

Enduring Power of Attorney

– becoming an attorney what you need to know

Your responsibilities under Enduring Power of Attorney (EPA)

Agreeing to be an attorney for someone can be a significant commitment.

It is important you understand the legal and financial implications of being an attorney, as well as the potential risks and consequences of your decisions.

Make sure you know what kind of EPA you'll be an attorney for

Personal care and welfare EPA

You may be responsible for making decisions around a person's:

- medical treatment
- health and welfare
- living situation.

It is important that you understand that you will be the sole person responsible for making these decisions. Your role is to promote and protect the welfare and best interests of the person you are making decisions for. You need to involve them in decisions where this is possible. You must help the person participate in community life as much as possible.

Note: There are some decisions that you cannot make for the person, such as marriage, divorce, adoption, or refusing life-saving medical treatment.

A personal care and welfare EPA will come into effect when the person no longer has capacity to make decisions. There is more information about when an EPA comes into effect on the Office for Seniors website.

Property EPA

You will be responsible for making decisions around the person's property, such as:

- arranging benefits
- paying bills
- buying and selling assets
- taking care of bank accounts.

More than one attorney is permitted for this type of EPA, so you may have to make decisions with other people. Your role is to use the person's property to promote and protect their best interests. You need to involve the person in decision-making where that is possible.

The person with the property EPA can choose for it to come into effect either:

- at a time they decide, while they have capacity to make decisions, and to continue to have effect if they lose capacity to make decisions
- when they lose the capacity to make decisions.

There is more information about when an EPA comes into effect on the Office for Seniors website.

Your responsibilities

Your role as an attorney will be to:

- act in the best interests of the person who appointed you
- as much as you can, consult with anyone else named in the EPA
- keep records of all financial transactions (if you are a property attorney)
- consider the financial implications of your decisions in respect of their property (if you are a personal care and welfare attorney).



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As an attorney, you cannot make decisions for the benefit of yourself or anyone other than the person who appointed you while they lack capacity to make decisions, except in some limited circumstances.

Mental capacity (the capacity to make decisions) is decided by someone who is qualified to assess. For example, a GP, a doctor specialising in the care of older people, or a mental health nurse.

Things to think about

Before becoming an attorney, consider whether you have the time and skills needed.

- For a personal care and welfare EPA, you will be solely responsible for making decisions about their care and wellbeing. These decisions could be complex.
- For a property EPA you will be responsible for managing money and property, paying bills, and even managing any businesses they own.

Communication

As an attorney it is important that you communicate regularly with the person who appointed you. As much as possible, you should keep them informed of any decisions or actions you make on their behalf.

If you are unsure about your responsibilities or have any questions or concerns about your role, immediately seek legal advice.

Understanding your responsibilities

Becoming an EPA attorney can be a significant commitment.

- Make sure you understand the wishes and preferences of the person you are making decisions for, as well as any specific instructions or limits outlined in the EPA.
- You must follow any instructions given in the EPA by the person who appointed you.

you grapple with difficult decisions. Make sure you're ready for it.

- If you don't live nearby or plan to go overseas, you might need to be willing to travel to be near the person you are making decisions for in some situations.
- It's essential to make sure you have the skills you need. It will help if you are good at dealing with finances and understanding legal issues.
- If requested, you may be required to provide information about your decisions as an EPA attorney to a person named in the EPA. You may also be required to provide records of financial transactions you are required to keep to a barrister or solicitor.
- A property EPA may identify how your dealings with their property will be monitored. The Family Court could also review your decisions and can require you to produce information or documents.

More information

Setting up an EPA can seem complex. Remember your lawyer is there to help you with the process.

More detailed information on every step of the process and online copies of all the forms you will need can be found at:

officeforseniors.govt.nz/our-work/promoting-enduring-power-of-attorney

The language in this guide has been simplified to facilitate understanding of Enduring Powers of Attorney. Where any language appears to conflict with that contained in the relevant legislation (generally, the Protection of Personal and Property Rights Act 1988) the relevant legislation should be referred to instead.