



Department of the
Attorney General



Enduring Power of Attorney Information Kit



Enduring Power of Attorney Information Kit

An Enduring Power of Attorney (EPA) allows an adult with capacity (a person's capacity to make reasonable judgements in respect of matters relating to all or any part of his/her estate) to give a trusted person or agency the right to make financial and or property decisions on their behalf. Medical and other lifestyle decisions are not covered by EPAs.

The 'donor' of an EPA (the person drafting the attached EPA form) must choose whether the 'attorney' (the person who will make decisions on the donor's behalf) is to act immediately, or only in the event that the 'donor' loses legal capacity.

This Information Kit has been prepared by the Public Advocate to assist with the completion of EPA forms. It is recommended that donors and attorneys **seek legal advice** on specific or complex matters relating to the execution of an EPA.

More information about EPAs is provided in the Office of the Public Advocate's *A Guide to Enduring Power of Attorney in Western Australia* available at: www.publicadvocate.wa.gov.au



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Completing the EPA Form

At the top of the form, in the spaces provided, insert:

- the date, month and year on which the EPA form is being completed; and
- the donor's full name and address.

CLAUSE 1

Appoint **one attorney or two attorneys** by completing the full name(s) and addresses of the selected attorney(s).

The making of an EPA is a significant decision and the selection of an attorney should be well considered. It is usual for an attorney to be over 18 years of age and in a position of absolute trust. An attorney may be a spouse, partner, family member, friend, or a professional person such as an accountant or lawyer, the Public Trustee or a private trustee company.

Appointing someone as your enduring attorney effectively authorises them to manage your finances as you would have. This authority allows the attorney to stand in your shoes.

When choosing an attorney, the Public Advocate recommends that you, the donor, give careful consideration to the following questions:

- Is the person trustworthy and likely to always act in your best interests?
- Is the person willing to take on the responsibilities?
- Is the person competent to deal with all financial and property matters relating to your estate?
- Is the person competent to take on the task of keeping and preserving accurate records and accounts of all dealings and transactions made under the EPA?

- Does the person live close enough to you to be able to easily discharge his or her responsibilities under the EPA?
- Could the choice of attorney create conflict within your family? You might wish to consult family members with a view to avoiding any potential difficulties with the exercise of the power in the future.
- Whether to place conditions or restrictions on the attorney's authority.

You, the donor, may appoint either:

- a single person or agency as **sole attorney** who is authorised to make decisions alone;
- two people as **joint attorneys** who must agree on any decisions that are made;
- two people as **joint and several attorneys** who can make decisions independently OR together.

When appointing more than one attorney, indicate whether the two persons are to act as joint attorneys or as joint and several attorneys by **striking out whichever does NOT apply**.

CLAUSE 1a

Appoint **one substitute attorney or two substitute attorneys** in the event that the originally appointed attorney(s) is/are no longer capable, suitable or available to act e.g. through death, incapacity or bankruptcy of the attorney. There is no requirement to appoint a substitute attorney but you may choose to appoint:

- a single person or agency as a **sole substitute attorney**;
- two people as **joint substitute attorneys** who must agree on any decisions that are made;
- two people as **joint and several substitute attorneys** who can make decisions independently OR together.

When appointing more than one substitute attorney to replace one original attorney, indicate whether the two persons are to act as joint substitute attorneys or as joint and several substitute attorneys by **striking out whichever does NOT apply.**

When appointing one substitute attorney where there are two original attorneys, indicate whether the substitute appointment applies to EITHER of the joint, or joint and several attorneys previously appointed (by striking out "AND") OR to BOTH attorneys (by striking out "OR").

The full name(s) and address(s) of all appointed substitute attorney(s) should be listed. When appointing two attorneys in substitution of joint, or joint and several original attorneys, the Public Advocate recommends that you **seek legal advice.**

NOTE: NO MORE THAN TWO ATTORNEYS CAN BE AUTHORISED TO MAKE DECISIONS AT ANY ONE TIME.

CLAUSE 2

Authorise the attorney(s) to do anything that you may lawfully do in relation to the management of your property or finances, acknowledging that the appointed attorney(s) is/are obliged by law to make financial and property decisions that will serve your best interests. By completing the EPA form you, the donor, have conferred this authority on the person/persons appointed.

CLAUSE 3

You may wish to **impose conditions or restrictions** on the authority of the attorney(s). In such cases, the Public Advocate recommends that you, the donor, **seek legal advice.**

CLAUSE 4

Choose **when the Enduring Power of Attorney is to come into effect**. You may authorise the power to come into effect either:

- (a) immediately and continue in force if you lose legal capacity;
or
- (b) only during any period when the State Administrative Tribunal declares that you, the donor, do not have legal capacity.

Strike out whichever paragraph does not apply. This section must be completed or the EPA will not be valid.

SIGNATURE OF DONOR

You, the donor, should **sign the form using your normal signature** in the space provided. If the donor cannot read or cannot understand English, or cannot write their name, the Public Advocate recommends that **legal advice is sought** to ensure proper execution of the EPA.

WITNESSES

Sign the EPA form in the presence of two independent witnesses who are authorised to witness declarations (see attached list). The role of the witnesses is to verify the identity of the donor. If there is any **doubt about the donor's decision-making capacity**, the Public Advocate recommends that at least one of the witnesses be a doctor who has assessed the donor's capacity.

NOTE: RETAIN TWO ORIGINAL COPIES OF THE ORIGINAL EPA

The Public Advocate recommends that at least two original copies of the EPA are retained in a safe place for future reference. The donor may wish to provide additional copies to his or her doctor, lawyer and family members.

Registering an EPA

The Office of the Public Advocate does **not** maintain a register of EPAs. There is no requirement in WA to register an EPA, however, if the donor owns land, they are encouraged to lodge their EPA with Landgate to enable the attorney to make property or land transactions in the future.

LODGING THE EPA WITH LANDGATE

Landgate will accept an EPA regardless of the donor having an existing interest in a property at the time of the execution of an EPA.

If the EPA is to be lodged with Landgate, two completed EPA forms are required, including an original document which is retained by Landgate. Landgate also requires that the acceptance of the EPA is on the reverse of the EPA itself, not on a separate form.

If the EPA is lodged at Landgate more than three months after it is signed, a Statutory Declaration may be required from the attorney stating that the EPA has not been revoked. The Statutory Declaration should:

- Identify the attorney;
- Identify the EPA by reference to the donor and date of the EPA;
- State that the donor is still alive;
- State that the EPA has not been revoked or varied by the donor or by the State Administrative Tribunal;
- State that an administrator has not been appointed to act on behalf of the estate of the donor;
- State that a substitute attorney has not been appointed by the State Administrative Tribunal; and
- State when and how the attorney last saw or communicated with the donor.

The Public Advocate recommends that the attorney **seeks legal advice** when drafting the required Statutory Declaration.

If the EPA comes into effect immediately the attorney will be able to make financial decisions, including those about land transactions, as soon as the EPA form has been processed by Landgate.

If the EPA comes into effect only after the donor loses capacity an application will need to be made to the State Administrative Tribunal for a 'Declaration of Legal Capacity'. If a determination is made that the donor has lost capacity, the Tribunal will make an Order for the EPA to come into effect.

All land transactions signed by the attorney, on behalf of the donor, will be cross-checked by Landgate with the EPA and any Orders from the Tribunal.

Acceptance by Attorney

In order to be valid, the EPA must be formally accepted by the attorney(s).

The Acceptance Form is on the back of the EPA Form and Landgate requires both forms are signed (if property matters are to be dealt with under the EPA). The Public Advocate recommends the Acceptance Form is signed as soon as possible after the donor has signed the EPA form.

Before accepting the role of attorney you should be aware of your obligations under Section 107 of the *Guardianship and Administration Act 1990*. These are:

- to exercise your power with reasonable diligence to protect the interests of the donor and, if you fail to do so, be liable for any loss incurred by the failure;
- to keep and preserve accurate records of all dealings and transactions made under the power;
- to not renounce the power when the donor has lost capacity, except by order of the State Administrative Tribunal.

Revoking/Renouncing an EPA

While the donor has legal capacity, the donor may revoke the EPA and the attorney may renounce it.

Essentially this means that while the donor has legal capacity he or she may cancel the EPA at anytime, and the attorney may give up his or her responsibilities at anytime.

If the EPA has been lodged with Landgate, Landgate should be given written notification of the revocation. The Public Advocate recommends that all relevant persons and organisations should also be informed in writing.

If the donor has lost capacity and the attorney wishes to renounce the EPA, an application must be made to the State Administrative Tribunal for an alternative arrangement to be put in place to protect the donor's interests.

Witnesses to an EPA

Schedule 2 of the *Oaths, Affidavits and Statutory Declarations Act 2005* lists the people who are authorised to witness declarations in Western Australia. These are:

- Academics (post-secondary institution)
- Accountants
- Architects
- Australian Consular Officers
- Australian Diplomatic Officers
- Bailiffs
- Bank managers
- Chartered secretaries
- Chemists
- Chiropractors
- Company auditors or liquidators
- Court officers
- Defence force officers
- Dentists

- Doctors
- Electorate officers of a member of State Parliament
- Engineers
- Industrial organisation secretaries
- Insurance brokers
- Justices of the Peace
- Landgate officers
- Lawyers
- Local Government CEOs or deputy CEOs
- Local government councillors
- Loss adjusters
- Marriage celebrants
- Members of Parliament
- Ministers of religion
- Nurses
- Optometrists
- Patent attorneys
- Physiotherapists
- Podiatrists
- Police officers
- Post office managers
- Psychologists
- Public notaries
- State & Commonwealth public servants
- Real estate agents
- Settlement agents
- Sheriffs or Deputy Sheriffs
- Surveyors
- Teachers
- Tribunal officers
- Veterinary surgeons

And anyone authorised under the *Commonwealth Statutory Declarations Act 1959* to take a statutory declaration.

NOTE: No person under the age of 18 years is qualified to witness any Statutory Declarations or instruments.

NOTE: Different criteria apply for execution of an EPA by witnesses in places other than Western Australia. If the EPA is signed elsewhere, seek legal advice.

ENDURING POWER OF ATTORNEY

Under Section 104 of the *Guardianship and Administration Act 1990*



THIS ENDURING POWER OF ATTORNEY IS MADE ON the day of 20

BY

OF

1 I APPOINT

OF to be my sole Attorney

OR I APPOINT

OF

AND

OF JOINTLY to be my Attorneys*

JOINTLY **AND SEVERALLY** to be my Attorneys*

**one of these must be struck out*

1a I APPOINT

OF to be my sole substitute Attorney

AND

OF JOINTLY to be my substitute Attorneys**

JOINTLY **AND SEVERALLY** to be my substitute Attorneys**

***one of these must be struck out*

IN SUBSTITUTION OF

OR IN SUBSTITUTION OF **AND/OR*****

****one of these must be struck out*

on (or during) the occurrence of the following events or circumstances

.....

.....

2 I AUTHORISE my Attorney (s) to do on my behalf anything that I can lawfully do by an Attorney.

3 The authority of my Attorney (s) is **subject to the following CONDITIONS or RESTRICTIONS**

.....

.....

4 I DECLARE that this POWER of ATTORNEY

*(a) will continue in force notwithstanding my subsequent legal incapacity; **OR**

*(b) will be in force ONLY during any period when a declaration by the State Administrative Tribunal that I do not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990*.

**one of these sub-paragraphs must be struck out*

SIGNED AS A DEED BY

WITNESSED BY

(Signature of Witness 1)

(Signature of Witness 2)

Must be

witnessed at

(Full Name of Witness 1)

(Full Name of Witness 2)

the same time

by two persons

(Address of Witness 1)

(Address of Witness 2)

authorised to

witness

Declarations.

(Occupation of Witness 1)

(Occupation of Witness 2)

ACCEPTANCE OF AN ENDURING POWER OF ATTORNEY



The person(s) or agency nominated as Attorney(s) is/are required to indicate their willingness to accept the power vested in them under this EPA and the legal obligations which go with that power. The Attorney(s) must sign the Statement of Acceptance in the space provided as soon as possible after the document conferring the authority has been completed.

1 I/WE

.....
 the person(s) appointed to be the Attorney(s) under clause 1 of the instrument on which this acceptance is endorsed [or to which this acceptance is annexed]

1a I/WE

.....
 the person(s) appointed to be the substitute Attorney(s) under clause 1a of the instrument on which this acceptance is endorsed [or to which this acceptance is annexed]

ACCEPT THE APPOINTMENT AND ACKNOWLEDGE:

- that the power of Attorney is an Enduring Power of Attorney and
 - * (a) will continue in force notwithstanding the subsequent legal incapacity of the Donor;
 - * (b) will be in force only during any period when a declaration by the State Administrative Tribunal that the Donor does not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990*.

***one of these sub-paragraphs must be struck out**

- that I/we will, by accepting this Power of Attorney, be subject to the provisions of Part 9 of the *Guardianship and Administration Act 1990*.

SIGNED

1	Attorney appointed under clause 1 of the Enduring Power of Attorney	Attorney appointed under clause 1 of the Enduring Power of Attorney
	(Date)	(Date)

1a	Attorney appointed under clause 1a of the Enduring Power of Attorney	Attorney appointed under clause 1a of the Enduring Power of Attorney
	(Date)	(Date)

ENDURING POWER OF ATTORNEY

Under Section 104 of the *Guardianship and Administration Act 1990*



THIS ENDURING POWER OF ATTORNEY IS MADE ON the day of 20

BY

OF

1 I APPOINT

OF to be my sole Attorney

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OF JOINTLY to be my Attorneys*

JOINTLY AND SEVERALLY to be my Attorneys*

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1a I APPOINT

OF to be my sole substitute Attorney

AND

OF JOINTLY to be my substitute Attorneys**

JOINTLY AND SEVERALLY to be my substitute Attorneys**

***one of these must be struck out*

IN SUBSTITUTION OF

OR IN SUBSTITUTION OF AND/OR***

****one of these must be struck out*

on (or during) the occurrence of the following events or circumstances

.....

.....

2 I AUTHORISE my Attorney (s) to do on my behalf anything that I can lawfully do by an Attorney.

3 The authority of my Attorney (s) is **subject to the following CONDITIONS or RESTRICTIONS.**

.....

.....

4 I DECLARE that this **POWER** of **ATTORNEY**

*(a) will continue in force notwithstanding my subsequent legal incapacity; **OR**

*(b) will be in force **ONLY** during any period when a declaration by the State Administrative Tribunal that I do not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990*.

**one of these sub-paragraphs must be struck out*

SIGNED AS A DEED BY

WITNESSED BY

(Signature of Witness 1)

(Signature of Witness 2)

Must be
witnessed at
the same time
by two persons
authorised to
witness
Declarations.

(Full Name of Witness 1)

(Full Name of Witness 2)

(Address of Witness 1)

(Address of Witness 2)

(Occupation of Witness 1)

(Occupation of Witness 2)

ACCEPTANCE OF AN ENDURING POWER OF ATTORNEY



The person(s) or agency nominated as Attorney(s) is/are required to indicate their willingness to accept the power vested in them under this EPA and the legal obligations which go with that power. The Attorney(s) must sign the Statement of Acceptance in the space provided as soon as possible after the document conferring the authority has been completed.

1 I/WE.....

.....
 the person(s) appointed **to be the Attorney(s) under clause 1** of the instrument on which this acceptance is endorsed [or to which this acceptance is annexed]

1a I/WE.....

.....
 the person(s) appointed **to be the substitute Attorney(s) under clause 1a** of the instrument on which this acceptance is endorsed [or to which this acceptance is annexed]

ACCEPT THE APPOINTMENT AND ACKNOWLEDGE:

- that the power of Attorney is an Enduring Power of Attorney and
 - *(a) will continue in force notwithstanding the subsequent legal incapacity of the Donor;
 - *(b) will be in force only during any period when a declaration by the State Administrative Tribunal that the Donor does not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990*.

***one of these sub-paragraphs must be struck out**

- that I/we will, by accepting this Power of Attorney, be subject to the provisions of Part 9 of the *Guardianship and Administration Act 1990*.

SIGNED

1	Attorney appointed under clause 1 of the Enduring Power of Attorney	Attorney appointed under clause 1 of the Enduring Power of Attorney
	(Date)	(Date)

1a	Attorney appointed under clause 1a of the Enduring Power of Attorney	Attorney appointed under clause 1a of the Enduring Power of Attorney
	(Date)	(Date)

Disclaimer

The materials presented in this Kit are provided voluntarily as a public service. The information and advice provided is made available in good faith but is provided solely on the basis that readers will be responsible for making their own assessment of the matters discussed herein and that they should verify all relevant representations, statements and information. Neither the State of Western Australia ("State") nor any agency or instrumentality of the State, nor any employee or agent of the State or any agency or any instrumentality of the State shall be responsible for any loss or damage howsoever caused and whether or not due to negligence arising from the use or reliance on any information or advice provided in the Kit.

Further information

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