

# Enduring Power of Attorney—

*what does it mean to be an attorney?*



Life can be fragile — as an attorney you are trusted to protect someone's future, if they can't decide for themselves.

# What does it mean if someone gives you an Enduring Power of Attorney?

*An Enduring Power of Attorney (EPA) is a legal document giving a person (known as an ‘attorney’) the power to make decisions for someone who can no longer make decisions for themselves.*

Being an attorney is an important and valued role, which means you are trusted to protect someone’s wishes about their future life, and/or their finances and their treasured possessions, such as their money, house and belongings.

An EPA must be set up before the person – known as the ‘donor’ – needs one, and while they still have the mental capacity to make their own decisions. Acting in the donor’s best interests is the most important part of an attorney’s role.

There are two types of EPAs and you can be the attorney for one or for both:

- **PROPERTY** – a donor can have one or several attorneys for this, who can be people or a trustee corporation (like the Public Trust), and it can be activated before the donor loses mental capacity.
- **PERSONAL CARE AND WELFARE** – only one attorney can hold this kind of EPA, and it can’t be a trustee corporation. This is only activated when the donor is assessed as being mentally incapable by a medical professional.

The donor can also name other people in the EPA who you need to talk to about any decisions you make.



## What will I have to do?

After an EPA is activated, you have the power to make decisions for the donor. What you need to do depends on the type of EPA and how much the donor wants you to do.

For a **property** EPA you may need to:

- pay bills and take care of bank accounts, maintain or sell property and shares, and carry out whatever responsibilities are stated in the EPA.

For a **personal care and welfare** EPA you may need to:

- decide on issues such as medical care, accommodation, and general wellbeing. You cannot make decisions on marriage, divorce, or adoption, or refuse life-saving medical treatment.

You must consult the donor and anyone else named in the EPA, and if you are a property attorney, keep good financial records. It's also important to help the donor to participate in decisions as much as possible.

If there are other attorneys you need to work with them and consult each other regularly to ensure that the interests of the donor are not affected by any breakdown in communications.



## When does the EPA come into effect?

An EPA will only come into effect if a medical professional or the Family Court determines that the donor is mentally incapable. However, for property, the EPA can come into effect while the donor is mentally capable and continues if the donor loses capacity.



## Will someone be checking to make sure I am doing the right thing?

You have a legal duty to consult with the donor as much as is possible, and consult anyone else named in the EPA. You may also need to provide information about your actions to people named by the donor, so they can monitor your decisions.

The Family Court can review your performance and can change the EPA terms if an application is made to the court.



## When does the EPA end?

The donor can change, end or make a new EPA if they are still mentally capable. Also, you will lose your role as an attorney if you die, become bankrupt, are subject to a personal or property court order, or the Family Court revokes your appointment. You also stop being an attorney if the donor dies. If you don't want to be an attorney anymore, you can let the donor know in writing while the donor is still mentally capable, or go to the Family Court if the donor has lost capacity.



### Where can I get help?

There may be times that you need support and advice. Go to [www.msd.govt.nz/epa](http://www.msd.govt.nz/epa) for more information, or visit a Community Law Centre. You can also ask the Family Court for directions if you are having difficulties following the EPA instructions.



### Do I need an EPA as well?

Yes. It's about protecting your future, and unfortunately, you never know when you'll need to use one. If you don't already have one, now's the time to choose who you want to make decisions for you if you can no longer decide for yourself.



### Where can I find out more?

More information, advice and EPA resources can be found on the Ministry of Social Development website at [www.msd.govt.nz/epa](http://www.msd.govt.nz/epa), or at your local Citizens Advice Bureau, public library, Community Law Centre, or Age Concern, or by contacting your legal professional. Information is also available by calling 0800 273 674.



New Zealand Government



OFFICE FOR SENIOR CITIZENS

TE TARI KAUMĀTUA

*Administered by the Ministry of Social Development*