

In the words of Forrest Gump, “life is like a box of chocolates, you never know what you’re gonna get.” It can all be very exciting when it’s all going well, but it can also get bad and ugly. Unfortunately, we have no control over the unpleasant things that happen in life, but we can be one step ahead by preparing for them.

So, ask yourself, what happens if I’m in an accident and unable to make decisions for myself? Perhaps you are suffering from an illness, have lost mental capacity, or simply need a helping hand with your affairs while you’re overseas. The hand you can turn to is that of the attorney appointed as your enduring power of attorney (EPA).

## What is an EPA?

An attorney is a personal representative responsible for making decisions during your lifetime. You appoint an attorney under a document known as an EPA to make significant decisions when you are unable to do so for yourself. There are two types of EPAs:

- ▶ Personal care and welfare
- ▶ Property

You can appoint the same or different people to be your attorneys for your welfare and property affairs. The most important thing is that you choose people that you have absolute confidence and trust in to keep your best interests at heart. In doing so, you will need to consult the person to ensure they are happy to be your attorney (they will also need to sign the EPA).

Commonly, we see spouses or children appointed, but you can appoint anyone of sound mind who is 20 years or older and not bankrupt.

Your attorney/s must always promote and protect your interests. Their job is to act with reasonable care and involve you in the decision-making process as much as possible.

## The finer details

- ▶ Personal care and welfare

When does it apply?	Who can you appoint?	What can they do?	What can they not do?
When you lose mental capacity <i>E.g., if you have dementia</i>	One attorney  One or more successor attorneys if your first attorney is unable to act – recommended  Person/s your attorney must consult or provide information to when they act	Promote and protect your welfare and best interests  Monitor your needs  Determine the residential care facility for you  Consider whether the care you are receiving is appropriate	Make relationship decisions like marriage or dissolution  Make guardianship or adoption decisions  Refuse standard medical treatment  Consent to experimental medical treatment  Consent to treatment designed to change behaviour  <i>Not an exhaustive list</i>

## ▶ Property

When does it apply?	Who can you appoint?	What can they do?	What can they not do?
<p>Either: 1) From the time you sign the EPA OR 2) When you lose mental capacity</p> <p><i>Option 1) can be useful if you are going overseas or are temporarily unable to deal with finances, e.g., if you are in an accident</i></p>	<p>One or more attorneys</p> <p>One or more successor attorneys if either or both your first attorney is unable to act - recommended</p> <p>Person/s your attorney must consult or provide information to when they act</p>	<p>Promote and protect your property interests</p> <p>Manage your bank accounts and investments</p> <p>Pay bills</p> <p>Sell any chattels or properties</p> <p>Keep records of each financial transaction they enter on your behalf</p>	<p>Benefit themselves or someone else, unless the EPA specifically authorises it or it is allowed by legislation</p> <p><i>Not an exhaustive list</i></p>

## Capacity - who decides?

Losing mental capacity is when you become incapable of making or communicating your own decisions. Don't worry, your attorney cannot simply decide you have lost your marbles and put you in care! Your attorney must have a medical certificate from a qualified medical practitioner to confirm you no longer have capacity before they can act on your behalf.

It is possible to regain mental capacity after a period of incapacity - for example, if you make a full recovery after a medically induced coma. You can take back control of your own affairs once a medical practitioner has confirmed you have regained capacity. The EPA will be suspended until such time as you lose capacity again.

An EPA can be changed or cancelled (revoked) at any time provided you have capacity. You will need to give your previous attorney/s notice if the EPA is changed or revoked. Your EPA otherwise comes to an end when you die and is replaced by your will (or the provisions of the Administration Act 1969 if you do not have a will).

## The Family Court

Your attorney can apply to the Family Court for guidance where necessary. This may arise where consultation with your named person/s has resulted in conflicting advice, or the attorney simply is unsure what option is in your best interests. The Court can also be asked to review your attorney if you or someone else has concerns about them.

If you lose capacity and do not have an EPA there will be no one with the legal authority to act on your behalf. This becomes particularly tricky if you need to be admitted to some form of residential care, as they require all clients to have EPAs. Where an EPA does not exist, an application needs to be made to the Family Court to have either a welfare guardian or property manager appointed. This process can be expensive, slow, and result in someone being appointed who you would not have chosen. It can also be stressful on family in times where urgent decisions need to be made.

At an already stressful time, why not make things easier on those you love by appointing an attorney? An EPA will give you the freedom to decide who will look out for you when you are unable to look out for yourself. That way, you can focus on the good, knowing the bad and the ugly are taken care of.