act.

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