

Certified to be a true copy of the original dated this 12<sup>th</sup> day of May 2023

Donor name: FRANCES MARSICH

A SOLICITOR OF THE HIGH COURT OF

## Notes to Enduring Power of Attorney (EPA) in relation to property

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 each attorney (if you have appointed more than 1) and 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 as set out in bold).

### Setting up your EPA

1. Your EPA in relation to **property** authorises the **attorney** that you (the **donor**) have appointed to make decisions on your behalf about your property affairs, particularly when you cannot do so for yourself because you have become **mentally incapable**. Your attorney can act for you while you are mentally capable if you authorise them to do so. You can appoint more than 1 attorney. You can also 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 manage your property, provided they are aged 20 or older, not bankrupt and not mentally incapable themselves. This can be a friend or family member, a work colleague, or a professional person, for example, a lawyer or an accountant. An attorney for property can also be a **trustee corporation**.
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 each attorney (and 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 of 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, if you appoint more than 1 attorney, you can say whether they must act together (jointly) or can act separately (severally). You can also appoint successor attorneys, cancel (**revoke**) previous EPAs, determine the extent of your attorneys' authority to act and say who they must **consult**. See sections B to M 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. You can choose that your EPA comes into effect only if you become mentally incapable. If you do, your attorney can act under the EPA only if a **medical certificate** states, or the Family Court decides, that you are mentally incapable.
8. If you choose that your EPA comes into effect while you are mentally capable, your attorney can act under it as soon as it is signed and witnessed and can continue to act if you become mentally incapable.
9. 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 19).

### What an attorney must do

10. Your attorney must use your property to promote and protect your best interests. Wherever possible, your attorney must encourage you to maintain or develop your own competence to manage your property affairs.

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11. When acting on your behalf, your attorney must, as far as practicable, consult you and the persons you have asked to be consulted in section I of the EPA form before making decisions. Your attorney must also consult any other attorney under any other EPA you have given (other than a successor attorney whose appointment has not come into effect). Your attorney is entitled to follow advice received from consultation if they act in good faith and with reasonable care. Your attorney can also apply to the Family Court for directions on how to act (for example, if they receive conflicting advice from consultation).
12. If you have appointed someone else to be your attorney for your **personal care and welfare**, 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.
13. If you have named someone in section J of your EPA to be given information, your attorney must promptly give them that information when asked for it.

### How your property can be used

14. Your attorney must not **act to the benefit** of any person other than you unless you have explicitly stated in your EPA that your attorney can do so. However, unless you have explicitly stated in your EPA that they cannot do so, your attorney can, out of your property:
  - o recover reasonable **out-of-pocket expenses**;
  - o recover reasonable professional fees and expenses (if your attorney has accepted appointment or done work related to your property in a professional capacity);
  - o deal with any property that you and your attorney jointly own if you and your attorney are married or in a civil union or de facto relationship, are living together, and are sharing your incomes; and
  - o make a loan, advance, or other investment of your property that a trustee could make under the Trusts Act 2019.If you have authorised your attorney to make celebratory gifts or donations, your attorney must consider whether you can afford to make them, having regard to your overall financial circumstances and commitments.

### Attorneys must keep records

15. Your attorney must keep records of each financial transaction they enter into on your behalf while you are mentally incapable. Failure to do so is an offence for which they can be prosecuted and fined. If an application is made to the Family Court under the Act about you or your EPA, your attorney must supply these records on request to the lawyer (if any) appointed by the court to represent your interests.
16. If you have named someone in section J of your EPA to be given information that includes records of financial transactions, your attorney must promptly give them that information when asked for it.

### Cancelling or suspending an EPA

17. 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).
18. If you choose to revoke your previous EPAs in relation to property, but do not give notice of revocation to the previous attorneys, 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.
19. 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.
20. 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

21. 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.
22. 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).
23. Unless you have expressly stated in your EPA that your attorney cannot do so, your attorney may apply to the Family Court for authorisation to sign a will for you (in a form approved by the court) if you are not **capable of making a will**.
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 property***under the Protection of Personal and Property Rights Act 1988***A. My details (donor)**Title: MRSFull name: FRANCES MARSICHAny other name(s) by which I am known: BILLIEAddress: 19 Waitemarama Gorge Road, Opononi 0473, RD3 KaikoheTelephone: 09 405 8089

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

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

If you have 1 or more previous EPAs in relation to your property, you may choose to revoke them, or specify below that 1 or more of them 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 things, 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 property that I may have given.

~~• I want to continue only the previous EPA(s) in relation to my property that are specified below. [List details of any EPA in relation to property that is to continue]~~

Date of EPA: \_\_\_\_\_

Attorney details: \_\_\_\_\_

Date of EPA: \_\_\_\_\_

Attorney details: \_\_\_\_\_

[Provide similar details for any other EPAs]

**C. Attorney details**

You can appoint 1 or more attorneys to act for you on property matters. These can be individuals or a trustee corporation.

This form allows for 2 attorneys, but you can appoint more if you wish.

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) or be a trustee corporation.

I appoint the following person(s) as my attorney(s):

Details of attorney(s) (if individual(s))

Attorney 1:

Title: MR

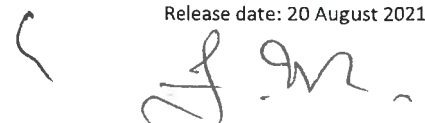
Full name: GAVIN JOHN MARSICH (also known as ARIKI NUI KAWENATA MARSICH CROWN)

Relationship to donor: SON

Address: 19 Waitemarama Gorge Road, Opononi 0473, RD3 Kaikohe

Telephone: 0226976166

Email: MARSICH.CROWN.KINGDOM@GMAIL.COM



~~Attorney 2: (if applicable)~~

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

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

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

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

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

~~Attorney 3: (if applicable)~~

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

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

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

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

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

~~{Provide similar details for any other individual attorney(s)}~~

~~Details of attorney: (if a trustee corporation)~~

~~Name of trustee corporation: \_\_\_\_\_~~

~~Street address: \_\_\_\_\_~~

~~PO Box: \_\_\_\_\_~~

~~Town/city: \_\_\_\_\_~~

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

**D. When your EPA comes into effect**

*You must decide when you want your EPA to come into effect; that is, whether you want your attorney to act for you only if you become mentally incapable, or while you are mentally capable and continuing if you become mentally incapable.*

**This enduring power of attorney comes into effect:** *(cross out option that does not apply)*

- ~~• only if I become mentally incapable~~
- while I am mentally capable, and continues in effect if I become mentally incapable.

**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.*

*If your attorneys are to act jointly (and there is no successor attorney), if one of your attorneys dies or is unable to act, your EPA will come to an end. You can provide for your successor attorneys to act jointly if that is what you want by appointing a first successor attorney and a joint first successor attorney. You can then provide for a second successor attorney if you are concerned about the longevity of your EPA.*

**Do you want to appoint 1 or more first successor attorneys?** *(cross out option that does not apply)*

- No—go to section F.
- ~~• Yes—if the appointment of any attorney named in section C ends, I appoint as my first successor attorney(s) the person(s) named below.~~
- ~~• Yes—if the appointment of all attorneys named in section C ends, I appoint as my first successor attorney(s) the person(s) named below.~~

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~~1. First successor attorney: (if an individual)~~

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

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

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

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

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

~~2. Joint First successor attorney: (if an individual)~~

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

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

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

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

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

~~First successor attorney: (if a trustee corporation)~~

~~Name of trustee corporation: \_\_\_\_\_~~

~~Street address: \_\_\_\_\_~~

~~PO Box: \_\_\_\_\_~~

~~Town/city: \_\_\_\_\_~~

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

**Do you want to appoint 1 or more second successor attorneys? (cross out option that does not apply)**

- No—go to section F.
- Yes— if the appointment of any of my first successor attorney(s) ends, I appoint as my second successor attorney(s) the person(s) named below.
- Yes— if the appointment of all of my first successor attorney(s) ends, I appoint as my second successor attorney(s) the person(s) named below.

~~1. Second successor attorney: (if an individual)~~

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

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

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

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

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

~~2. Joint Second successor attorney: (if an individual)~~

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

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

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

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

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

~~Second successor attorney: (if a trustee corporation)~~

~~Name of trustee corporation: \_\_\_\_\_~~

~~Street address: \_\_\_\_\_~~

~~PO Box: \_\_\_\_\_~~

~~Town/city: \_\_\_\_\_~~

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

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J.M.

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

**F. How your attorneys are to act**

If you appoint more than 1 attorney in your EPA, you must state whether they are authorised to act:

- jointly—where they must act together to manage your affairs and agree on all decisions;
- severally—where each attorney has a separate authority and can act individually without the agreement of the other; or
- jointly and severally—where they can act together or individually.

I have appointed more than 1 attorney and they are authorised to act: (cross out options below that do not apply)

- ~~jointly~~
- ~~severally~~
- ~~jointly and severally~~

**G. What your attorney(s) can act on**

Do you want your attorney(s) to act for you on all your property affairs, or only on part of your property affairs? If only on part of your property affairs, you must specify what part.

You can also state any conditions or restrictions you want to place on your attorney's authority to act.

My attorney(s) can act on my behalf on: (cross out options that do not apply)

- all my property affairs
- ~~• only the part of my property affairs I have specified: [specify part of property affairs]~~
- ~~• only the following specified things: [specify the things relating to your property].~~

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

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

**H. Authorising a will**

If you are not capable of making a will, your attorney(s) may apply to the Family Court to get authorisation to sign a will on your behalf (in a form that the court approves). Indicate whether or not you wish to authorise this.

Unless you clearly specify otherwise, the Family Court will be able to authorise your attorney(s) to make a will for you if you are no longer capable of making one.

Do you want the Family Court to be able to authorise your attorney(s) to make a will for you when you are no longer capable of making one? (cross out option that does not apply)

- No—I do not want my attorney(s) to be authorised to sign a will for me.
- ~~• Yes—I want the Family Court to be free to authorise my attorney(s) to sign a will for me if the court thinks fit.~~

*[Handwritten signature]*

**I. Consultation (optional)**

You have the option to name 1 or more people who, as far as practicable, your attorney(s) must seek advice from (consult) about your property affairs before making decisions.

Your attorney(s) can consult only on the matters you specified in section G.

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(s) or successor attorney(s) must consult about your property matters?** (cross out option that does not apply)

• No—go to section J.

~~• 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(s) and my successor attorney(s)
- my successor attorney(s) only.

**Person 1**

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

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

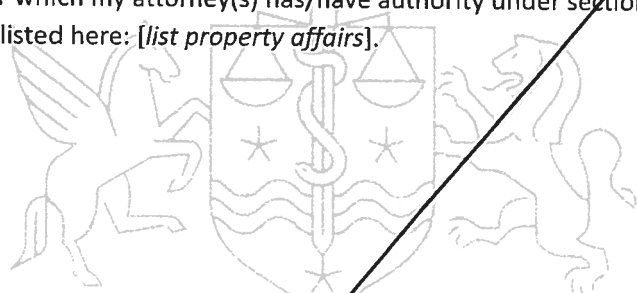
Relationship to donor: \_\_\_\_\_

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

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

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

- all my property affairs for which my attorney(s) has/have authority under section G
- only the property affairs listed here: [list property affairs].



**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 property affairs for which my attorney(s) has/have authority under section G
- only the property affairs listed here: [list property affairs].

[Provide similar details for any other person]

*Handwritten signature: L J.M.*



**J Providing information (optional)**

You have the option to name 1 or more people to keep an eye on your attorneys' actions. This form allows for 2 names, but you can name as many people as you like.

Your attorney(s) must provide them with the information (as listed) about how the attorney(s) are carrying out their EPA duties. The information is about your attorneys' decisions and actions on your property affairs (for example, a copy of the records of financial transactions that your attorney(s) must keep). This information must be provided straight away when requested.

Do you want to name someone to whom your attorney(s) need to give information about how they are carrying out their role as your attorney(s)? (cross out option that does not apply)

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

**Person 1**

Title: **MR**

Full name: **IVAN JASON MARSICH**

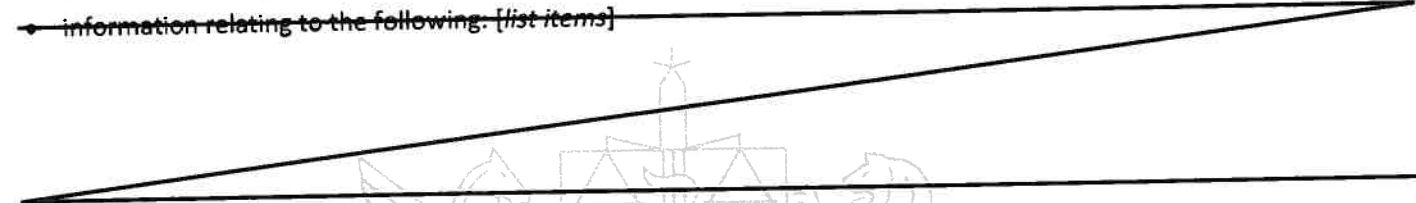
Relationship to donor: **SON**

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

Telephone: **027 290 0377** Email: **dogfacedgodeater@gmail.com**

Information to be given to person 1: (cross out options that does not apply)

- 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]



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**K Attorney's and other benefits (optional)**

You should think very carefully about what rights you want to give your attorney(s) to act for their own benefit or for the benefit of other persons when you are mentally incapable. It is recommended that you clearly state here what your attorney(s) can or cannot do.

Unless your EPA states otherwise, your attorney(s) is/are authorised to:

- recover from your property their out-of-pocket expenses and their professional fees and expenses; or
- deal with any property that you and the attorney own jointly (and not as tenants in common) if you and an attorney are married, in a civil union, or in a de facto relationship and you live together and share your incomes.

**Do you want to give your attorney(s) authority to use your property for their own benefit or for the benefit of any other person?** (cross out options that do not apply)

- No—go to section M.
- ~~• No—except for out-of-pocket expenses and their professional fees and expenses and~~
- ~~• No—except for any property that you and the attorney own jointly (and not as tenants in common) if you and an attorney are married, in a civil union, or in a de facto relationship and you live together and share your incomes~~
- ~~• Yes—my attorney(s) can act to their own benefit as stated here. [list details].~~

- ~~• Yes—my attorney(s) can act to the benefit of the following persons as specified.~~

**Person 1:**

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

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

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

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

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

My attorney can give person 1 the following benefits: [list benefits]

**Person 2:**

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

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

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

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

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

My attorney can give person 2 the following benefits: [list benefits]

[Provide similar details for any other person]

*S. M.*

**L. Celebratory gifts and donations (optional)**

You can authorise your attorney(s) to provide, out of your property, celebratory gifts to children and grandchildren, etc, and to make modest charitable donations. Your attorney(s) is/are not required to make these gifts or donations and should only do so having regard to your overall financial circumstances and commitments.

**Do you want your attorney(s) to use your property to provide celebratory gifts or charitable donations?** (cross out option that does not apply)

- No—go to section M.
- ~~Yes I authorise my attorney(s) to provide out of my property celebratory gifts of not more than the following maximum value to the following people, including any that are born after the date on which this EPA is signed (cross out those that do not apply):~~
  - my children
  - my grandchildren
  - my nieces and nephews
  - my great-grandchildren
  - other people: [specify]

Maximum value of each gift: [specify amount \$]

**I authorise my attorney(s) to make out of my property annual donations of the following amounts to the following charities:**

Amount \$	to	_____
Amount \$	to	_____
Amount \$	to	_____
Amount \$	to	_____
Amount \$	to	_____

[Provide similar details for any other charity]

**M. 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 additional terms and conditions]~~

*Handwritten signature/initials*

**N. 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(s) and successor attorney(s) described in this EPA as my attorney(s) in relation to my property affairs 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: [Handwritten Signature]

**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: [Handwritten Signature]

Full name: John Graham Alexander Day

Occupation: Solicitor

Address: Kerikeri

**Attorney 1: (if an individual)**

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: [Handwritten Signature]

**Witness for attorney 1:**

In the presence of:

Witness signature: [Handwritten Signature]

Full name: Rachel Halliwell

Occupation: Police Employee

Address: KERIKERI POLICE  
P.O. BOX 31  
102 KERIKERI ROAD  
KERIKERI  
PH: (05) 407-9211

Rachel Halliwell  
A person authorised to take  
Statutory Declarations  
12/05/2023

~~Attorney 1: (if a trustee corporation) \_\_\_\_\_ is the attorney named in section C of this~~

~~form. It accepts the appointment as attorney in this EPA. Its authorised representative has read and understood the notes about what is expected of it in this role.~~

The common seal of:

**Witness to affixing of seal:**

Witness signature:

Director / Secretary / [Specify position in corporation]: \_\_\_\_\_

[Handwritten Initials]

~~Attorney 2: (if applicable)~~

~~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 2:~~

~~\_\_\_\_\_~~

~~Witness for attorney 2:~~

~~In the presence of:~~

~~Witness signature: \_\_\_\_\_~~

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

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

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

~~Attorney 3: (if applicable)~~

~~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 3:~~

~~\_\_\_\_\_~~

~~Witness for attorney 3:~~

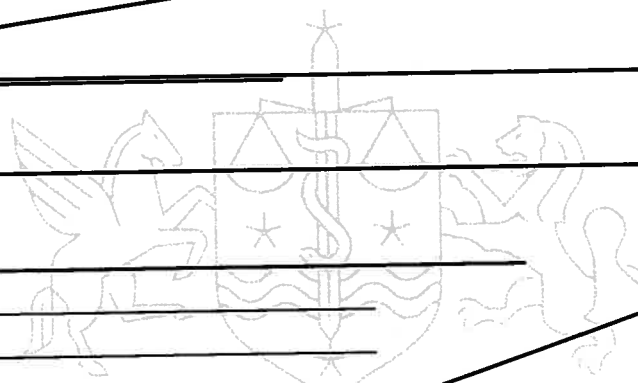
~~In the presence of:~~

~~Witness signature: \_\_\_\_\_~~

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

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

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



*[Provide similar details for any other attorney appointed.]*

~~First successor attorney: (if an individual)~~

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

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~~**Joint First successor attorney: (if an individual)**~~

~~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 an attorney named above ends. I have read and understood the notes about what is expected of me in this role.~~

~~**Signature of Joint First successor attorney:** \_\_\_\_\_~~

~~**Witness for Joint First successor attorney**~~

~~In the presence of:~~

~~**Witness signature:** \_\_\_\_\_~~

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

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

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

~~**First successor attorney: (if a trustee corporation)**~~

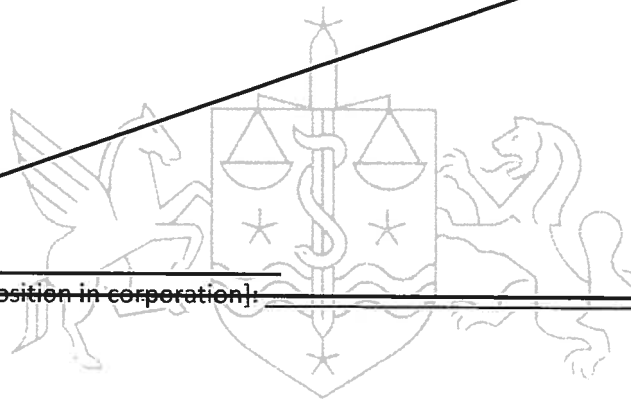
~~\_\_\_\_\_ is the first successor attorney named in section E of this form. It accepts the appointment as successor attorney in this EPA. Its authorised representative has read and understood the notes about what is expected of it in this role.~~

~~The common seal of trustee corporation:~~

~~**Witness to affixing of seal**~~

~~**Witness signature:**~~

~~Director/Secretary/[Specify position in corporation]: \_\_\_\_\_~~



~~**Second successor attorney: (if an individual)**~~

~~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 2 previous attorneys named above have ended. 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: \_\_\_\_\_~~

*Handwritten signature and scribble*

~~Joint Second successor attorney: (if an individual)~~

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 2 previous attorneys named above have ended. I have read and understood the notes about what is expected of me in this role.

Signature of Joint Second successor attorney: \_\_\_\_\_

**Witness for Joint Second successor attorney:**

In the presence of:

Witness signature: \_\_\_\_\_

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

Occupation: \_\_\_\_\_

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

~~Second successor attorney: (if a trustee corporation)~~

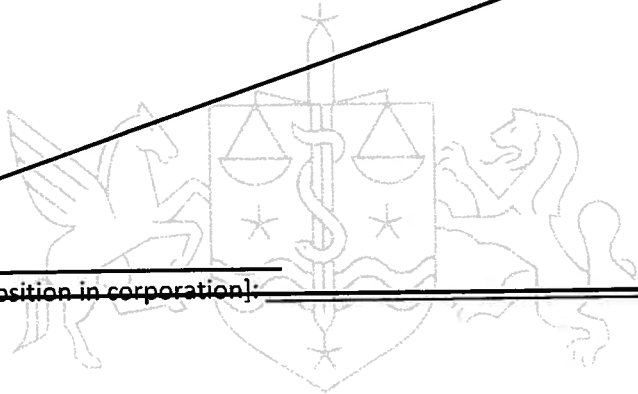
\_\_\_\_\_ is the second successor attorney named in section E of this form. It accepts the appointment as successor attorney in this EPA. Its authorised representative has read and understood the notes about what is expected of it in this role.

The common seal of trustee corporation:

**Witness to affixing of seal:**

Witness signature:

\_\_\_\_\_  
Director/Secretary/[Specify position in corporation]:



~~{Provide similar details for any further successor attorney appointed.}~~

*[Handwritten signature]*

*[Handwritten mark]*

# Notes to Witness for Enduring Power of Attorney in relation to property

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 **property**. It has four parts:

1. Instructions for an **authorised witness** (refer page 15);
2. Standard explanation for a witness of the effects and implications of an EPA (refer page 16);
3. Glossary of terms for an EPA in relation to property (refer page 22); and
4. Certificate of witness to donor's signature on an EPA (refer page 19).

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

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 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 in 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 the donor's 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 this standard explanation should be given to the donor along with a copy of the signed EPA.

**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 ADLS Form 4994 – Health Practitioner's Certificate (Property).





# Standard explanation of effects and implications of an EPA

## What does it mean to have an EPA?

Your EPA authorises the person (or people) you name as your **attorney** to make decisions on your behalf about your property affairs.

There are various options that you can have in your EPA. For example, if you appoint more than 1 attorney, you can say whether they must act together (jointly) or can act separately (severally). You can also 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 M of the EPA form for these options.

Your attorney can make decisions only on the property matters you specify in the EPA. Your attorney has to follow any conditions and restrictions in your EPA and in the **Act**.

Unlike an ordinary power of attorney, an EPA stays in force if you become **mentally incapable** and your attorney's decisions apply as if you made them.

## When does your EPA take effect?

You can choose whether your EPA comes into effect while you are still mentally capable or only if you become mentally incapable.

If you choose to have your EPA take effect while you are still mentally capable, it will remain in effect if you later become mentally incapable.

If you choose to have your EPA take effect only if you become mentally incapable, your attorney can act 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.

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?

If you are mentally incapable, the overriding consideration of your attorney is to use your property to promote and protect your best interests.

Your attorney must encourage you to develop your own competence to act on your own behalf as much as you possibly can.

If you have a separate EPA for your **personal care and welfare**, your attorney must provide your personal care and welfare attorney with any financial support (from your property) that that attorney requires to carry out their duties in relation to your personal care and welfare (subject to any conditions in your EPA or any direction of the court).

Your attorney must keep records of each financial transaction the attorney enters into under your EPA while you are mentally incapable. If any application under the Act is made to the court concerning you or your EPA, your attorney must supply those records to the lawyer appointed by the court to represent your interests.

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 these things on your behalf. Your attorney is also restricted by any conditions and restrictions that you specify in your EPA.

To avoid a conflict of interest between your attorney's duties under the EPA and their own interests, or the interests of someone close to them, an attorney cannot take any action to benefit themselves or other people while you are mentally incapable, unless:

- your EPA specifies that the action can be taken; or
- the court authorises the action.

However, unless your EPA specifically states otherwise, your attorney can:

- deal with property they own jointly with you (if your attorney is your spouse or civil union or de facto partner and you share your incomes);
- reimburse, out of your property, their own **out-of-pocket expenses** that have been reasonably incurred;
- receive from your property reasonable professional fees and expenses, if your attorney was appointed as a professional person (for example, a lawyer or an accountant) or did professional work to give effect to your attorney's decisions; and
- make loans, advances, and investments of your property that a trustee could make in relation to trust property.

### 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 named in your EPA as someone who must 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 attorney for your personal care and welfare, 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.

### 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 that 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 the attorney 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 about:
  - the management and disposal of your property and affairs;
  - the providing of accounts and producing of records by your attorney;
  - your attorney's remuneration and expenses; and
  - any other matter on which directions are sought;
- modify the scope of your EPA by including or excluding a part of your property or any powers;
- require your attorney to provide any information they hold as your attorney;
- give any consent or authorisation on your behalf;
- authorise your attorney to act to the benefit of your attorney or persons other than you, but subject to any conditions or restrictions in your EPA;
- authorise your attorney to make any loan or advance of your property, subject to any conditions or restrictions in your EPA;
- decide if the EPA was obtained by fraud or **undue influence**;
- decide if your attorney is suitable to be your attorney;
- unless your EPA states otherwise, authorise your attorney to execute a will for you (in a form approved by the court); and

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- **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, it remains in place 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.

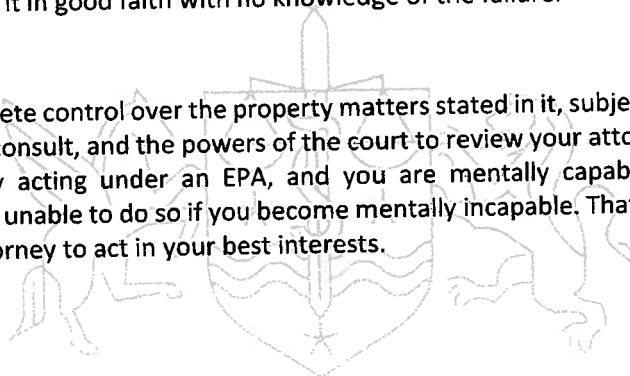
If your EPA appoints a successor attorney, they will become your new attorney for all purposes if your attorney's appointment ends, whether your EPA has already taken effect or not. The successor attorney has the same authority to act as your attorney had. If you have appointed a second successor attorney,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

### **Validity of your EPA and transactions**

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. Any transaction entered into by your attorney is also valid if the other party entered into it in good faith with no knowledge of the failure.

### **Implications of your EPA**

Your EPA gives your attorney complete control over the property matters stated in it, 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. If you are unsatisfied with the actions of your attorney acting under an EPA, and you are mentally capable, you may revoke the attorney's appointment. However, you will be unable to do so if you become mentally incapable. That is why you need to trust the person (or people) you choose as your attorney to act in your best interests.



**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: **MR**Full name: **JOHN GRAHAM ALEXANDER DAY**Address: **93 KERIKERI ROAD, KERIKERI**Occupation: **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. ✓

## 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.~~

### 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.

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:

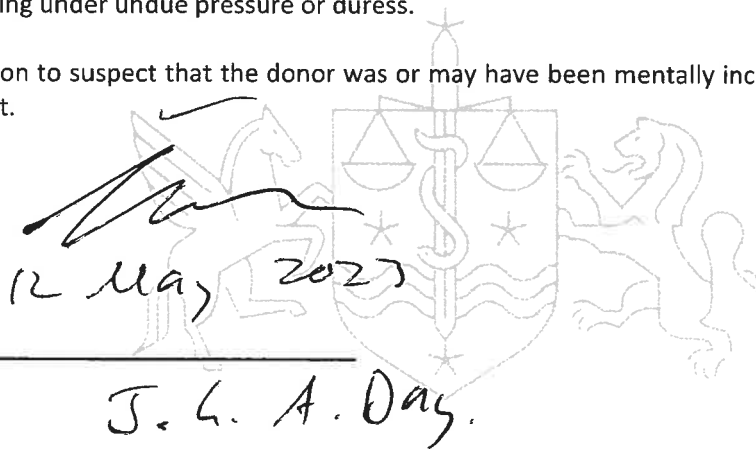
- understands the nature of the instrument creating the enduring power of attorney;
- understands the potential risks and consequences of the instrument; and
- is not acting under undue pressure or duress.

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:



12 May 2023

J. L. A. Day.

# Glossary of terms for an EPA in relation to property

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

**Act to the benefit:** in relation to a person other than the donor, give that person a profit or advantage (for example, by allowing them to live in or use the donor's house without paying rent, or by using the donor's money to pay for goods or services for them).

**Attorney:** a person or persons appointed by you to act on your behalf on some or all of your property affairs. 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 your signature to an EPA. The witness must be 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.

If the attorney is a trustee corporation, the witness may be an officer or employee of that corporation.

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.

**Capable of making a will:** the law requires that anyone making a will must have testamentary capacity; that is, they must understand the nature and effect of what they are doing, who might have a claim to their estate, what they are disposing of, and how they are disposing of it

**Consult:** to ask for advice and give that advice proper consideration before making a decision. 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 property 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 a donor is mentally incapable. The certificate must contain the information required by regulations under the Act.

◆ Refer to the ADLS Form 4994 – Health Practitioner's Certificate (Property)

**Mentally incapable:** under the Act, you are mentally incapable in relation to your property if you are not wholly competent to manage your own affairs in relation to your property. Everyone is presumed to be competent to manage their property affairs until the contrary is shown, and is not to be presumed to lack competence 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.



**Out-of-pocket expenses:** things that your attorney needs to pay for from their own resources in order to carry out their role, such as postage and stationery costs, bank fees, travel costs, telephone bills, and legal fees. These expenses do not include lost wages or payment for your attorney's time.

**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.

**Property:** anything you own, lease, hire, or hold on hire purchase. Property includes any land or buildings, money, investments, goods, shares, stock, machinery, businesses, household effects, or items such as vehicles, boats, aircraft, and caravans, and any interest in them or right in respect of them.

**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

**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;
- if the EPA appoints 1 attorney, the attorney's appointment ends, and there is no successor attorney who can act;
- if the EPA appoints more than 1 attorney to act jointly, the appointment of any of the attorneys ends, and there is no successor attorney who can act; or
- if the EPA appoints more than 1 attorney with several authority or with joint and several authority, the last remaining 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 property* to the donor and all attorneys prior to their signing the EPA in relation to property.**

**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 (or people) you name as your **attorney** to make decisions on your behalf about your property affairs.

There are various options that you can have in your EPA. For example, if you appoint more than 1 attorney, you can say whether they must act together (jointly) or can act separately (severally). You can also 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 M of the EPA form for these options.

Your attorney can make decisions only on the property matters you specify in the EPA. Your attorney has to follow any conditions and restrictions in your EPA and in the **Act**.

Unlike an ordinary power of attorney, an EPA stays in force if you become **mentally incapable** and your attorney's decisions apply as if you made them.

## When does your EPA take effect?

You can choose whether your EPA comes into effect while you are still mentally capable or only if you become mentally incapable.

If you choose to have your EPA take effect while you are still mentally capable, it will remain in effect if you later become mentally incapable.

If you choose to have your EPA take effect only if you become mentally incapable, your attorney can act 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.

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?

If you are mentally incapable, the overriding consideration of your attorney is to use your property to promote and protect your best interests.

Your attorney must encourage you to develop your own competence to act on your own behalf as much as you possibly can.

If you have a separate EPA for your **personal care and welfare**, your attorney must provide your personal care and welfare attorney with any financial support (from your property) that that attorney requires to carry out their duties in relation to your personal care and welfare (subject to any conditions in your EPA or any direction of the court).

Your attorney must keep records of each financial transaction the attorney enters into under your EPA while you are mentally incapable. If any application under the Act is made to the court concerning you or your EPA, your attorney must supply those records to the lawyer appointed by the court to represent your interests.

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 these things on your behalf. Your attorney is also restricted by any conditions and restrictions that you specify in your EPA.

To avoid a conflict of interest between your attorney's duties under the EPA and their own interests, or the interests of someone close to them, an attorney cannot take any action to benefit themselves or other people while you are mentally incapable, unless:

- your EPA specifies that the action can be taken; or
- the court authorises the action.

However, unless your EPA specifically states otherwise, your attorney can:

- deal with property they own jointly with you (if your attorney is your spouse or civil union or de facto partner and you share your incomes);
- reimburse, out of your property, their own **out-of-pocket expenses** that have been reasonably incurred;
- receive from your property reasonable professional fees and expenses, if your attorney was appointed as a professional person (for example, a lawyer or an accountant) or did professional work to give effect to your attorney's decisions; and
- make loans, advances, and investments of your property that a trustee could make in relation to trust property.

### **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 named in your EPA as someone who must 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 attorney for your personal care and welfare, 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.

### **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 that 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 the attorney 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 about:
  - the management and disposal of your property and affairs;
  - the providing of accounts and producing of records by your attorney;
  - your attorney's remuneration and expenses; and
  - any other matter on which directions are sought;
- modify the scope of your EPA by including or excluding a part of your property or any powers;
- require your attorney to provide any information they hold as your attorney;
- give any consent or authorisation on your behalf;

- authorise your attorney to act to the benefit of your attorney or persons other than you, but subject to any conditions or restrictions in your EPA;
- authorise your attorney to make any loan or advance of your property, subject to any conditions or restrictions in your EPA;
- decide if the EPA was obtained by fraud or **undue influence**;
- decide if your attorney is suitable to be your attorney;
- unless your EPA states otherwise, authorise your attorney to execute a will for you (in a form approved by the court); 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, it remains in place 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 and transactions**

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. Any transaction entered into by your attorney is also valid if the other party entered into it in good faith with no knowledge of the failure.

### **Implications of your EPA**

Your EPA gives your attorney complete control over the property matters stated in it, 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. If you are unsatisfied with the actions of your attorney acting under an EPA, and you are mentally capable, you may revoke the attorney's appointment. However, you will be unable to do so if you become mentally incapable. That is why you need to trust the person (or people) you choose as your attorney to act in your best interests.

# Glossary of terms for an EPA in relation to property

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

**Act to the benefit:** in relation to a person other than the donor, give that person a profit or advantage (for example, by allowing them to live in or use the donor's house without paying rent, or by using the donor's money to pay for goods or services for them).

**Attorney:** a person or persons appointed by you to act on your behalf on some or all of your property affairs. 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 your signature to an EPA. The witness must be 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.

If the attorney is a trustee corporation, the witness may be an officer or employee of that corporation.

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.

**Capable of making a will:** the law requires that anyone making a will must have testamentary capacity; that is, they must understand the nature and effect of what they are doing, who might have a claim to their estate, what they are disposing of, and how they are disposing of it

**Consult:** to ask for advice and give that advice proper consideration before making a decision. 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 property 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 a donor is mentally incapable. The certificate must contain the information required by regulations under the Act.

- ◆ Refer to the ADLS Form 4994 – Health Practitioner's Certificate (Property)

**Mentally incapable:** under the Act, you are mentally incapable in relation to your property if you are not wholly competent to manage your own affairs in relation to your property. Everyone is presumed to be competent to manage their property affairs until the contrary is shown, and is not to be presumed to lack competence 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.

**Out-of-pocket expenses:** things that your attorney needs to pay for from their own resources in order to carry out their role, such as postage and stationery costs, bank fees, travel costs, telephone bills, and legal fees. These expenses do not include lost wages or payment for your attorney's time.

**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.

**Property:** anything you own, lease, hire, or hold on hire purchase. Property includes any land or buildings, money, investments, goods, shares, stock, machinery, businesses, household effects, or items such as vehicles, boats, aircraft, and caravans, and any interest in them or right in respect of them.

**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

**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;
- if the EPA appoints 1 attorney, the attorney's appointment ends, and there is no successor attorney who can act;
- if the EPA appoints more than 1 attorney to act jointly, the appointment of any of the attorneys ends, and there is no successor attorney who can act; or
- if the EPA appoints more than 1 attorney with several authority or with joint and several authority, the last remaining 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