



# LIVING WILLS & POWERS OF ATTORNEY

Have you ever wondered who would look after your affairs if you weren't able to? Who would pay your bills, look after your bank accounts, deal with your home? Who would make decisions about your personal care if you weren't able to communicate your wishes? A Power of Attorney operates to give a person or persons of your choice the right to act legally on your behalf in respect of these matters and to the extent granted by you in the Power of Attorney.

## LIVING WILLS

A Living Will is a written directive setting out your wishes for your health care in the event that you have an accident or illness which leaves you unable to make or communicate your decisions. It is not a substitute for an EPA as it is not necessarily legally binding. However it is highly recommended that a Living Will is entered into at the same time as an EPA for personal care & welfare, as it provides direction and comfort to your attorney in respect of the decisions that they may be forced to make about your medical care on your behalf.

## GENERAL POWER OF ATTORNEY

A General Power of Attorney is only valid while the donor (ie. the person who grants it) is **mentally capable** and is particularly useful if you spend extended periods of time **outside of New Zealand**. Under a General Power of Attorney it is possible to appoint any number of attorneys to act either together (jointly) or separately (severally) and it **ceases to exist when the donor dies or loses mental capacity**.

## ENDURING POWERS OF ATTORNEYS

Unlike a General Power of Attorney, an EPA allows an attorney to act if the donor has become mentally incapable. By entering into an EPA the donor is granting significant powers and responsibilities to their chosen attorney. The attorney will be responsible for making decisions about the donor's property and/or personal care & welfare while the donor is mentally incapable and unable to express their wishes. Careful consideration should be given to who is appointed as an attorney, so that the donor is satisfied that the appointed attorney will be able and willing to act, if required.

Without an EPA any person wishing to make legal decisions on the donor's behalf in relation to their property or personal care & welfare must apply to the Court under the Protection of Personal and Property Rights Act 1998 ('**PPPR Act**'). This process takes time, is expensive, and may result in the appointment of an attorney that the donor would otherwise not have chosen.

## EPA IN RELATION TO PROPERTY

An EPA in relation to property allows the appointed attorney to make legal decisions in the respect of the donor's property (ie. their land, houses, shares, bank accounts and all other possessions and debts).

The donor may also wish for the EPA to have effect immediately (ie. while they are still capable as well as after they lose mental capacity) or only upon the loss of the donor's mental capacity. Depending on the donor's circumstances, an attorney may need to sell property, obtain a mortgage, pay for their medical care and/or manage their business, so it is not a document that should be entered into lightly.

## WHAT TO LOOK FOR WHEN CHOOSING TO GIVE SOMEONE POWER OF ATTORNEY

When choosing an attorney you should pick someone:

- ◆ Whom you trust and who will act in your best interests;
- ◆ Who is at least 20 years old;
- ◆ Who is not bankrupt or subject to a personal or property order (for an enduring power of attorney); and
- ◆ Who understands their role as an attorney, and agrees to it.

## EPA IN RELATION PERSONAL CARE & WELFARE

An EPA in relation to personal care & welfare allows the appointed attorney to make legal decisions in respect of the donor's personal care only after they have lost their mental capacity. Despite entering into an EPA in relation to personal care & welfare, the law does place some restrictions on the attorney. For instance, they cannot enter into marriage or adoption on the donor's behalf or refuse medical treatment intended to save the donor's life.

## DIFFERENT PEOPLE AS APPOINTED ATTORNEYS FOR PROPERTY AND FOR PERSONAL CARE & WELFARE

The law allows the same person to be appointed as attorney for property and for personal care and welfare. However, a donor may choose to appoint different people for each of these roles. The personal skills needed to look after someone's personal care and welfare are different from those needed to look after someone's financial affairs, which usually require some business knowledge.

If a person has different attorneys for personal care and welfare and for property, both attorneys are required to consult each other regularly, to ensure that the donor's interests are not harmed by any breakdown in communication between them.

## MORE INFORMATION

If you're thinking about updating or creating a Living Will or Power of Attorney, need some advice or have any questions — give us a call or send us an email for more information.



### Wellington Office:

Level 2, Zephyr House, Te Aro, Wellington 6011

### Kapiti Office:

116 Rimu Road, Paraparaumu 5032

### Otaki Office:

208 Main Highway, Otaki 5512

### Foxton Office:

74 Main Street, Foxton 4814

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## SAFEGUARDS

Because the powers conferred on the appointed attorney are so significant, there are a number of safeguards that have been provided for in the PPPR Act to ensure that these powers are not abused. These include:

- ◆ Strict requirements are to be met to establish the loss of mental capacity. The donor may specify in the EPA which medical practitioner they wish to establish the loss of mental capacity;
- ◆ The PPPR Act requires an attorney to promote the donor's best interests as paramount;
- ◆ More than one attorney may be appointed to act either jointly or severally in respect of an EPA in relation to property. *NB: Only one attorney may be appointed for an EPA in relation to personal care & welfare; and*
- ◆ The donor may require an attorney to consult with or provide information to other named persons before making their decisions.

## CONSIDERATIONS

Appointing an attorney, whether under a General Power of Attorney or EPA, places a significant power and responsibility on that person's shoulders. It is vital that you choose someone who is capable and willing to perform the tasks required. Most importantly your attorney must be someone that you trust to handle your affairs.

The PPPR Act provides a great deal of flexibility in respect of the nature of an EPA. For instance, you may limit the powers of your attorney, appoint one or more successor attorneys, and/or require them to consult with specific people before making decisions. Because of these complexities and the unique wishes and concerns that you will have, it is essential that you seek legal advice before entering into an EPA. Power of Attorney's can be revoked at any stage while you still have mental capacity. If you wish to revoke a Power of Attorney, it must be done in writing and you must advise people and institutions such as your bank and doctor.