

PERSONAL CARE AND WELFARE EPA OF KEITH ADAM FREWER



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

Please read these notes BEFORE completing the form.

(See the Glossary at the end of these notes for the meanings of terms set out in ***bold italics***. In these notes, “attorney” includes each attorney if you have appointed more than one, and each successor attorney.)

Setting up your EPA

1

Your ***EPA 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 one 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 one successor attorney.

2

Your attorney can be anyone you trust to understand and respect your wishes and feelings and 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, a family member or work colleague. Preferably your attorney would live in the same area so 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 will 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, the attorney’s spouse or partner, or live at the same address as the attorney.

4

Note: Your EPA will not be valid until signed by all parties. This includes you (the donor) and your attorney.

Options in your EPA

5

There are various options that you can have in your EPA. For example, appointing successor attorneys, cancelling (***revoking***) previous EPAs, the extent of your attorney’s authority to act and who they must ***consult***. See sections B to H of the EPA form for these options.

You and your attorney need to understand what an attorney's role is

6 An attorney's authority under the EPA is governed by both the EPA and the Protection of Personal and Property Rights Act 1988 (*the Act*). These notes are a summary of the main requirements of the Act. Attorneys and successor attorneys should ask for legal advice on their role from a lawyer if they are unclear about how to act.

7 **When an attorney can act**

Your attorney can act under the EPA welfare only if you become mentally incapable.

8 Your attorney cannot act or make any decision on any **significant matter** relating to your personal care and welfare unless 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 matters relating to your personal care and welfare that are not significant matters, if they have reasonable grounds to believe you are mentally incapable.

10 Your mental capacity must be assessed both 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 if they receive notice of an event revoking or suspending the EPA.

13 **What an attorney must do**

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 (**consulting**) when making decisions, and consulting anyone else named in your EPA for that purpose and with any attorney acting under any other EPA you have given
- taking into account the financial implications of any decision about your personal care and welfare. If you have a separate attorney(s) for your property affairs the attorney must regularly consult with them.

14

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 16 below.

15

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.

16

What an attorney cannot do

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.

17

Revoking or suspending an EPA

While you are mentally capable, you can 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).

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| 18 | <p>If you choose the option that your EPA revokes your previous welfare EPAs, 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, including after you become mentally incapable.</p> |
| 19 | <p>If you become mentally incapable but recover your mental capacity, you can put on hold (<i>suspend</i>) 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.</p> |
| 20 | <p>If you are mentally incapable and your attorney's authority is questioned, they can certify on a <i>prescribed form</i> (available on the Ministry of Justice website) that they have not received notice of an <i>event revoking or suspending</i> the EPA. This means they can continue to act as attorney.</p> |

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| 21 | <p>Involving the Family Court</p> <p>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.</p> |
| 22 | <p>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 whether to follow an advance directive.</p> |
| 23 | <p>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.</p> |

Glossary of terms

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| Act | The Protection of Personal and Property Rights Act 1988. Part 9 of the Act sets out the law on EPAs. |
| Advance directive | <p>A written or oral directive to a health practitioner—</p> <ul style="list-style-type: none"> • 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 Consumers' Rights set out in the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996. |

Glossary of terms continued

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| <p>Attorney</p> | <p>A person appointed by the donor to act on behalf of the donor on some or all of the donor's personal care and welfare.</p> |
| <p>Authorised witness</p> | <p>The donor's signature to an EPA must be witnessed by one of the following who must be independent* of the attorney and any successor attorney named in the EPA:</p> <ul style="list-style-type: none"> • a lawyer • a legal executive who is member of, and holds a current annual registration certificate issued by, the New Zealand Institute of Legal Executives Inc, 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 <i>trustee corporation</i>. |
| <p>Consult, consultation and consulting</p> | <p>To consult means 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.</p> |
| <p>Donor</p> | <p>The person setting up the EPA who is giving the appointed attorney or attorneys authority to act.</p> |
| <p>EPA</p> | <p>An enduring power of attorney under Part 9 of the Protection of Personal and Property Rights Act 1988.</p> |
| <p>Event revoking or suspending the EPA</p> | <p>Any of the following events:</p> <ul style="list-style-type: none"> • the donor (while mentally capable) revokes the EPA by written notice to the attorney • the donor having recovered mental capacity suspends the attorney's power to act by written notice to the attorney • the donor dies |

Glossary of terms continued

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| | <ul style="list-style-type: none"> • any of the following events if there is no successor attorney who can act: <ul style="list-style-type: none"> ◦ 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 (eg because of serious illness) ◦ the Family Court makes an order revoking the attorney's appointment. |
| <p>Independent</p> | <p>Independent means having no connection with the attorney. The requirement that the witness must be independent of the attorney is modified where two people appoint each other as attorney to allow:</p> <ul style="list-style-type: none"> • two lawyers or legal executives from the same firm or two officers or employees of the same trustee corporation to witness the respective donors' signatures • the same authorised witness 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 arising. <p>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.</p> |
| <p>Medical certificate</p> | <p>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.</p> |

Glossary of terms continued

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| <p>Mentally incapable</p> | <p>Under the Act, the donor is mentally incapable if, in relation to their personal care and welfare, they lack the capacity to:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> |
| <p>Personal care and welfare</p> | <p>The donor's health, well-being, and enjoyment of life.</p> <p>Includes matters such as where the donor lives and medical treatment they may need.</p> |
| <p>Prescribed form</p> | <p>A form set out in the Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008.</p> |
| <p>Property</p> | <p>Property is anything you own, lease or hire or hold on hire purchase and includes any land and buildings, money, investments, goods, shares, stock, machinery, businesses, household effects or other property (such as vehicles, boats, aircraft and caravans) and any interest in them or right in respect of them.</p> |
| <p>Relevant health practitioner</p> | <p>A health practitioner in New Zealand who is authorised to make assessments of mental capacity (for example, a New Zealand general medical practitioner [GP]).</p> <p>For 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.</p> |
| <p>Revoke and revoking</p> | <p>To cancel or make an EPA or an attorney's appointment invalid by:</p> <ul style="list-style-type: none"> • sending a written notice to the attorney stating that the EPA or their appointment is revoked, or • an order of the Family Court. |

Glossary of terms continued

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| <p>Significant matter</p> | <p>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.</p> |
| <p>Successor attorney</p> | <p>A person appointed by the donor to be their attorney if a previous attorney's appointment ends. An attorney's appointment ends if:</p> <ul style="list-style-type: none"> • the donor (while mentally capable) cancels (revokes) the EPA by written notice to the attorney (the EPA ceases to have effect if this occurs) • the donor (while mentally capable) revokes the attorney's appointment by written notice to the attorney • the donor dies (the EPA ceases to have effect if this occurs) • 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 (eg because of serious illness). • the Family Court makes an order revoking the attorney's appointment. |
| <p>Suspend and suspension</p> | <p>The donor of an EPA that has come into effect because the donor is mentally incapable can, if the donor is no longer mentally incapable, suspend the attorney's power to act by giving written notice to the attorney.</p> <p>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.</p> |
| <p>Trustee Corporation</p> | <p>The Māori Trustee, Public Trust, and every trustee company within the meaning of the Trustee Companies Act 1967 (Trustees Executors Limited, AMP Perpetual Trustee Company N.Z. Limited, PGG Trust Limited, New Zealand Permanent Trustees Limited, and The New Zealand Guardian Trust Company Limited).</p> |

Enduring Power of Attorney (EPA) In relation to personal care and welfare

Under the Protection of Personal and Property Rights Act 1988

My details (donor)

A

My details (donor):

Mr Mrs Ms Miss Other

Specify other:

First and middle names

KEITH ADAM

Surname or family name

FREWER

Known by any other name

Contact details

Flat/House number **32** Street name **ANY ROAD**

Suburb **OTARA**

Town/City **AUCKLAND**

Email **KJFRAHER+16MAR@GMAIL.COM**

Phone

Cancelling previous EPAs

B

Do you want to cancel any previous EPA in relation to your care and welfare? (tick one)

- No – I have no previous EPA in relation to personal care and welfare
- No – My previous EPA gives the attorney authority to act in relation to some specific matters relating to my personal care and welfare that I want to continue
- Yes – I revoke any previous EPA I have given in relation to my care and welfare.

Note: If you revoke any previous EPAs, you should send notice to the attorney(s) named in the EPAs that you have done this. Until notice is received the attorney(s) named in the EPAs can continue to act.

Attorney Details

C

You can appoint only one person to be your attorney for personal care and welfare.

An attorney must be at least 20 years old and not bankrupt or mentally incapable themselves.

(see Note 2).

I appoint as my attorney:

Mr Mrs Ms Miss Other

Specify other:

First and middle names

TANIA ANNE

Surname or family name

COTTON

Relationship to donor

SPOUSE

Contact details

Flat/House number 32 Street name ANY ROAD

Suburb OTARA

Town/City AUCKLAND

Email TCOTTON@EMAIL.COM

Phone +64 9 123 456

What your attorney can act on

D

Do you want your attorney to 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 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 I have listed below:

My attorney's authority to act is subject to the following conditions and restrictions: (optional)

I specifically grant authority to

Successor attorney details (optional)

You have the option to appoint one or more successor attorneys, to act if your attorney's appointment ends.

This form allows for two successor attorneys, but you can name as many as you like.

E

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

- No – go to section F
- Yes – in the event the appointment of an attorney named in section C ends, I appoint as my attorney the person below

Mr Mrs Ms Miss Other

Specify other:

First and middle names

PATRICK PETER

Surname or family name

FREWER

Relationship to donor

BROTHER

Contact details

Flat/House number **15** Street name **ANYCITY ROAD**

Suburb **RICCARTON**

Town/City **CANTERBURY**

Email **PATRICK@ACCOUNTANT.COM**

Phone **+64 3 123 4560**

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

- No – go to section F
- Yes – in the event the appointments of both the attorneys named in section C and above end, I appoint as my attorney the person named below

Consultation (optional)

F

You have the option to name a person or people who, as far as is practical, your attorney must seek advice from (consult) about your personal care and welfare before making decisions. Note: your attorney can only consult on the matters you specified in section D. This form allows for two 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 someone your attorney must consult with about your personal care and welfare matters? (tick one)

No – go to section G

Yes – I have named the person/people below

Person 1:

Mr

Mrs

Ms

Miss

Other

Specify other:

First and middle names

JOAN LILLY

Surname or family name

FREWER

Relationship to donor

MOTHER

Contact details

Flat/House number

76

Street name

ANY SOUTH ROAD

Suburb

PAPAKURA

Town/City

AUCKLAND

Email

JOAN@EMAIL.COM

Phone

+64 3 123 456

Person 1 must be consulted about: (tick one)

all the personal care and welfare matters listed in section D

only matters relating to my personal care and welfare I have listed below

Providing information (optional)

G

You have an option to name one or more people to keep an eye on your attorney's actions.

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.

This form allows for two names but you can name as many people as you like.

Do you want to name someone 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 – I have named the person/people below

My attorney must give to the person(s) I have named here, the information I have listed below:

Person 1:

Mr Mrs Ms Miss Other

Specify other:

First and middle names

Surname or family name

Relationship to donor

Contact details

Flat/House number Street name

Suburb

Town/City

Email

Phone

Information to be give to Person 1:

Additional terms and conditions (optional)

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

H

My EPA is subject to the following additional terms and conditions:

Signatures

The donor signature must be witnessed by an **authorised witness** (a lawyer, 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.

I

Dated:

Donor:

I am the donor. I appoint the attorney(s) and successor attorney(s) described in this EPA as my attorney(s) for 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 one successor attorney is described) any prior successor attorney.

Signature of donor:

Witness for donor – must be an authorised witness – see Glossary

In the presence of: Witness signature:

I confirm I am an authorised witness and that I have completed the relevant certification (attached)

First and middle names and surname (family 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:

[Redacted signature area]

Witness for Attorney:

In the presence of: Witness signature:

[Redacted witness signature area]

First and middle names and surname (family name)

[Redacted name area]

Occupation

[Redacted occupation area]

Address

[Redacted address area]

Successor Attorney 1:

I am the 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 attorney:

[Redacted signature area]

Witness for Successor Attorney 1:

In the presence of: Witness signature:

[Redacted witness signature area]

First and middle names and surname (family name)

[Redacted name area]

Occupation

[Redacted occupation area]

Address

[Redacted address area]