

# Conversations

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## Types of enduring power of attorney

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**T**here are two types of enduring powers of attorney, one for personal care and welfare and one for property.

It is recommended that you have both of these in place. You can appoint the same person, or different people, to act for you when the particular needs arise.

**Personal care and welfare**  
The person who you appoint as your personal care and welfare attorney would be responsible for making decisions about you "personally".

This could include, for example, where you live and when you require rest home care, consenting to medical treatment and even deciding the clothes you wear.

It is important to note that a personal care and welfare attorney can only be used if you have lost mental capacity.



You can only appoint one person at a time to be your attorney for personal care and welfare, but you can appoint a substitute attorney if that first attorney was unable to act for you for some reason.

**Property**  
A property attorney would manage your financial affairs and deal with your property on your behalf.

You would need to choose

whether this comes into effect immediately and can be used while you are mentally capable (in accordance with your instructions, of course) and will continue to remain in force if you lose mental capacity, or whether it can only be used if you lose mental capacity.

You can appoint more than one person to be your attorney for property matters if you wish and you can also appoint a substitute

attorney.

You can also state whether you want your attorney to benefit any person other than yourself - for example, supporting your minor children.

There are many additional conditions you can impose on your attorney, including the requirement to consult or provide information to other nominated people.

If you lose mental capacity without having these documents in place, those who care for you and want to make decisions for you would need to apply to the court to be appointed as a property manager and/or a welfare guardian.

This is expensive, time consuming, and causes even more stress in what is generally already a highly stressful and emotional time for your family. Even more concerning is that you would have no control over who applies to the court and the court could appoint someone to take care of you and your finances that you would not have chosen yourself.

Your enduring powers of attorney are required by law to be

witnessed by a lawyer, an appropriately qualified registered legal executive, or an employee of a trustee corporation that is independent of the attorney, so you are unable to prepare these documents yourself.

Enduring powers of attorney are not automatically revoked by marriage, separation or divorce.

As it is unlikely you will want your ex to still have powers to make decisions about your affairs you need to revoke your enduring powers of attorney upon separation.

The revocation must be completed in writing and delivered to the person appointed as your attorney.

There is a specific form for this notice and a new enduring power of attorney does not automatically revoke an earlier one.

! Column courtesy of Rainey Collins Lawyers phone 0800 783 434

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! If you have a legal inquiry you would like discussed in this column email Alan on [alanknowsley@raineycollins.co.nz](mailto:alanknowsley@raineycollins.co.nz)