

EPOA Checklist SA



This checklist will guide you through the process of making an enduring power of attorney in South Australia. It will show you what to think about and connect you to relevant information.

HOW TO USE THIS CHECKLIST



Think about each point before you start to complete your enduring power of attorney form and make notes of your preferences, questions and decisions.



Tick the boxes once you've completed each step.



A PDF version is also available for you to download should you want to go through this process offline.

1 GET READY

Background information and resources to help you research and prepare to make an EPOA

2 GET STARTED

Practical information you will need to consider before completing the EPOA form

3 COMPLETE THE FORM

Helpful information to help you complete the EPOA form

4 SIGN AND WITNESS

Information about how to correctly sign and witness your EPOA

5 REGISTER AND STORE

Information about registration requirements and tips on where and how to store your EPOA

6 CHANGING OR REVOKING YOUR EPOA

Information to assist you should you want to change or revoke your EPOA

Disclaimer: Please be aware this checklist is not a substitute for legal advice.

1 GET READY

Knowing as much as possible about an enduring power of attorney (EPA) before you start to make one will make the process easier.

☐ Have you read the information about EPAs? Do you know where you can find out more?

- Compass – [Introduction to enduring power of attorney](#) webpage
- Compass – [Powers of attorney in South Australia](#) webpage
- South Australian Government's – [Power of attorney](#) webpage
- The Australian Guardianship and Administration Council's – [You decide who decides](#) booklet on the Compass website (PDF, 2.5MB)
- Legal Services Commission of South Australia – [Power of attorney](#) webpage
- Legal Services Commission of South Australia – [Power of attorney](#) brochure (PDF, 379KB)
- Office of the Public Advocate – [About enduring power of attorney](#) webpage

☐ Do you understand the key terms that relate to powers of attorney in South Australia?

If you're unsure about any of these, visit the Compass [Helpful terms to know](#) webpage.

- **Donor or principal** (you, the person making the power of attorney)
- **Donee or attorney** (the person you appoint under a power of attorney to make decisions for you)
- **Legal capacity** (your ability to understand facts about your decisions, weigh up the consequences—i.e. the risks and benefits—of making decisions, and communicate consistent choices)
- **Legally incapacitated** (you become unable to make and communicate your own decisions)
- **General power of attorney** (a legal document that authorises a donee to make financial decisions on your behalf while you still have capacity)
- **Enduring power of attorney** (a legal document that authorises a donee to make financial affairs on your behalf if you lose capacity)
- **Jointly** (2 or more donees must all make decisions together)
- **Severally** (2 or more donees can each make decisions on their own)
- **Jointly and severally** (2 or more donees can make decisions either on their own or together)
- **Revocation** (cancellation of a previous act, such as making an EPOA)

☐ Are you confident that you understand the difference between South Australia's general power of attorney and enduring power of attorney (EPA) documents?

- Compass – [Powers of attorney in South Australia](#)
- Legal Services Commission of South Australia – [Powers of attorney](#) webpage
- Government of South Australia – [Power of attorney](#) webpage

☐ **Have you decided that what you need is a power of attorney that will cover your financial decisions if you lose capacity to make them yourself?**

- If so, an EPA is the right option for your needs.
- If you want your financial decisions to be looked after while you still have capacity (for example, if you are in hospital or travelling overseas), you should make a general power of attorney (which requires a P1 form in South Australia). The form and guidance notes are available from the [Land Services South Australia](#) website.

☐ **Because your EPA cannot authorise your donee to make decisions about your lifestyle, living arrangements or health care decisions, do you also want a future planning tool that will cover these for you?**

- If so, you need to make an **advance care directive**, which is a record of your wishes, preferences and instruction for these matters, should you become unable to make the decisions yourself.
- The advance care directive has replaced the old enduring power of guardianship, medical power of attorney, and anticipatory direction future planning options.
- As part of your advance care directive, you can choose to appoint a **substitute decision maker**, who will be authorised to make health care, end of life and other decisions for you if you cannot do so.
- Find out more about your future planning options on the Government of South Australia's [Advance care directives](#) webpage.

If you've ticked all those boxes, you should feel confident you have all the information you need. Move on to the next list.

☐ **All of the following three statements must be true for you to be able to make your EPA:**

1. You are over 18 and
2. you understand the effect of making a power of attorney and
3. you currently have capacity to make your own decisions.

Help is available to people who are making their EPAs. The next list will help ensure that you know who you can contact for advice and help.

☐ **Getting legal advice from a solicitor about making your EPA is highly recommended. They can also help you complete the EPA form. Fees will apply.**

- If you don't currently have a lawyer, you can find one via the [Law Society of South Australia](#) website.

☐ **You may also be able to get information and help from these services:**

- [Public Trustee](#), which provides EPA services to eligible concession holders
- [Legal Services Commission of South Australia's](#) Legal Helpline, phone 1300 366 424

Now you should be ready to start making your EPA.

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2 GET STARTED

The best way to make your EPA is to download and complete the official [Enduring power of attorney P2](#) form. This form is available from the [Land Services South Australia Forms and guidance notes](#) webpage (under [Registration Forms](#)).

There is also a downloadable do-it-yourself kit available for purchase for a modest price from the [Legal Services Commission of South Australia](#) and [Services SA](#). The kit includes detailed instructions and answers to common questions, so buying it could be well worthwhile.

☐ If you download the EPA form, save a copy to your computer. (If you'd like to fill it in on the computer, you'll need to print it for signing once it's complete.)

Before you start filling in the form, read through it and the EPA guidance notes available with it. The guidance notes include explanations and tips to help you complete it, but you may still think of questions you want answered. Write down any questions you have if they're not answered in the form.

☐ Look for answers to your questions. These resources may be helpful:

- Compass [Powers of attorney](#) webpage
- [You decide who decides](#) a booklet compiled by the Australian Guardianship and Administration Council
- Office of the Public Advocate, phone 1800 066 969
- Legal Services Commission of South Australia [Power of attorney](#) brochure (PDF, 379KB)
- 24Legal [Knowing your rights: a guide to the rights of older South Australians](#) booklet
- Your solicitor
- Your accountant
- Trusted family members
- Close friends whom you trust

You'll need to decide who you'd like to be your donee(s), remembering that in South Australia you can appoint more than one donee.

☐ Read about how to choose a donee (or [attorney](#)) on Compass.

☐ There are lots of people you can consider to be your donee, but whoever you choose should be someone you trust.

- Family members (it doesn't have to be your closest relative, if you don't believe they are suitable)
- Trusted, close friends
- Neighbours
- Your partner (however, you should consider their own age and decision-making capacity; read more about [partners as donees](#) here)
- Your solicitor or accountant

- ☐ **If you believe you don't have anyone suitable to ask, there are other options you can consider. Fees may apply.**
 - [The Public Trustee](#) if you're eligible (check your eligibility here)
 - An independent trustee company

- ☐ **Check that your chosen person(s) meets the criteria for being your donee:**
 - They are over 18 years old.
 - You trust them.

- ☐ **Talk to your chosen donee(s) about what the role would involve, how you would like your decisions to be made, and how they could support your participation in decision-making. Do they listen to what you want?**

- ☐ **Make sure they understand what the job will involve. You could look at these resources together:**
 - Compass [Being an attorney](#) webpage
 - [You decide who decides](#) booklet, section 1 [Choose someone you trust](#), pages 15–20
 - Legal Services Commission of South Australia [Duties of a donee](#) webpage

- ☐ **Now that you've had the discussion, has the person agreed to be your donee?**
 - If the person you've chosen doesn't agree, consider someone else and talk to them about it.
 - If they do agree, they must accept the appointment by signing your completed EPA form.

- ☐ **If you chose more than one donee, decide how you'd like this to work and whether you want to include any specific instructions for sharing the role. You should indicate in the P2 form that you want your donees to act:**
 - jointly (all attorneys must make decisions together and all sign any document) or
 - jointly and severally (they can make decisions together or independently) or
 - severally (any one attorney can make decisions independently of the others and sign a document alone).

Next, decide on the details of your EPA and how you would like it to work for you.

- ☐ **When do you want the EPA to take effect? (You'll note this in the first section of the form.)**
 - As soon as the EPA is witnessed?
 - When a doctor confirms that you have become legally incapacitated?

☐ **Are there any particular conditions, limits or instructions you'd like to record? If so, you will need to note these in the EPA form. Here are some examples, but you may think of others that are relevant to your circumstances.**

- Do you have particular preferences for some matters — for example, transacting real estate or managing investments?
- Should your donee notify someone (e.g. your lawyer, your bank) that the EPA is taking effect before they make any of your decisions?
- Do you authorise for your donee in a financial EPA to give gifts from your finances?
- Can your donee use your money to meet the needs of your dependants, such as paying for rent, food, education or medical care?
- Have you thought about requiring your donees to submit your accounts to your accountant every year?
- Are there any specific instructions about personal matters that you'd like to record?

☐ **Have you gathered the names and addresses of all your chosen donees?**

- You will need to have the details of all your donees before completing the form.

Once you have thought through all your preferences and found answers to your questions, you should be ready to fill in the EPA form.



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3 COMPLETE THE FORM

The form is in a Word document format. You can complete your form on a computer if you have a Word-editing program, such as Microsoft Word, but you'll need to print the completed form when you are ready to sign it. Alternatively, you can print the blank form to fill it in by hand with a black or blue permanent pen.

If you are completing the form on paper, you might like to think about printing 2 copies: one as a draft that you can change and make mistakes on, the other to become the final, unaltered copy.

☐ Do you have the right form for your EPA?

- Land Services South Australia has both a [Power of attorney](#) (P1) form and an [Enduring power of attorney](#) (P2) form. You will need the P2 form.
- You can download the P2 form and guidance notes from the [Land Services South Australia](#) website.
- Alternatively, you can buy a downloadable do-it-yourself kit for a modest price from the [Legal Services Commission of South Australia](#) or [Services SA](#).

☐ Read the information in the guidance notes before you start completing the form.

☐ Leave the cover page blank and turn to the first section.

- Fill in your full name and home address and that of your donee in the boxes. (If you have more than one donee, record all their details neatly in this space.)
- Indicate whether they are to act jointly or jointly and severally by crossing out one option in this box.
- Complete the declaration about when the EPA should take effect by striking out the inapplicable statement.
- Complete the section on conditions, limitations or exclusions. You may be as detailed as you like here and use the following page if you need to. If you don't want to set any conditions, limitations or exclusions, write 'not applicable' and rule a line through the rest of this section (and the following page, if it's not needed).
- Complete the page number at the bottom of each page (for example, 'page 1 of 3').

☐ The first section is now done. Turn to the 'Form of acceptance' section.

- Under 'I/We', write the full name of each donee on the lines. Cross out any unused lines.
- Your donee(s) need to sign their acceptance of the appointment, but not in front of a witness.
- Have each donee sign and date the section (in the same order as you've written their names).

☐ Your EPA is now ready to be witnessed.

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4 SIGN AND WITNESS

You must sign your EPA in front of a witness, who must be a person authorised by law to take affidavits, such as a Justice of the Peace, police officer or solicitor. Fees may apply for the service, depending on who your witness is.

- To find an authorised witness, visit the state Attorney-General's Department [Authorised witnesses](#) webpage.

☐ Arrange to meet face-to-face with your witness to sign your EPA.

- Check in advance whether you'll be charged a fee and how it should be paid.
- Take photographic identification with you, such as your driver's licence.

Your EPA form is complete! There are a few more steps to finalise it.

Once your EPOA has been correctly witnessed, the last step is to decide where to keep it.



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DEPOSIT (IF REQUIRED) AND STORE

In South Australia, you are not required to register your EPA unless it covers property decisions. You may store it at home yourself.

However, if your EPA authorises your donee to act on real estate matters on your behalf, it must be deposited with Land Services South Australia before they can make any property decisions. You don't have to deposit your EPA straight away, but it's a good idea to do so. A fee will apply.

☐ **Make several copies of your EPA and have them certified.**

- Visit the South Australian Attorney-General's Department [Authorised witnesses](#) webpage for up-to-date information on who is authorised to certify documents. A Justice of the Peace is usually the most convenient witness service.
- Get an extra copy if you are required to lodge your EPA with Land Services South Australia, because you will need to deposit the original document and a photocopy, so you'll need one of the certified copies to keep for yourself.

☐ **Distribute the certified copies of the original, signed EPA.**

- If you want to store the original EPA yourself, keep it in a safe place at home — perhaps with your will and other important papers.
- Give certified copies to all your donees.
- Give certified copies to any other relevant people, such as your solicitor, bank, care provider, accountant, family members and trusted close friends.
- You might like to keep a copy of this checklist with the certified copies of your EPA.

☐ **If your EPA authorises your donee(s) to make real estate decisions, deposit your EPA with Land Services South Australia. Fees will apply.**

- Complete the Land Services South Australia [Power/enduring power of attorney checklist](#)
- At least one original and one photocopy of the signed EPA must be lodged.
- Present your forms and payment in person to the Land Services South Australia office address on the form, or mail it in.
- Note that the lodgement fee currently cannot be paid by card, only in cash or by cheque or money order.

And finally ...

☐ **Make a diary note to review your EPA in 2 to 3 years.**

- Circumstances and relationships change, so it's wise to review your plans regularly and make adjustments if needed.

Sometimes things change, and you may decide later that you want to appoint a different donee, alter the preferences that you recorded in your EPA, or revoke (cancel) your EPA completely.

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6

CHANGING OR REVOKING YOUR EPA

In South Australia, you may change or revoke (cancel) your EPA at any time as long as you still have capacity.

☐ Think through why you want to change your EPA and what the changes will be.

- Has your donee changed their mind about agreeing to be your donee? Has your good relationship with your donee changed, or do you now have doubts that the person you nominated will act in your best interests?
- Do you now believe someone else would be better to handle your financial decisions for you?
- Have you changed how you want your future decisions to be made if you should lose capacity?

☐ Have you read the available information about changing or revoking an EPA in South Australia?

- Compass [Powers of attorney in South Australia: can I change or cancel my power of attorney?](#) webpage
- Office of the Public Advocate [About enduring power of attorney](#) webpage

☐ Have you discussed the changes you want to make with other people, such as family members, your donees, friends, your solicitor, or a professional trustee or legal advisory service?

Now you should be prepared to make the changes that you want.

To revoke an existing EPA, you must still have decision-making capacity and you must make the revocation in writing.

☐ Get and complete the 'Revocation of enduring power of attorney (RP)' form.

- You can download it from the Government of South Australia's [Power of attorney](#) webpage
- You can purchase a copy online from [Service SA](#) for a very small fee
- You can use the copy included in the do-it-yourself kit you purchased from the Legal Services Commission or Office of the Public Advocate.
- Review the guidance notes before completing the form.
- Complete the form, then sign the completed form in front of a witness authorised by law to take affidavits, just like you did with your EPA.

☐ If you deposited your EPA with Land Services South Australia, you will need to provide them with a copy of the revocation.

- Download and complete the [accompanying checklist](#).
- You'll need to know the number of your EPA.
- Present your form, checklist and payment in person to the Land Services South Australia office address on the form, or mail it in.
- Note that the lodgement fee currently cannot be paid by card, only in cash or by cheque or money order.

☐ **Tell all donees in writing that you have revoked your EPA.**

- Provide them with copies of the completed revocation form.
- Make a note of how and when you tell them.
- Ask to have their copies of the previous EPA back.

☐ **If you have given anyone else a copy of your EPA, let them know the version they have has been revoked.**

To make a new EPA, follow this checklist again to complete the form.

☐ **Provide your donees with certified copies of the new EPA.**

☐ **Provide certified copies of the new EPA to any other relevant people, such as your solicitor and bank.**

☐ **If you lodged your previous EPA with Land Services South Australia, repeat the deposit process with your new one.**

☐ **File a certified copy for yourself with your other important paperwork.**



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