

# *A Guide to Enduring Powers of Attorney*





## ***Why use Perpetual Guardian?***

- We are an expert trustee company built on more than 130 years of experience in establishing and managing Trusts and estate planning.
- As a trustee company, we exist in perpetuity – we will not go out of business or die, leaving you without a trustee or adviser.
- We will be here when you and your family need us.
- All Perpetual Guardian staff are professionals with extensive experience in their areas of expertise.
- We are independent and will act objectively and impartially when dealing with family members.
- We will deal with your affairs promptly and efficiently.
- We offer a full range of associated services, including Trusts, online storage of your Will and much more.

***You never know  
what to expect  
in life.***

**An Enduring Power of Attorney can ensure that someone you trust will look after the things that matter.**

## What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) is a legal document appointing an attorney to act on your behalf if you cannot or do not wish to. Unlike a Will, an EPA operates while you are alive.

There are two types of EPA; one for your personal care and welfare, and the other for your property. You can decide to have either one or both.

## Why is an EPA so important?

You never know what to expect in life. For example, you may need to travel overseas at short notice, have a serious accident, suffer an illness such as a stroke or Alzheimer's disease or want someone else to look after your affairs as you get older.

## What happens if I do not have an EPA and have an accident or get sick?

If you do not have an EPA and an important decision must be made or document signed, your family or friends must apply to the Family Court (under the Protection of Personal and Property Rights Act 1988) so they can help you and legally manage your affairs. This can be costly and time-consuming and the Court may appoint someone that you would not choose.

An EPA lets you decide who manages your affairs and how they will be managed.

An EPA will not only provide for unforeseen events but can also be

used temporarily (e.g. if you are travelling overseas).

## What does a Property EPA cover?

Anything to do with managing your financial affairs and assets. For example, managing property, collecting rents, paying bills, handling investments, managing your business, etc.

## What does a Personal Care and Welfare EPA cover?

Anything to do with your personal health and wellbeing. For example, they can help decide whether you stay in your own home or move into an assisted living home, give consent to minor medical procedures and other health related matters.

## How flexible is an EPA?

You can decide how your EPA will operate. You can:

- Appoint an individual to work with your attorney;
- Appoint a substitute attorney;

- Cancel or change it at any time - as long as you have the required mental capacity to do so;
- For a Property EPA you can specify whether it takes effect immediately or sometime in the future; and,
- Decide whether the attorney looks after all or some of your assets, under your Property EPA.

## What responsibilities does my attorney have?

Your attorney must act in your best interest. They need to consult with you when acting on your behalf, encouraging you to develop and exercise the capacity you have.

Your attorney must consult with others as required by you and keep

## Important

You can have one or more attorneys. It is very important that you appoint someone you trust implicitly. We can assist you in identifying a suitable attorney.



them up to date regarding any actions taken.

It is important that your attorney keeps accurate records of all decisions made and of any financial transactions undertaken on your behalf.

### Do I have any legal protection from actions taken by my attorney?

Your attorney can only act as instructed by you within the EPA, and within the law. They are personally liable for acts of negligence or breaking the law (for example, fraud).

### Who should have an EPA?

Everyone over 18 years of age should sign an Enduring Power of Attorney.

### How does an EPA end?

There are several ways including:

- When you die;
- If you revoke the EPA in writing while you are mentally capable;
- If an attorney you have appointed loses mental capacity, becomes bankrupt or dies (however, you may appoint a successor);
- If an attorney you have appointed does not want to act on your behalf; or,
- If the Family Court cancels the appointment of your attorney.

### Who decides when I have lost mental capacity?

A medical certificate must be provided by a registered health practitioner, for example, your GP or a mental health nurse whose scope of practice includes assessing mental capacity. You can even choose to specify in your



EPA the qualified practitioner you want to assess your mental capacity.

### When is the best time?

The best time to provide for maximum and ongoing control over your assets and welfare is now. Many people prepare an EPA when they complete or review their Will.

Setting up an EPA will give you peace of mind that your assets and personal welfare will be properly managed on a temporary or permanent basis by someone you trust, if you become unable to do so.

Both types of EPA can be prepared by Perpetual Guardian. However, whilst we can be appointed as a property attorney, only a private individual can be appointed as a personal care and welfare attorney. We suggest you nominate someone you trust implicitly, such as a friend or relative, to act in this capacity.

### Does an EPA affect my Will?

An EPA has no effect on your Will. However, your attorney may have to make decisions which affect property that will be dealt with in your Will. It may be useful to have the ability to make changes to your Will in case your circumstances change in ways you had not anticipated.

Your EPA property attorney is able to ask the Family Court for approval to make changes to your Will or to make a new Will for you, unless you specify otherwise in your EPA.

## Important

Before you appoint someone as your attorney, it is important that you discuss their appointment with them, to make sure they have the time and skills necessary.

## Why should I choose Perpetual Guardian as my property attorney?

The Protection of Personal and Property Rights Act 1988 recognises the special role of trustee companies, such as Perpetual Guardian, to manage assets for people.

Perpetual Guardian:

- Has the experience and skills to act as a property attorney;
- Offers continuity (unlike an individual, we will not die, become ill or be absent from New Zealand when needed);
- Acts impartially and independently;
- Will work closely with other appointed attorneys;
- Can be your property attorney as well as the trustee and executor of your estate, making effective decisions on your behalf with full appreciation of your wishes as expressed in your Will; and,
- Will ensure the legal requirements for an EPA are met.

Perpetual Guardian is not permitted to act as your Personal Care and Welfare Attorney.

## What are the costs?

Fees for preparing your EPA are proportionate to the complexity of the work involved. We can provide you with a full estimate of costs during our preliminary discussions with you.

If Perpetual Guardian is appointed property attorney and is later required to act on your behalf, fees will be charged for administering your affairs. Information on fees can be obtained

by contacting your nearest Perpetual Guardian branch.

The law regarding Enduring Powers of Attorney provides greater protection for vulnerable people by strengthening the witnessing requirements for EPAs. This means your signature must be witnessed and certified by an approved person who is independent of your attorney. The same person cannot witness both your signature and your attorney's signature. This may mean additional cost to you. The cost of preparing an EPA is minimal in comparison to the cost of a Family Court order.

Before your appointment, you will need to consider the following:

- Who do you wish to appoint as your attorney for property?;
- Who do you wish to appoint as your attorney for personal care and welfare?;

- Do you wish to appoint a replacement attorney in case an individual named as attorney is not able to continue at some stage?; and,
- Do you wish to add conditions, for example, should the attorney be required to consult with certain people or to give them annual accounts or other information?

## Important Note

Perpetual Guardian does not accept any liability for loss arising as a consequence of anyone acting in reliance on these notes alone without individual advice. Equally, liability will not be accepted where individual or specific advice was given but all relevant details were not supplied to Perpetual Guardian.

Perpetual Guardian is a trading name of Perpetual Trust Limited.



*Our experts  
have a wealth of  
knowledge.*

We will ensure you gain the  
best possible advice when  
instructing your EPA.



