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GUIDELINE

EPA signatures and signing

Introduction

An Enduring Power of Attorney (EPA) is not valid until:

- it is explained to the Donor
- the witness certificate is completed by an **authorised person**
- the EPA is signed by the Donor
- the EPA is signed by all of the Attorneys (note: the Donor is responsible for getting attorneys to sign the EPA)

The Protection of Personal and Property Rights Act 1988 **Section 94A**, requires that:

1. the signature of the donor is witnessed by a person who is independent of the attorney and who is one of the following:
 - a. a lawyer
 - b. an officer or employee of a trustee corporation authorised by the corporation for the purposes of this subsection
 - c. a legal executive who meets the requirements of subsection (9)

Only authorised Public Trust staff can provide advice and witness the donor's signature.

Handy Tip

Signing an EPA is easy:

1. the trustee who advises the donor must witness the **donor's** signature.
2. **only** authorised trustees may witness a donor's signature.
3. the donor's witness is not able to witness the attorney's signature or sign on behalf of Public Trust
4. anyone who signs on behalf of Public Trust is **unable** to act as a witness
5. anyone over 18 with mental capacity can witness the attorney's signature. **If** the attorney doesn't come with the donor to the same signing appointment, the donor can **hold on** to the original EPA and organise the attorney signing him/herself.

Instructions for authorised witness

This form will help you explain the effects and implications of an EPA in relation to property to a **donor** before witnessing the donor's signature. You may give the explanation required by section 94A(6) of the Act by giving this form to the donor and following the instructions below. This explanation should be read in conjunction with the glossary of terms.

You must be one of the persons mentioned below to be authorised to witness an EPA. You may also need to be independent of the attorney and each successor attorney appointed by the EPA (see the definition of authorised witness in the glossary of terms). The persons who may witness an EPA are:

- a lawyer
- an officer or employee of a **trustee corporation** authorised by the corporation for the purpose
- a legal executive who is a member of and holds a current registration certificate issued by The New Zealand Institute of Legal Executives Incorporated, has at least 12 months' experience as a legal executive, and is employed by and under the direct supervision of a lawyer.

Take the donor through these notes and tailor your explanation to their individual needs and circumstances. You will also need to explain the effect of any aspect of the EPA that is not covered in the standard explanation.

Ask the donor whether they already have an EPA (a previous EPA). If they do, ask them if they want to cancel it under section B of the form. If they do, ensure that the attorney (and any successor attorney) named in the previous EPA is notified that it is revoked. Until they receive a notice of revocation, an attorney under a previous EPA may continue to act (see section 103C of the Act). However, even after the donor is mentally incapable, notice of revocation can be given by providing the attorney under the previous EPA with a copy of the new EPA in which section B specifies the previous EPA is revoked (see section 95A(2) of the Act).

You must certify that, before the donor signed the EPA, you:

- explained the effects of the EPA using these notes; and
- advised the donor of the matters referred to in the notes to the EPA form; and
- advised the donor of the donor's right to suspend or revoke the EPA; and
- have no reason to suspect the donor may be mentally incapable.

You must also certify that you believe on reasonable grounds that the donor understands the nature of the instrument, understands the potential risks and consequences of the instrument, and is not acting under undue pressure or duress.

A copy of this standard explanation should be given to the donor along with a copy of the signed EPA.

Note: *If you have any reason to suspect that the donor may be mentally incapable, you should not witness the donor's EPA. You should refer the donor to a relevant health practitioner for an assessment of whether he or she is mentally capable of setting up an EPA.*