



Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Amendment Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 13th day of March 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 112 of the Protection of Personal and Property Rights Act 1988 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Amendment Regulations 2017.

2 Commencement

These regulations come into force on 16 March 2017.

3 Principal regulations

These regulations amend the regulations that were previously called the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms) Regulations 2008 (the **principal regulations**).

4 Name of principal regulations changed

- (1) As from the commencement of this section, the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms) Regulations 2008 are called the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008.
- (2) In regulation 1, after “Enduring Powers of Attorney Forms”, insert “and Prescribed Information”.

5 New regulation 5 inserted (Prescribed information for certificates of mental incapacity)

After regulation 4, insert:

5 Prescribed information for certificates of mental incapacity

- (1) A health practitioner’s certificate of mental incapacity under section 97(5), 98(3), or 100A(2) of the Act must include the following information:
 - (a) the full name, address, and registration number of the health practitioner giving the certificate (the **certifying practitioner**):
 - (b) the health profession in which the certifying practitioner is registered or deemed to be registered under the Health Practitioners Competence Assurance Act 2003 and the name of the responsible registration authority:
 - (c) that the certifying practitioner’s scope of practice includes assessment of a person’s mental capacity:
 - (d) if the enduring power of attorney to which the certificate relates requires that the donor’s mental capacity be assessed by a health practitioner with a specified scope of practice, that the certifying practitioner’s scope of practice includes the one specified:

- (e) that the certifying practitioner examined or assessed the donor for the purpose of assessing his or her mental capacity, and the date of that examination or assessment:
 - (f) the full name of the donor, and the date of the enduring power of attorney:
 - (g) the certifying practitioner's opinion under subclause (2):
 - (h) the reasons for the certifying practitioner's opinion:
 - (i) the certifying practitioner's signature:
 - (j) the date of the certificate.
- (2) The certificate of mental incapacity must include the following opinion:
- (a) in a certificate to be used in connection with an enduring power of attorney in relation to property under section 97(5) or 100A(2), the certifying practitioner's opinion that the donor is mentally incapable because he or she is not wholly competent to manage his or her own affairs in relation to his or her property; or
 - (b) in a certificate to be used in connection with an enduring power of attorney in relation to personal care and welfare under section 98(3) or section 100A(2), the certifying practitioner's opinion that the donor is mentally incapable, specifying 1 or more of the following particulars:
 - (i) that the donor lacks the capacity to make a decision about a matter relating to the donor's personal care and welfare in respect of which a decision is made, or is proposed to be made:
 - (ii) that the donor lacks the capacity to understand the nature of decisions about a matter relating to the donor's personal care and welfare in respect of which a decision is made, or is proposed to be made:
 - (iii) that the donor lacks the capacity to foresee the consequences of decisions about a matter relating to the donor's personal care and welfare in respect of which a decision is made, or is proposed to be made, or to foresee the consequences of any failure to make such decisions:
 - (iv) that the donor lacks capacity to communicate decisions about a matter relating to the donor's personal care and welfare in respect of which a decision is made, or is proposed to be made.

6 Schedule amended

In the Schedule, replace forms 1 to 5 with the forms 1 to 5 set out in the Schedule of these regulations.

Schedule Forms

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Form 1

Enduring power of attorney (EPA) in relation to property

Protection of Personal and Property Rights Act 1988

Notes to enduring power of attorney

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. (See the glossary of terms at the end of these notes for the meaning of attorney and other terms.)

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. 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 attor-

neys, 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.
- 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,—

- recover reasonable out-of-pocket expenses:
- recover reasonable professional fees and expenses (if your attorney has accepted appointment or done work related to your property in a professional capacity):
- 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:
- make a loan, advance, or other investment of your property that a trustee could make under the Trustee Act 1956.

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.

Glossary of terms

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 the donor to act on behalf of the donor on some or all of the donor's 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 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:
- 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:
- 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 in the donor's best interests. This includes making sure the person being asked for advice has all the information they need to base their advice on

donor: the person setting up the EPA giving the appointed attorney(s) authority to act for them

ends: an attorney's appointment under the EPA ends when any of the following events occurs:

- the donor (while mentally capable) revokes the attorney's appointment by written notice to the attorney:
- the attorney gives written notice to the donor (or to the Family Court if the donor is mentally incapable) that the attorney disclaims the right to act under the EPA:
- the attorney dies or becomes bankrupt:
- the attorney becomes subject to compulsory treatment or special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- the Family Court makes a personal or property order under the Act in respect of the attorney:
- the attorney becomes unable to act (for example, because of serious illness):
- the Family Court makes an order revoking the attorney's appointment

EPA: an enduring power of attorney in relation to 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 the donor is mentally incapable. The certificate must contain the information required by regulations under the Act

mentally incapable: under the Act, donors are mentally incapable in relation to property if they are not wholly competent to manage their own property affairs. 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: the donor's health, well-being, and enjoyment of life, including matters such as where the donor lives and medical treatment they may need

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

property: anything the donor owns, leases, hires, or holds 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 any of those things or right in respect of them

relevant health practitioner: a health practitioner in New Zealand who is authorised to make assessments of mental capacity (for example, a New Zealand general medical practitioner (GP)). In relation to a medical certificate given overseas, a registered medical practitioner in the country where the certificate is issued who is authorised to make assessments of mental capacity

revoke: to cancel (end the validity of) an EPA or an attorney's appointment—

- by sending a written notice to the attorney stating that the EPA or the appointment is revoked; or
- by an order of the Family Court

successor attorney: a person appointed by the donor to be their attorney if a previous attorney's appointment ends

suspend: the donor of an EPA who was, but is no longer, mentally incapable may suspend the attorney's authority to act by giving written notice to the attorney. The EPA is not revoked by the suspension but the attorney cannot act again unless and until a relevant health practitioner has certified, or the court has determined, that the donor is (again) mentally incapable

terminated: an EPA is terminated by any of the following events:

- the donor (while mentally capable) revokes the EPA by written notice to the attorney;
- the donor dies;
- 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:
- if the EPA appoints more than 1 attorney to act severally, or jointly and severally, the last remaining attorney's appointment ends, and there is no successor attorney who can act

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

***Enduring power of attorney (EPA) in relation to property under the
Protection of Personal and Property Rights Act 1988***

A My details (donor)

Title:

Full name:

Any other name(s) by which I am known:

Address:

Email:

Telephone:

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. 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)? (tick first box only, or both)

- I revoke all previous EPAs in relation to my property that I may have given except those specified below (if any).
- 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. If none, you may leave the space blank or specify "None".]

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:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

Attorney 2 (if applicable)

Full name:

Relationship to donor:

Address:

Email:

Telephone:

[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:

Email:

Telephone:

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 (tick one)—

- 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.

Do you want to appoint 1 or more successor attorneys? (tick one)

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

First successor attorney (if an individual)

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

First successor attorney (if a trustee corporation)

Name of trustee corporation:

Street address:

PO Box:

Town/city:

Email:

Telephone:

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

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

Second successor attorney (if an individual)

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

Second successor attorney (if a trustee corporation)

Name of trustee corporation:

Street address:

PO Box:

Town/city:

Email:

Telephone:

[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:*
- *jointly and severally—where they can act together or individually.*

I have appointed more than 1 attorney and they are authorised to act (tick one)—

- 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 (tick one)—

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

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? (tick one)

- 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.

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? (tick one)

- 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 (tick one)—

- both my attorney(s) and my successor attorney(s)
- my successor attorney(s) only.

Person 1

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

Person 1 must be consulted about (tick one)—

- 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:

Email:

Telephone:

Person 2 must be consulted about (tick one)—

- 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.]

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)? (tick one)

- 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:

Full name:

Relationship to donor:

Address:

Email:
Telephone:
Information to be given to person 1: *[list items]*
Person 2
Title:
Full name:
Relationship to donor:
Address:
Email:
Telephone:
Information to be given to person 2: *[list items]*
[Provide similar details for any other person.]

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:*
- *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? (tick all those that apply)

- No—go to section M.
- 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:
Email:

Telephone:

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

Person 2

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

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

[Provide similar details for any other person.]

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? (tick one)

- 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 (tick all those that 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 *[name of charity]*

[Amount \$] to *[name of charity]*

[Amount \$] to *[name of charity]*

[Amount \$] to *[name of charity]*

[Amount \$] to [name of charity]

[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]

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: [insert date]

[Signature of donor]

Witness for donor

I confirm that I am an authorised witness, that the donor signed this EPA in my presence, and that I have completed the relevant certification (attached).

[Witness signature]

Full name:

Occupation:

Address:

Attorney 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]

Attorney 1 (if a trustee corporation)

[Name of 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 trustee corporation]

Witness to affixing of seal

[Witness signature]

(Director/Secretary/*[specify position in corporation]*)

Witness for attorney 1

In the presence of: *[witness signature]*

Full name:

Occupation:

Address:

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:

[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]

First successor attorney (if a trustee corporation)

[Name of 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]*)

Witness for first successor attorney

In the presence of: [*witness signature*]

Full name:

Occupation:

Address:

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*]

Second successor attorney (if a trustee corporation)

[*Name of 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*])

Witness for second successor attorney

In the presence of: [*witness signature*]

Full name:

Occupation:

Address:

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

Form 2

Standard explanation of effects and implications of enduring power of attorney in relation to property

Protection of Personal and Property Rights Act 1988

About this document

This document is intended for a witness to an enduring power of attorney (**EPA**) in relation to property to use with a person who is considering creating such an EPA. It has 3 parts, entitled as follows:

- Standard explanation of effects and implications of EPA:
- Instructions for authorised witness:
- Glossary of terms.

The witness should refer first to the second part, entitled “*Instructions for authorised witness*”. See the third part, entitled “*Glossary of terms*”, for the meanings of words and expressions in this document.

Standard explanation of effects and implications of 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:
- 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:
- 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:
 - 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):
- 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.

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:
- 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; and
- advised the donor of the matters referred to in the notes to the EPA form; and
- 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.

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.

Glossary of terms

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

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:
- 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:
- 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. 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 occurs:

- the donor (while mentally capable) revokes the attorney's appointment by written notice to the attorney:
- the attorney gives written notice to the donor (or to the Family Court if the donor is mentally incapable) that the attorney disclaims the right to act under the EPA:
- the attorney dies or becomes bankrupt:
- the attorney becomes subject to compulsory treatment or special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- the Family Court makes a personal or property order under the Act in respect of the attorney:
- the attorney becomes unable to act (for example, because of serious illness):
- the Family Court makes an order revoking the attorney's appointment

EPA: an enduring power of attorney in relation to 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

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

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:
- 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:
- by an order of the court

successor attorney: a person appointed by the donor to be their attorney if a previous attorney's appointment ends

suspend: the donor of an EPA who was, but is no longer, mentally incapable may suspend the attorney's authority to act by giving written notice to the attorney. The EPA is not revoked by the suspension but the attorney cannot act again unless and until a relevant health practitioner has certified, or the court has determined, that the donor is (again) mentally incapable

terminated: an EPA is terminated by any of the following events:

- the donor (while mentally capable) revokes the EPA by written notice to the attorney:
- the donor dies:
- 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:
- 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

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

Form 3

Enduring power of attorney (EPA) in relation to personal care and welfare

Notes to enduring power of attorney

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

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

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. 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 attor-

neys 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—
- encouraging you to make and communicate your own decisions about your personal care and welfare and to understand and see how decisions about your personal care and welfare will affect you;
 - encouraging you to act on your own behalf where possible and remain part of your community;
 - seeking your advice when making decisions, and consulting anyone else named in your EPA for that purpose and any attorney acting under any other EPA you have given (other than a successor attorney whose appointment has not come into effect);
 - taking into account the financial implications of any decision about your personal care and welfare.
- 14 If you have appointed someone else to be your attorney for your property, your attorneys must regularly consult each other to ensure that your interests are not disadvantaged by any breakdown in communication between them. Your property attorney should provide your personal care and welfare attorney with any

financial support (out of your property) needed for your personal care and welfare.

15 Your attorney may follow any advice received through consultation or in an advance directive you have given if your attorney does so in good faith and with reasonable care, unless the attorney is asked to do something listed in note 17.

16 If you have named someone in section G of your EPA to be given information, your attorney must promptly give them that information when asked for it.

What an attorney cannot do

17 Your attorney cannot—

- make a decision about you marrying or entering into a civil union:
- make a decision about your marriage or civil union being dissolved:
- make a decision about any of your children being adopted:
- refuse consent to any standard medical treatment or procedure intended to save your life or prevent serious damage to your health:
- consent to you receiving electro-convulsive treatment (ECT):
- consent to any brain surgery or treatment designed to change your behaviour:
- consent to your taking part in any medical experiment except for the purpose of saving your life or preventing serious damage to your health.

Cancelling or suspending an EPA

18 While you are mentally capable, you can cancel (revoke) your EPA or an attorney's appointment at any time by giving written notice to your attorney (you should also give notice to any successor attorneys).

19 If you choose to revoke any previous EPA in relation to personal care and welfare, but do not give notice of revocation to the previous attorney, your attorney under this EPA or your lawyer can give your previous attorney that notice by providing them with a copy of this EPA before or after you become mentally incapable.

20 If you become mentally incapable but recover your mental capacity, you can suspend your attorney's authority to act by giving them written notice. The EPA is only put on hold by the suspension, which means your attorney cannot act under it again unless a medical certificate states, or the Family Court declares, that you are mentally incapable again.

21 If you are mentally incapable and your attorney's authority is questioned, the attorney can certify on a prescribed form (available on the Ministry of Justice website) that they have not received any notice that the EPA is terminated, their appointment is ended, or their authority to act is suspended. This means they can continue to act as your attorney.

Involving the Family Court

- 22 The Family Court can be asked to review your attorney's actions under the EPA if you or someone else has concerns about them. An application to the court is required for this purpose. The court must appoint a lawyer to represent your interests.
- 23 Your attorney may apply to the Family Court for directions if they are not sure about the most suitable action to take in your best interests (for example, where consultation has resulted in conflicting advice or questions about whether to follow an advance directive).
- 24 For matters involving the Family Court, an application to the Family Court is required. The application form can be found at the Ministry of Justice website.

Glossary of terms

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

advance directive: a written or oral directive—

- by which a person makes a choice about a possible future health care procedure; and
- that is intended to be effective only when the person is not competent.

See the Code of Health and Disability Consumers' Rights set out in the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996

attorney: a person appointed by the donor to act for the donor on some or all of the donor's personal care and welfare matters if the donor becomes mentally incapable. This includes a successor attorney whose appointment has taken effect (unless the context makes it clear that this is not intended)

authorised witness: a person who witnesses the donor's signature to an EPA. The signature must be witnessed by one of the following:

- a lawyer;
- a legal executive who is a member of, and holds a current annual registration certificate issued by, The New Zealand Institute of Legal Executives Incorporated, has 12 or more months' experience as a legal executive, and is employed by and supervised by a lawyer;
- an authorised officer or employee of a trustee corporation.

If the attorney is a lawyer appointed in his or her capacity as a lawyer, the witness may belong to the same firm as the attorney.

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

The requirement that the witness must be independent of the attorney is modified where 2 people appoint each other as attorney in order to allow—

- the witnesses to belong to the same legal firm or the same trustee corporation:
- the same person to witness both donors' signatures if the witness is satisfied and certifies that doing so does not constitute more than a negligible risk of conflict of interest

consult: to ask for advice and give that advice proper consideration before making a decision in the donor's best interests. This includes making sure the person being asked for advice has all the information they need to base their advice on

donor: the person setting up the EPA giving the appointed attorney(s) authority to act for them

ends: an attorney's appointment under the EPA ends when any of the following events occurs:

- the donor (while mentally capable) revokes the attorney's appointment by written notice to the attorney:
- the attorney gives written notice to the donor (or to the Family Court if the donor is mentally incapable) that the attorney disclaims the right to act under the EPA:
- the attorney dies or becomes bankrupt:
- the attorney becomes subject to compulsory treatment or special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- the Family Court makes a personal or property order under the Act in respect of the attorney:
- the attorney becomes unable to act (for example, because of serious illness):
- the Family Court makes an order revoking the attorney's appointment

EPA: an enduring power of attorney in relation to personal care and welfare made under Part 9 of the Act (unless the context makes it clear that another kind of enduring power of attorney is intended)

medical certificate: a certificate given by a relevant health practitioner on whether the donor is mentally incapable. The certificate must contain the information required by regulations under the Act

mentally incapable: under the Act, donors are mentally incapable if, in relation to their personal care and welfare, they lack the capacity to—

- make a decision; or
- understand the nature of decisions; or
- see the likely result of decisions or of any failure to make decisions; or
- communicate decisions.

Everyone is presumed to have the capacity to do these things until the contrary is shown, and is not to be presumed to lack capacity just because the person makes imprudent decisions, is subject to compulsory treatment, or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992

personal care and welfare: the donor's health, well-being, and enjoyment of life, including matters such as where the donor lives and medical treatment they may need

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

relevant health practitioner: a health practitioner in New Zealand who is authorised to make assessments of mental capacity (for example, a New Zealand general medical practitioner (GP)). In relation to a medical certificate given overseas, a registered medical practitioner in the country where the certificate is issued who is authorised to make assessments of mental capacity

revoke: to cancel (end the validity of) an EPA or an attorney's appointment—

- by sending a written notice to the attorney stating that the EPA or the appointment is revoked; or
- by an order of the Family Court

significant matter: a matter having a major effect on the donor's health, well-being, or enjoyment of life (for example, a permanent change to where they live, entering residential care, or undergoing a major medical procedure such as an operation)

successor attorney: a person appointed by the donor to be their attorney if a previous attorney's appointment ends

suspend: the donor of an EPA who was, but is no longer, mentally incapable may suspend the attorney's authority to act by giving written notice to the attorney. The EPA is not revoked by the suspension but the attorney cannot act again unless and until a relevant health practitioner has certified, or the court has determined, that the donor is (again) mentally incapable

terminated: an EPA is terminated by any of the following events:

- the donor (while mentally capable) revokes the EPA by written notice to the attorney;
- the donor dies;
- the attorney's appointment ends, and there is no successor attorney who can act

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

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

A My details (donor)

Title:

Full name:

Any other name(s) by which I am known:

Address:

Email:

Telephone:

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. 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)? (tick first box only, or both)

- I revoke all previous EPAs in relation to my personal care and welfare that I may have given except those specified below (if any).
- I want to continue only the previous EPA(s) in relation to my personal care and welfare that are specified below. [*List details of any personal care and welfare EPA that is to continue. If none, you may leave the space blank or specify "None".*]

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).

I appoint the following person as my attorney.

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

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 (tick one)—

- 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): *[list any conditions or restrictions. If none, you may leave the space blank or specify "None".]*

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? (tick one)

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

First successor attorney

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

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

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

Second successor attorney

Full name:

Relationship to donor:

Address:

Email:

Phone:

[Provide similar details for any further successor attorney.]

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? (tick one)

- No—go to section G.
- Yes—the person(s) I have named below are to be consulted about the matters I have indicated.

The duty to consult applies to (tick one)—

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

Person 1

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

Person 1 must be consulted about (tick one)—

- 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:

Email:

Telephone:

Person 2 must be consulted about (tick one)—

- 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.*]

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? (tick one)

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

Person 1

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

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

Person 2

Title:

Full name:

Relationship to donor:

Address:

Email:

Telephone:

Information to be given to person 2: [*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*]

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: [*insert date*]

[*Signature of donor*]

Witness for donor

I confirm that I am an authorised witness, that the donor signed this EPA in my presence, and that I have completed the relevant certification (attached).

[*Witness signature*]

Full name:

Occupation:

Address:

Attorney

I am the attorney named in section C of this form. I accept the appointment as attorney in this EPA. I have read and understood the notes about what is expected of me in this role.

[*Signature of attorney*]

Witness for attorney

In the presence of: [*witness signature*]

Full name:

Occupation:

Address:

First successor attorney (if applicable):

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Schedule

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

[Signature of first successor attorney]

Witness for first successor attorney

In the presence of: *[witness signature]*

Full name:

Occupation:

Address:

Second successor attorney (if applicable):

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

[Signature of second successor attorney]

Witness for second successor attorney

In the presence of: *[witness signature]*

Full name:

Occupation:

Address:

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

Form 4

Standard explanation of effects and implications of 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 for a witness to an enduring power of attorney (**EPA**) in relation to personal care and welfare to use with a person who is considering creating such an EPA. It has 3 parts, entitled as follows:

- Standard explanation of effects and implications of EPA:
- Instructions for authorised witness:
- Glossary of terms.

The witness should refer first to the second part, entitled “**Instructions for authorised witness**”. See the third part, entitled “**Glossary of terms**”, for the meanings of words and expressions in this document.

Standard explanation of effects and implications of 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 behavior:
- 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:
- 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:
- 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.

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;
- 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; and
- advised the donor of the matters referred to in the notes to the EPA form; and
- 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 this 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.

Glossary of terms

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

advance directive: a written or oral directive—

- by which a person makes a choice about a possible future health care procedure; and
- that is intended to be effective only when 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.

ated, has 12 or more months' experience as a legal executive, and is employed by and supervised by a lawyer:

- an authorised officer or employee of a trustee corporation.

If the attorney is a lawyer appointed in his or her capacity as a lawyer, the witness may belong to the same firm as the attorney.

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

The requirement that the witness must be independent of the attorney is modified where 2 people appoint each other as attorney in order to allow—

- the witnesses to belong to the same legal firm or the same trustee corporation:
- the same person to witness both donors' signatures if the witness is satisfied and certifies that doing so does not constitute more than a negligible risk of conflict of interest

consult: to ask for advice and give that advice proper consideration before making a decision in the donor's best interests. This includes making sure the person being asked for advice has all the information they need to base their advice on

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 occurs:

- the donor (while mentally capable) revokes the attorney's appointment by written notice to the attorney:
- the attorney gives written notice to the donor (or to the Family Court if the donor is mentally incapable) that the attorney disclaims the right to act under the EPA:
- the attorney dies or becomes bankrupt:
- the attorney becomes subject to compulsory treatment or special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- the Family Court makes a personal or property order under the Act in respect of the attorney:
- the attorney becomes unable to act (for example, because of serious illness):
- the Family Court makes an order revoking the attorney's appointment

EPA: an enduring power of attorney in relation to personal care and welfare made under Part 9 of the Act (unless the context makes it clear that another kind of enduring power of attorney is intended)

medical certificate: a certificate given by a relevant health practitioner on whether the donor is mentally incapable. The certificate must contain the information required by regulations under the Act

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; or
- understand the nature of decisions; or
- see the likely result of decisions or of any failure to make decisions; or
- communicate decisions.

Everyone is presumed to have the capacity to do these things until the contrary is shown, and is not to be presumed to lack capacity just because the person makes imprudent decisions 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

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:
- 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:
- by an order of the court

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

terminated: an EPA is terminated by any of the following events:

- the donor (while mentally capable) revokes the EPA by written notice to the attorney:
- the donor dies:
- the attorney's appointment ends, and there is no successor attorney who can act

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

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

Form 5

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

Full name:

Address:

Occupation:

B Qualification of witness

I am (tick one)—

- a lawyer holding a current practising certificate as a barrister or as a barrister and solicitor issued by the New Zealand Law Society
- a legal executive—
 - who is a member of, and who holds a current annual registration certificate issued by, The New Zealand Institute of Legal Executives Incorporated, with at least 12 months' experience as a legal executive; and
 - who is employed by and under the direct supervision of a lawyer holding a current practising certificate as a barrister or as a barrister and solicitor issued by the New Zealand Law Society
- an officer or employee of the following trustee corporation and am authorised by the corporation to witness the signatures of donors of EPAs.

Name of trustee corporation:

C Name of donor in attached EPA

Donor's full name:

D Mutual appointment

Is the attached EPA 1 of 2 EPAs where 2 people appoint each other as attorney?
(tick one)

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

Full name of other donor:

E How the donor signed EPA

The attached EPA was (tick one)—

- signed personally by the donor described in section C of this certificate—go to section F

- signed by the person named below in the presence of and under the direction of the donor described in section C of this certificate.

Full name of signatory:

F Certification

I certify the matters set out in paragraphs 1 to 7 below.

Identity

- 1 I am the person described in sections A and B of this certificate.

How EPA was signed

- 2 I witnessed (tick one)—
- the signature of the donor described in section C of this certificate
 - the signature of the person described in section E of this certificate in the presence of and at the direction of the donor described in section C of this certificate.

Independence or exceptions

- 3 Tick all of the following that apply.

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:

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.

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).

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 (tick one)—

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
- 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

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.

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 (tick one)—

- explained the effects and implications of the EPA to the donor
- gave the donor a copy of the prescribed form of standard explanation of the effects and implications of an enduring power of attorney, followed the instructions in the form for giving 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.

Tick the following statement if the EPA is in relation to property.

- I also advised the donor of—
- the donor’s right to appoint more than 1 attorney, or a trustee corporation, as attorney; and
 - the donor’s right to stipulate whether and, if so, how the attorney’s dealings with the donor’s property are to be monitored.

Donor’s understanding

6 I believe on reasonable grounds that the donor—

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

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:

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, made under the Protection of Personal and Property Rights Act 1988 (the **Act**), amend the Protection of Personal and Property Rights (Enduring

Powers of Attorney Forms) Regulations 2008 and rename them as the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008. They come into force on 16 March 2017 together with certain amendments to the Act. In consequence of the amendments to the Act, they revoke former forms 4 and 5 for certificates of mental incapacity issued under the Act and instead prescribe what information the certificates must contain. They also replace the former forms 1 to 3 with 5 new forms, as follows:

- form 1: enduring power of attorney (EPA) in relation to property:
- form 2: standard explanation of effects and implications of enduring power of attorney in relation to property:
- form 3: enduring power of attorney (EPA) in relation to personal care and welfare:
- form 4: standard explanation of effects and implications of enduring power of attorney in relation to personal care and welfare:
- form 5: certificate of witness to donor's signature on enduring power of attorney (EPA).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 16 March 2017.

These regulations are administered by the Ministry of Justice.