

Enduring Powers of Attorney

A guide to help you prepare for a possible loss of decision-making ability



Public Legal Education
and Information Service
of New Brunswick

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This guide provides information about enduring powers of attorney (EPAs). The legislation governing EPAs in New Brunswick is called the *Enduring Powers of Attorney Act*. It came into effect on July 1, 2020. Before that, EPAs were governed by the *Property Act* and the *Infirm Persons Act*. The *Enduring Powers of Attorney Act* also governs health care directives. Information about health care directives is provided in a separate publication.

This guide addresses the commonly asked questions about EPAs. It does not contain a complete statement of the law in this area. Anyone needing specific advice on their situation should consult a lawyer.

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A. Introduction

What is the purpose of this guide?

The purpose of this guide is to provide information about *enduring powers of attorney* (EPAs). An EPA is a legal document that you can use to prepare for the possibility that you may lose your *capacity* (your ability to make your own decisions) in the future. It allows you to appoint a person or persons (known as your *attorney(s)*) to make decisions and act on your behalf.

An EPA is an important part of planning for the future. It can help you protect your personal and financial wellbeing in the event that you lose your capacity, whether

due to an accident, an illness, dementia or another cause. It can also give you and your loved ones peace of mind.

It's never too early to plan ahead by making an EPA. A loss of capacity can happen at any time and without warning.

Most of the information in this guide is aimed at people who would like to know about what an EPA is and how you make one. The guide also includes information for people who made an EPA under the old legislation or in another province or country (see *Validity of existing EPAs*, page 22).

Form for making an EPA for personal care

At the end of this guide there is an optional form you can use to make an EPA for personal care in New Brunswick. Before you fill out the form, you should read the guide. You can find a fillable and printable version of the form on the PLEIS-NB website:

Enduring Power of Attorney for Personal Care

Note: Forms for the other two types of EPA (EPA for property and EPA for property and personal care) are not provided because the legislation requires that you get help from a lawyer to make those documents (see *Making an EPA*, page 17).

Are there other legal tools I can use to prepare for a possible loss of capacity?

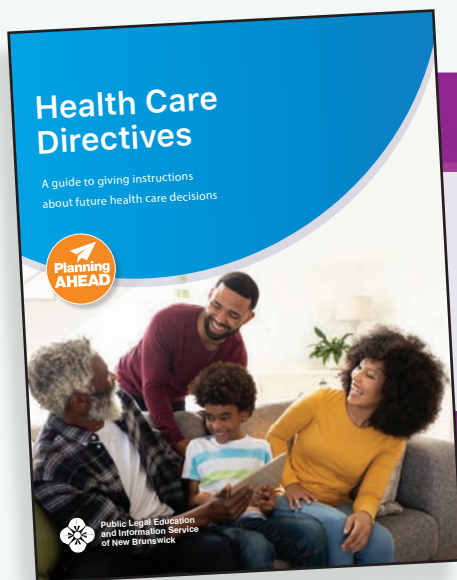
Along with an EPA, another legal tool you can use is a *health care directive*. A health care directive allows you to give instructions about future health care decisions. Unlike an EPA, a health care directive does not allow you to appoint someone to make decisions on your behalf.

In New Brunswick, EPAs and health care directives are both governed by the same legislation, which is called the *Enduring Powers of Attorney Act*.

Know your options

This guide and the guide on health care directives are intended to help you become familiar with the legal tools you can use to plan for a time when you may no longer be able to make your own decisions.

You have a number of options. If you wish, you can make both an EPA and a health care directive. Or you can make only an EPA or only a health care directive. Or you may decide not to make either document. The decision is up to you.



Guide on health care directives

You can find more information about health care directives in the PLEIS-NB guide called *Health Care Directives*.

What is capacity?

Throughout this guide, there are references to *capacity*. For example, the guide explains that you need capacity in order to make or revoke (cancel) an EPA, and that your attorney can act on your behalf when you lack capacity.

Capacity is the ability to make your own decisions. You have capacity if, when you are making decisions, you are able to understand the relevant information and appreciate the consequences that may arise as a result of the decisions (the “reasonably foreseeable” consequences).

In other words, you have capacity if you can **understand and weigh the options** when you are making decisions. If you cannot do this, you lack capacity.

It’s important to keep in mind that capacity is not “all or nothing”. You can have the capacity to make some kinds of decisions but not others.

For example, you could have the capacity to make decisions about personal matters but not finances.

Also, capacity can change over time. You could lose the capacity to make decisions about something and then regain that capacity at a later point.

The legislation on EPAs says that everyone is presumed to have capacity unless it is determined otherwise. This means that you can continue making your own decisions until someone determines that you lack capacity.





B. Enduring Powers of Attorney

1. General information

What is an enduring power of attorney (EPA)?

An *enduring power of attorney* (EPA) is a legal document that allows you to give another person or persons, known as your *attorney(s)*, the authority to make decisions and act on your behalf when you lack capacity.

» When you make an EPA, you are known as the **grantor**.

» The person you appoint is known as your **attorney**.

Note: Your attorney does **not** have to be a lawyer.

You can give your attorney(s) authority over your property/finances, your personal care, or both. EPAs are governed by legislation called the *Enduring Powers of Attorney Act*.

Why are they called “enduring”?

They are called “enduring” powers of attorney because the authority you give to your attorney(s) continues or endures if you lose your capacity. For other types of powers of attorney, the attorney’s authority ends when the grantor loses capacity. These other types of powers of attorney are not governed by the *Enduring Powers of Attorney Act* and are not covered in this guide. If you wish to make one, you should consult a lawyer.

Who can make an EPA?

Anyone who has the capacity to make decisions about an EPA can make one. In other words, you can make an EPA if you can understand and weigh the options for the decisions involved, such as who to appoint as an attorney and what authority to give them.

What are the benefits of making an EPA?

An EPA allows you to choose who will make important decisions about your life if you lose your capacity. These decisions include how your money will be spent, where you will live, the kinds of health care treatments you will receive, and so on.

If you don't make an EPA, the court may need to appoint someone as your legal guardian. If this happens, you won't get to choose who your legal guardian will be. Someone, such as a family member or friend, will apply to the court, and the court will decide whether that person may act as your legal guardian. This can be a time-consuming and expensive process. If no one you know is able and willing to apply to the court to be appointed as your legal guardian, the Public Trustee may be asked to step in.

Who should I appoint as an attorney?

For information about what to consider when choosing an attorney, see *Choosing someone to act as an attorney*, page 7.

What are the different options for EPAs?

When you make an EPA, you have options regarding the type of attorney to appoint and the type of EPA to use. Your choices will depend on your needs and preferences.

There are two types of attorneys you can appoint:

- **Attorney for property** – This is someone who makes decisions and acts on your behalf in relation to your finances and property (house, land, vehicles, etc.). Depending on what you decide, your attorney for property can start acting either as soon as your EPA is complete or only when you lack capacity (see *When can my attorney start acting?*, page 13).
- **Attorney for personal care** – This is someone who makes decisions and acts on your behalf in relation to your health care and other personal care matters. Your attorney for personal care cannot start acting until you lack capacity.

The type of EPA you will use depends on which type(s) of attorney you are appointing:

- If you are appointing an attorney for property, you use a document known as an **EPA for property**.
- If you are appointing an attorney for personal care, you use a document known as an **EPA for personal care**.
- If you are appointing both an attorney for property and an attorney for personal care, you can either use a combined document known as an **EPA for property and personal care** or you can use two separate EPAs (an EPA for property and an EPA for personal care).

You also have options regarding the number of attorneys you appoint. You can appoint one person as both your attorney for property and your attorney for personal care or you can appoint two different people – or you can appoint two or more people to act together as attorneys for property, attorneys for personal care, or both (see *Consider whether to appoint more than one attorney*, page 7).

If I make an EPA, when would I lose the power to make my own decisions?

If you make an EPA, you do not immediately lose the power to make your own decisions.

Use of the term attorney

Sometimes the rules are the same for attorneys for property and attorneys for personal care. But sometimes they are different.

When the rules are the same, this guide uses the term **attorney**.

When the rules are different, this guide uses the more specific terms – **attorney for property** and **attorney for personal care**.

As long as you have capacity, you can continue to make your own decisions and you can revoke (cancel) your EPA if you wish. If you lose your capacity, your attorney(s) will be able to make decisions on your behalf (see *When can my attorney start acting?*, page 13).

Depending on your EPA, your attorney for property may be able to act on your behalf *before* you lose capacity. However, as long as you have capacity they will have to follow your instructions (see *How will my attorney make decisions on my behalf?*, page 10). In other words, they will be able to do things for you, but they won't be able to make decisions on your behalf (unless you ask them to).

2. Choosing someone to act as an attorney

What to consider when appointing an attorney

□ **Appoint someone you know and trust**

The skills and attributes you are looking for in an attorney may vary depending on whether you are appointing an attorney for property or an attorney for personal care, or both. In any case, you should consider appointing:

- someone you know well and trust – for example, your spouse or partner, another family member or a close friend;
- someone who has the necessary skills – for example, your attorney for property should be someone who has experience handling money;
- someone who will be available when called on to act on your behalf.

□ **Consider whether to appoint more than one attorney**

You can appoint more than one attorney if you wish. You can do this by appointing two or more people who would act together as your attorneys for property or your attorneys for personal care (or both). You can also do this by appointing different people to act as your attorney for property and your attorney for personal care.

□ **Decide how your attorneys will make decisions**

If you appoint two or more attorneys, you can say in your EPA how they will make decisions. For example, if you appoint two or more attorneys for personal care, you can say that they must make decisions together (by *unanimous agreement*) or that they can make decisions separately.

What happens if my EPA doesn't say how my attorneys will make decisions?

If you appoint two or more people as the same type of attorney and you don't say how they will make decisions, they will have to make all decisions by unanimous agreement.

If you appoint different people as your attorney(s) for property and your attorney(s) for personal care and you don't say how they will make decisions that affect both property/finances and personal care, your attorney(s) for personal care will have the final say.

□ Appoint alternate attorney(s)

Whether you appoint one attorney or more than one, you can also appoint one or more alternate or “back-up” attorneys. An alternate attorney replaces an attorney who has resigned or has stopped acting for any reason. It is a good idea to appoint at least one alternate attorney. This will ensure that if your attorney can no longer act on your behalf and you don’t have the capacity to make a new EPA, an alternate attorney of your choosing can take their place.

□ Determine if the person you want as your attorney is willing to act

Before you appoint someone, you should talk to them and make sure they are willing

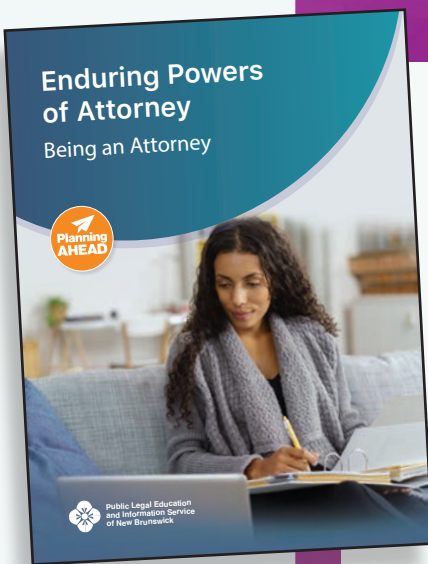
Look for team players

If you appoint more than one attorney, make sure they are team players. Even if they are responsible for different areas, they will have to cooperate with each other.

and able to take on the responsibility of acting as your attorney. If you appoint them in your EPA and they refuse to act as your attorney after you have lost the capacity to make a new EPA, a family member or friend may have to apply to the court to become your legal guardian.

Guide for attorneys

You should make sure that the person you are hoping to appoint understands the role and duties of an attorney and is willing to accept the responsibility. To help you do this, PLEIS-NB has created a separate guide called *Enduring Powers of Attorney: Being an Attorney*. It is a good idea to give a copy of that guide to the person. It has more detailed information on this topic, and includes forms that an attorney can use to keep records.





□ Consider your options if you have no family or friends to appoint

If you don't have a family member or trusted friend, you may be able to appoint the Public Trustee as your attorney. You must apply to do this, by completing a **form** that is available on the Public Trustee Services webpage of the New Brunswick Legal Aid Services **website**. The Public Trustee charges a fee for this service.

Another option is to appoint a financial institution, such as a trust company, as your attorney for property. You should consult a lawyer before doing this, and you should also consult a lawyer if a financial institution asks you to use their form to make an EPA.

□ Know the rules about who you can appoint

When you are deciding who to appoint as an attorney, keep these rules in mind:

- You cannot appoint someone who has been convicted of an offence that involves dishonesty, such as fraud or theft, unless you state in your EPA that you are aware of the conviction.
- You cannot appoint someone who is paid to provide health care services or support services to you unless the person is your spouse, common-law partner or relative.
- If you appoint someone who is not yet 19 years old, they will not be able to act as your attorney until they turn 19.
- If you appoint your spouse or common-law partner and you later separate from them, they will not be able to act as your attorney unless your EPA says that they can do so even if you separate.
- You cannot appoint someone as your *attorney for property* if they have filed for bankruptcy and have not finished going through the bankruptcy process (in other words, they are an “undischarged bankrupt”).

3. Role of an attorney

This section provides information for people who are considering whether to make an EPA. Information for people who have been appointed as an attorney in an EPA can be found in another PLEIS-NB publication: *Enduring Powers of Attorney: Being an Attorney*.

What is my attorney required to do?

Your attorney is required to:

- act honestly and in good faith;
- act with reasonable care;
- do only what you have authorized them to in your EPA;
- give notice when they start to act (if your EPA requires them to do so);
- keep records of their actions.

How will my attorney make decisions on my behalf?

If you lack capacity and your attorney is making a decision on your behalf, your attorney is required to consult with you, if it is reasonable to do so. They must then use the following decision-making process:

1. If you gave your attorney instructions when you had capacity and the

instructions are relevant to the decision, your attorney must follow the instructions. This includes instructions in the EPA or in a health care directive.

2. If you did not give your attorney any relevant instructions, your attorney must make the decision that reflects your current wishes, as long as they are reasonable.
3. If your attorney cannot determine what your current wishes are, or your current wishes are unreasonable, your attorney must make the decision that you would make if you had capacity. Your attorney must consider your values and beliefs when they do this.
4. If your attorney doesn't know what decision you would make, your attorney must make the decision that they believe is in your best interests.

Your attorney for property should not use this decision-making process if you still have the capacity to make decisions about your property and finances. In that situation, your attorney for property should consult with you and follow your instructions.



What kinds of authority can I give my attorney?

You can state in your EPA what you want your attorney to do on your behalf – in other words, what their *authority* will be. You can give them *general* authority (authority over all areas) or *limited* authority (authority only over certain areas). Your attorney can only do what you have given them authority to do.

If you give your **attorney for property** general authority, they will have authority over all areas of your property and finances.

For example, they will be able to do the following on your behalf:

- pay your bills;
- manage your banking and investments;
- do your taxes;
- buy and sell property.

If you give your **attorney for personal care** general authority, they will have authority over all areas of your personal care. This includes:

- health care;
- diet;
- clothing;
- accommodation;
- support services;
- education;
- employment;
- recreation;
- social activities.

When you are deciding what authority to give your attorney, keep in mind that if you give them limited authority, there will be things they cannot do for you and it may become necessary for a family member or friend to apply to the court to become your legal guardian.

For example, if you do not give your attorney for property the authority to sell your business assets and it becomes necessary to do so, someone may have to become your legal guardian.

What will my attorney not be allowed to do?

Your attorney will not be allowed to:

- make, change or revoke (cancel) a will on your behalf;
- do something that is against the law or fail to do something that is required by law.

Also, your attorney will not be allowed to do the following things unless your EPA specifically gives them authority:

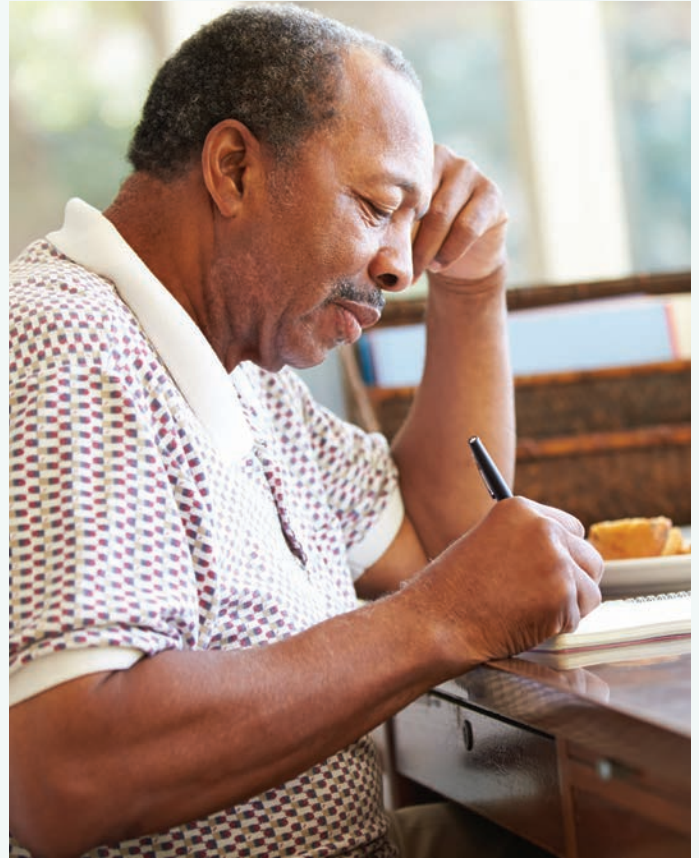
- give gifts on your behalf;
- delegate their authority as an attorney to another person.

Can I give my attorney instructions?

Your EPA can include general or specific instructions for your attorney, and conditions and restrictions on their authority.

For example, you could say that they must not do a certain thing or that they must consult with a certain person when making a certain kind of decision.

If you are appointing an attorney for personal care, your EPA can include instructions about the health care decisions they may make on your behalf. However,



you may wish to consider making a separate health care directive instead. Health care directives are easier to re-do if you change your mind about something.

Your instructions to your attorney do not have to be in your EPA or your health care directive. You can also give instructions in a separate document or orally. However, it is a good idea to put all of your instructions in your EPA or health care directive, so it is easy for your attorney to keep track of them.

Do I have to compensate (pay) my attorney?

You do not have to compensate your attorney. However, acting as an attorney can be a time-consuming responsibility, and you can choose to compensate your attorney if you wish. If you choose to do this, you must state in your EPA that your attorney is entitled to compensation. If you don't, they will not be allowed to receive any. You should also state the rate of compensation.

Be sure to discuss the compensation and your expectations when you are asking someone if they would be willing to act as your attorney (see *Determine if the person you want as your attorney is willing to act*, page 8). This can prevent future conflict.

Can I reimburse my attorney for expenses?

Your attorney will be allowed to be reimbursed for reasonable expenses they incur while carrying out their duties, unless your EPA says otherwise.

When can my attorney start acting?

The rules about when an attorney can start acting (in other words, *exercising their authority*) are different depending on whether they are acting as an attorney for property or an attorney for personal care.

Your **attorney for property** can start acting as soon as your EPA is completed, unless your EPA says otherwise. For example, your EPA could say that your attorney for property can act only when you lack the capacity to make decisions about property and finances. In that case, your attorney will not be able to act until someone has assessed your capacity and determined that you lack the capacity to make those decisions.

Your **attorney for personal care** can start acting only when someone has assessed your capacity and determined that you lack the capacity to make decisions about personal care.

Who will assess my capacity?

In your EPA, you can name the person who will assess your capacity to make decisions about property/finances or personal care. If you don't name anyone, or if the person you name is unable or unwilling to do the assessment, any doctor or nurse practitioner can do it.

However, it is important to note that when a health care decision needs to be made and a health care provider is involved, that person will assess your capacity to make the decision, even if you named someone else in your EPA. This is the case even if someone has already assessed your capacity to make health care and other personal care decisions.

How will my capacity be assessed?

The way your capacity will be assessed depends on the situation:

- If your capacity is being assessed to determine whether your attorney can start acting on your behalf, the person you named in your EPA (or a doctor or nurse practitioner) will assess your capacity. They will determine which matters (if any) you lack the capacity to make decisions about. Your attorney will then be able to act on your behalf in relation to those matters.
- If your capacity is being assessed because a decision needs to be made about health care, the health care provider will assess your capacity.

They will determine whether you have the capacity to make the decision. If you don't, your attorney for personal care will be able to make the decision on your behalf.

When does my attorney stop acting?

Your attorney stops acting on your behalf when you die, unless their authority has ended before then. For example, your attorney's authority will end if you revoke your EPA or if your attorney resigns. Their authority will also end if they are no longer eligible to be appointed as an attorney (see *Know the rules about who you can appoint*, page 9).



Choosing who will assess your capacity

It is a good idea to name someone who knows you well as the person who will assess your capacity. If you wish, you can name your attorney.

4. Monitors and misuse of EPAs

What is a monitor?

A monitor is a person you appoint in your EPA to provide oversight of the conduct of your attorney(s). Your monitor may:

- visit and communicate with you at any reasonable time;
- request records from your attorney;
- apply for a court order, such as an order requiring your attorney to provide records or an order terminating (ending) your attorney's authority.

If your monitor has reason to believe that your attorney is taking advantage of you or is otherwise misusing their authority, your monitor must tell you and the other attorneys appointed in your EPA (if any).

Do I have to compensate my monitor?

You do not have to compensate the person you name as your monitor, but you can if you wish. If you choose to do this, you must state in your EPA that your monitor is entitled to compensation, and you should also state the rate of compensation.

What can I do if I am concerned my attorney might be misusing their authority?

If you think your attorney might be taking advantage of you or otherwise misusing their authority, you can:

- ask the attorney to give you the records they have kept, and review them or ask someone else to review them;
- ask your monitor or other attorneys (if any) to get the records and review them;
- revoke the EPA (see *Revoking and changing an EPA*, page 21);
- consult a lawyer.

You can also contact the Adult Protection Program, which is run by the Department of Social Development. You can reach them by calling the 24-hour toll-free line: 1-833-733-7835. Depending on the circumstances, they may be able to help.

If you lack capacity, you may not be aware that your attorney is misusing their authority. That's why it is important to appoint someone as a monitor. If you do not have a monitor and you lack capacity, a family member or friend can apply to the court to have the conduct of your attorney reviewed.

Can my financial institution do anything if they suspect my attorney is misusing their authority?

Yes, your financial institution may:

- refuse to follow instructions given by the attorney;
- suspend or limit the withdrawal and transfer of funds from your accounts.

If your financial institution takes these actions they must notify you and your monitor and other attorneys (if any).

Why have a monitor?

A monitor can help to safeguard your well-being in the event that your attorney is misusing their authority.

What are the consequences if my attorney is misusing their authority?

The consequences for your attorney misusing their authority may range from termination of their authority to criminal prosecution.

A **financial institution** is a bank, credit union, loan or trust company, securities adviser or dealer, insurer, or insurance agent or broker.



5. Making an EPA

Can I make an EPA on my own or do I need help from a lawyer?

Many people wonder whether they can make an EPA on their own, without help from a lawyer. Whether or not you can do so depends on what kind of EPA you wish to make. The chart below explains the differences.

As the chart shows, you need help from a lawyer to make an EPA for property or an EPA for property and personal care. This is because the legislation says that an EPA that

appoints an attorney for property (or both types of attorney) must include a lawyer's statement – a statement from a practising New Brunswick lawyer confirming that certain requirements have been met.

On the other hand, you do not need help from a lawyer to make an EPA for personal care. This document can be signed by two non-lawyer witnesses instead of including a lawyer's statement. However, it is still a good idea to consult a lawyer even if you only want an EPA for personal care.

Type of EPA	Requires help from a lawyer?	Explanation
EPA for property	Yes	EPA must include a lawyer's statement
EPA for property and personal care	Yes	EPA must include a lawyer's statement
EPA for personal care	No (but recommended)	EPA can either include a lawyer's statement or be signed by two witnesses

Note: If you make two separate EPAs, you can make your EPA for personal care without a lawyer. But if you combine them in one document, you will need help from a lawyer.

What are the requirements for a valid EPA?

To be valid, your EPA must:

- be a written document;
- be signed and dated by you or by another person on your behalf;
- be signed by two witnesses (or include a lawyer's statement) if it is an EPA for personal care;
- include a lawyers' statement if it is an EPA for property or an EPA for property and personal care.

In addition, you must have the *capacity* to make the EPA – in other words, the ability to understand and weigh the options (see *What is capacity?*, page 3).

If a lawyer is helping you with your EPA, the lawyer will make sure that you have capacity. If you are making an EPA for personal care without help from a lawyer, you should make sure that your witnesses can confirm that you have capacity.

What if I have capacity but I'm unable to sign my EPA?

If you have capacity but are unable to sign and date your EPA, you can have someone else do so on your behalf. The person:

- must be at least 19 years old;
- cannot be your attorney;
- cannot be the spouse, common-law partner or child of your attorney.



Who can witness an EPA for personal care?

If you are making an EPA for personal care without help from a lawyer, two people must witness your signature and sign the EPA. The two witnesses:

- must be at least 19 years old;
- cannot be your attorney for personal care;
- cannot be the spouse, common-law partner or child of your attorney for personal care.

How do I make an EPA for personal care on my own?

If you want to make an EPA for personal care without help from a lawyer, you can do so by creating a document that appoints your attorney(s) for personal care, describes what authority they will have, and sets out any instructions you wish to provide (see *Can I give my attorney instructions?*, page 12).

Note: You are under no obligation to use any particular form to make an EPA for personal care. You can use the form in this guide or another form, as long as it meets the requirements of the New Brunswick *Enduring Powers of Attorney Act*.

Usually people who make an EPA for personal care without help from a lawyer use a form. There is a form at the end of this guide that you can use if you wish. A fillable and printable version of that form is available on the PLEIS-NB website.

You can also use a form from the internet or another source. However, you should be aware that such forms may reflect the law of another province or country and may not meet the requirements of the New Brunswick legislation.

Whichever form you use, remember that your EPA for personal care is not complete until you have signed and dated it (or another person has done so on your behalf) and two witnesses have signed it.

Does this guide include a form for making an EPA for property?

No, this guide does not include a form for making an EPA for property. That's because you need help from a lawyer to make this document, and lawyers make customized EPAs rather than using a form like the one in this guide. For the same reason, this guide does not include a form for a combined EPA for property and personal care.

Can I use a form provided by my bank to make an EPA?

Sometimes banks ask their clients to use a form from the bank to make an EPA. You should consult a lawyer before doing this. The form may not be suitable for your needs. And if you already have an EPA for property (or an EPA for property and personal care), making a second EPA with a bank form will likely affect your existing EPA. This is because when someone has two or more EPAs that are inconsistent with each other, the most recent one has priority.

What should I do with my completed EPA?

When you have completed your EPA, you should keep it somewhere safe and make sure your attorney can access it when they need it. For example, you could:

- keep it in a secure place and tell your attorney where it is;
- give it to your attorney and ask them to keep it in a secure place;
- give it to another person you trust, ask them to keep it in a secure place, and give them instructions about when they should give it to your attorney.

You should make a copy of your EPA and put it somewhere where you can easily



find it. Also, if it is an EPA for personal care (or an EPA for property and personal care) you should:

- give a copy to your doctor or nurse practitioner;
- take a copy with you if you go to the hospital.

If it is an EPA for property (or an EPA for property and personal care) you should ask your financial institutions, such as your bank and investment advisor, about their process for recognizing EPAs.

6. Revoking and changing an EPA

Can I revoke my EPA?

Yes, you can revoke (cancel) your EPA, as long as you have the capacity to do so.

There are two ways to do this:

- You can state in writing that you are revoking it, either in a new EPA or in a separate document.
- You can destroy it, or get someone else to destroy it, with the intention of revoking it.

Who should I notify if I revoke my EPA?

If you revoke your EPA, you should notify your attorney and anyone who has dealt with them, such as your bank.

If I make a new EPA should I revoke my old one?

If you make an EPA and you already have an EPA of the same type, you should revoke the old one. If you don't, both EPAs will be in effect at the same time. Your attorney will have to figure out which parts of the two EPAs are different from each other and follow the new one on those parts. This will likely be difficult to do.

Can I change my EPA?

Yes, you can change your EPA, as long as you have the capacity to do so. However, it's a good idea to replace your EPA rather than changing it. An EPA that has been changed can create confusion, and it is just as easy to make a new one because the requirements for a valid change are the same as the requirements for a valid EPA (see *What are the requirements for a valid EPA?*, page 18). If you do change your EPA, you should notify your attorney and anyone who has dealt with them.

Can signing a hospital form change my EPA?

Some hospital forms may have instructions regarding health care that are different from the instructions you provided in your EPA (if any). If you sign a form like this, the instructions in it become your most recent instructions, and your attorney for personal care will have to follow them. As a result, you should be cautious about signing hospital forms. Before you do so, be sure to thoroughly read the documents you are asked to sign.

7. Validity of existing EPAs

I made a power of attorney before July 1, 2020. Do I need to replace it?

The legislation in New Brunswick on EPAs changed on July 1, 2020, when the *Enduring Powers of Attorney Act* came into effect. If you made a valid power of attorney before that date and it is “enduring” (your attorney is authorized to act when you lack capacity or are “mentally incompetent”), it remains valid and is considered an EPA under the new legislation. You don’t need to make a new EPA.

If you aren’t sure whether your power of attorney is an EPA, consult the lawyer who helped you make it. And even if you’re sure it is an EPA, it’s a good idea to ask the lawyer whether they recommend making a new one.

Do I need a New Brunswick EPA if I have one from somewhere else?

If you have an EPA (or similar document) from another province or country and it was valid in that place, it is considered a valid EPA in New Brunswick. You don’t need to make a New Brunswick EPA.

However, if you have questions about your situation, it is a good idea to consult a lawyer. For example, you may wish to reconsider who you appointed to act as your attorney. Individuals that you named in another province or country may not be able to make timely decisions on your behalf in New Brunswick.

Changes in terminology

If you made an EPA before July 1, 2020, it will likely be titled “power of attorney” rather than “enduring power of attorney”. Also, it might use terminology from the old legislation, such as “mental incompetence” (rather than “lack of capacity”) and “donor” or “principal” (rather than “grantor”).

C. Helpful Resources and Websites

Public Legal Education and Information Service of New Brunswick (PLEIS-NB)

Review the resources in the “Planning Ahead” section of the website.

www.legal-info-legale.nb.ca

Financial and Consumer Services Commission (FCNB)

Review the information on preventing fraud and read the fact sheet *Understanding the Power of Attorney*.

www.fcnb.ca

New Brunswick Legal Aid Services Commission: Public Trustee

Check out the services offered by the Public Trustee, including acting as an attorney in cases where the grantor has no one willing and able to act for them. Application forms are on the Public Trustee Services [webpage](#).

www.legalaid-aidejuridique-nb.ca

Forum of Federal, Provincial and Territorial Ministers Responsible for Seniors

Review the information in the booklet *What every older Canadian should know about powers of attorney (for financial matters and property) and joint bank accounts*.

www.canada.ca

New Brunswick Seniors’ Advocate

Review the information in the “What We Do” section of the website (under “About”).

Toll Free: 1-888-465-1100

www.nbseniorsadvocate.ca

New Brunswick Adult Protection Program

Toll Free: 1-833-733-7835

www.socialsupportsnb.ca

Enduring Power of Attorney for Personal Care

*This is a form for making an enduring power of attorney for personal care in accordance with the Enduring Powers of Attorney Act in New Brunswick. You cannot use this form to appoint an attorney for property. If you would like to make an enduring power of attorney that appoints an attorney for property, you will need help from a lawyer. Before you fill out this form, you should read the PLEIS-NB guide called **Enduring Powers of Attorney**.*

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

A. Appointment of attorney

If you would like to appoint one person as your attorney for personal care, check the first box. If you would like to appoint two or more persons as your attorneys for personal care, check the second box.

I appoint the following person to act as my attorney for personal care in accordance with the *Enduring Powers of Attorney Act*:

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

I appoint the following persons to act as my attorneys for personal care in accordance with the *Enduring Powers of Attorney Act*:

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

A. Appointment of attorney *(continued)*

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

B. Appointment of alternate attorney *(optional)*

I appoint the following person to act in place of the attorney for personal care (or one of the attorneys for personal care) I appointed above if the attorney for personal care resigns or the authority of the attorney for personal care is terminated:

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

C. Authority of attorney

Scope of authority *(check one)*

I give my attorney(s) for personal care authority to act on my behalf in relation to all personal care matters, including health care.

I give my attorney(s) for personal care authority to act on my behalf in relation to the following personal care matters:

C. Authority of attorney *(continued)*

Conditions, restrictions and instructions *(optional)*

The authority of my attorney(s) for personal care is subject to the following conditions, restrictions and instructions:

When my attorney may exercise authority

My attorney(s) for personal care may make a decision on my behalf in relation to health care provided by a health care provider only if the health care provider assesses my capacity and determines that I lack the capacity to make the decision.

My attorney(s) for personal care may make decisions and otherwise exercise authority on my behalf in relation to any other personal care matter only if the following person assesses my capacity and determines that I lack capacity with respect to the matter:

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

D. Decisions by attorneys

If you appointed one attorney for personal care in section A, skip to section E. If you appointed two or more attorneys for personal care in section A, check one of the following boxes.

- My attorneys for personal care must make decisions by unanimous agreement.
- My attorneys for personal care may make decisions as follows:

E. Notice (optional)

My attorney(s) for personal care must make reasonable efforts to give notice to the following person(s) when my attorney(s) for personal care begin(s) to act:

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

F. Appointment of monitor (optional)

I appoint the following person as my monitor:

Name _____

Address _____ City/Prov. _____

Postal Code _____ Tel. _____ Email _____

G. Revocation *(optional)*

I revoke all of my previous enduring powers of attorney for personal care.

H. Signatures

Sign and date the form in the presence of two witnesses. If you are unable to sign and date the form, someone else can do so on your behalf. They must do this at your direction, in your presence and in the presence of two witnesses.

The following people cannot sign on your behalf and cannot act as a witness: a person who is under the age of 19; a person you appointed as an attorney for personal care; the spouse, common-law partner or child of a person you appointed as an attorney for personal care.

Name *(grantor or person signing on grantor's behalf)*

Signature

Date

Name *(witness 1)*

Address

Signature

Date

Name *(witness 2)*

Address

Signature

Date