

EPOA Checklist WA



This checklist will guide you through the process of making an enduring power of attorney (EPOA) in Western 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 EPOA 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 EPA

2 GET STARTED

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

3 COMPLETE THE FORM

Helpful information to help you complete the EPA form

4 SIGN AND WITNESS

Information about how to correctly sign and witness your EPA

5 REGISTER AND STORE

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

6 CHANGING OR REVOKING YOUR EPOA

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

Disclaimer: The information provided in this checklist is not a substitute for individual legal advice.

1 GET READY

Knowing as much as possible about an enduring power of attorney (EPOA) 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 Western Australia’](#) webpage
- Australian Guardianship and Administration Council [‘You decide who decides’](#) booklet on the Compass website (PDF, 2.5MB)
- Department of Justice [‘Enduring power of attorney’](#) webpage
- Office of the Public Advocate [‘Enduring power of attorney information kit’](#) (PDF, 1.1MB or DOCX, 76.14KB)
- Office of the Public Advocate [‘A guide to enduring power of attorney in Western Australia’](#) booklet (2013) (PDF, 1.99MB)

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

If you're unsure about any of these, visit the Compass 'Helpful terms to know' webpage or the glossary at the back of the Office of the Public Advocate's booklet, 'A guide to enduring power of attorney in Western Australia' (PDF, 1.99MB)

- **‘donor’** (you, the person making the EPA)
- **‘donee’** (or ‘attorney’—the person, agency or organisation you appoint under an EPA to make decisions for you)
- **‘capacity’** (the extent of 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)
- **‘full legal capacity’** (the capacity to make a formal agreement and to understand the implications of statements contained in that agreement)
- **‘lose capacity’** (become unable to make your own decisions)
- **‘general power of attorney’** (a legal document in which you appoint someone you trust to make decisions on your behalf in specified situations, often for a fixed period of time)
- **‘enduring power of attorney’** (a legal document in which you appoint someone you trust to make financial and/or property decisions on your behalf if you lose full legal capacity or are otherwise unable to manage your affairs)
- **‘sole attorney’** and **‘sole substitute attorney’** (when a single donee and/or substitute attorney is appointed)
- **‘jointly’** (when 2 donees are appointed and must make all decisions together)
- **‘jointly and severally’** (when 2 donees are appointed and may make decisions either individually or together)
- **‘substitute attorney’** (someone you appoint to act only if your appointed donee is unable or unwilling to act when needed)
- **‘revoke’ (cancel)**

☐ **Are you confident that you understand the difference between Western Australia's general power of attorney and enduring power of attorney documents?**

- Compass ['Powers of attorney in Western Australia'](#) webpage
- Legal Aid Western Australia ['Powers of attorney'](#) webpage

☐ **Have you decided that what you need is a power of attorney that covers your property and/or financial decisions if you become unable 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 in certain situations or for certain periods of time (for example, if you are in hospital or travelling overseas), you should make a general power of attorney.
- Information about general powers of attorney is available on the [Legal Aid](#) website.

☐ **Because your EPA cannot authorise your attorney to manage your medical or lifestyle matters, do you also want a future planning tool that will cover these decisions for you?**

- An **enduring power of guardianship** appoints a person or people you trust to make decisions on your behalf about personal, lifestyle and treatment matters if you become incapable of making these decisions yourself.
- You can also make an **advance health directive**, which is a record of the healthcare treatments you'd like to have, or refuse to have, if you become unable to give those instructions yourself when they are needed.
- Find out more about these future planning options via the Office of the Public Advocate's ['Making decisions: OPA information'](#) webpage.

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

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

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

There is a lot of support and assistance available to people who are making their EPA. 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 solicitor, you can find one via the [Find a lawyer](#) search on the Law Society of Western Australia website.

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

- Office of the Public Advocate telephone advisory service, phone 1300 858 455 (Monday to Friday from 9 am to 4.30 pm, with recorded information available at other times)
- Advocare, an advocacy service for seniors
- The Public Trustee

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 complete the official form that is included in the Office of the Public Advocate's 'Enduring power of attorney information kit'. This online document is available in both PDF and Word formats.

☐ **Download the information kit and EPA form from the [Office of the Public Advocate website](#) and save a copy to your computer. The information kit contains 24 pages of explanations and advice, then 2 identical copies of the 4-page form.**

- If you'd like to fill the forms in on the computer, you might find the Word version (DOCX) easier to use than the PDF. You'll still need to print your completed form for signing.
- If you'd like to fill your forms in by hand, print a copy of the document. You may wish to print out only the forms and not the rest of the document.
- If you are printing the form, consider printing an extra copy as a draft that you can change and make mistakes on before filling out the final version neatly and without changes.

Before you start filling in the form, read through it and the information attached to it. The information kit includes 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
- Australian Guardianship and Administration Council ['You decide who decides'](#) booklet, available on the Compass website
- Office of the Public Advocate ['A guide to enduring power of attorney in Western Australia'](#) booklet
- Office of the Public Advocate's advisory services—phone [1300 858 455](#) (Monday to Friday from 9 am to 4.30 pm, with recorded information available at other times)
- [Advocare](#), an advocacy service for seniors
- 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). In Western Australia you can appoint up to 2 people as your donees, and you can also appoint up to 2 substitute attorneys (one per donee) in case one resigns. To appoint someone as a donee or substitute attorney, you must get their written acceptance of the role in the EPA form.

Read about how to [choose an attorney](#) (or donee) 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)
 - Close friends
 - Neighbours
 - Your partner (however, you should consider their own age and decision-making capacity; [read more about partners as attorneys 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). Seeking legal advice about making your EPA is recommended in this case.**
 - [The Public Trustee](#) may be able to act as your attorney in certain circumstances. Ongoing fees apply. For more information about this option, download the [Public Trustee's information guide](#) (PDF, 425KB).
 - An independent trustee company or agency.

- ☐ **Check that your chosen person(s) meets the criteria for being your donee:**
 - They are 18 years old or older.
 - They have full legal capacity to make their own decisions.
 - 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
 - The ['You decide who decides'](#) booklet, section 1 'Choose someone you trust', pages 15–20
 - Office of the Public Advocate ['A guide to enduring power of attorney in Western Australia'](#) booklet, section 5

- ☐ **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.
 - If they do agree, they will need to sign your completed EPA form in the appropriate place.

- ☐ **If you choose to appoint 2 donees, decide how you'd like this to work. You'll need to indicate in the EPA form whether you want your donees to act:**
 - jointly (both donees must make decisions together), OR
 - jointly and severally (the donees may make decisions either together or independently).

☐ **Have you chosen any substitute attorneys in the same way? Consider what should happen if your EPA has taken effect and one of your donees has died or lost their full legal capacity, or is unavailable because they are travelling, or is otherwise not able to act as attorney.**

- If you have already lost capacity when your donee resigns, you won't be able to appoint a replacement then. You need to appoint one now by nominating a substitute attorney.
- You may appoint one substitute attorney for each donee you have appointed.
- If you decide to nominate substitute attorneys, you'll need to provide the details in the EPA form and state whether they may act jointly, or, jointly and severally.

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

- You will need to have the details of all donees and substitute attorneys ready to complete the form.

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

☐ **Are there any conditions or restrictions for the authority of your attorney(s) that you'd like to record? If so, you will need to note these in clause 3 of the EPA form. Here are some examples, but you may think of others that are relevant to your circumstances. (We recommend you seek legal advice when deciding on any conditions or restrictions.)**

- Should your attorneys 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 attorneys to give gifts from your finances?
- Have you thought about requiring your attorneys to submit your accounts to your accountant every year?

☐ **When do you want the EPA to take effect? (You'll note this in clause 4.) In Western Australia, you have 2 options for this:**

- **as soon as you've made the EPA** (this is called an 'immediate EPA', and it doesn't mean that your donee must start acting for you immediately—you can continue to manage your financial affairs as long as you have full legal capacity), OR
- **when you've lost your full legal capacity** (this is called a 'dormant EPA', and means your donee(s) will not be able to act on your behalf without first applying to the State Administrative Tribunal for a determination that you have lost full legal capacity).
- taking money out of your bank accounts.

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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The form is available online in both PDF and Word format. You can complete your form on a computer if you have a PDF-editing program such as Adobe Acrobat Reader (a free program—download from the [Adobe website](#) or a word processing program such as Microsoft Word. (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 pen.

☐ Do you have difficulty reading, writing, and/or understanding English?

- You can still make an EPA. It would be wise to get legal advice from a solicitor or a community legal centre to help you.
- **If you cannot understand English**, an accredited interpreter must read the form to you and ensure you understand what you are doing. You can [find an accredited interpreter](#) through the Western Australian Institute of Translators and Interpreters.
- The interpreter should sign the document when you sign it, either as a witness or in addition to your 2 witnesses. A 'readover clause' (see examples in appendix C of the information kit) must also be completed and added to your EPA, and instructions for doing this are included further along in this checklist.
- **If you cannot write**, someone else (called a 'marksman') can fill the form in for you and you can sign it by making some kind of mark—an initial, a cross, a thumbprint—instead of a signature. The 'marksman clause' (see examples in appendix C of the information kit) must also be completed and added to your EPA, and instructions for doing this are included further along in this checklist.
- **If you cannot read**, someone else (called a 'marksman') can read the form and any instructions to you and ensure you understand what you are doing. The 'marksman clause' (see examples in appendix C of the information kit) must also be completed and added to your EPA, and instructions for doing this are included further along in this checklist.
- Note that anyone involved with the readover clause or marksman clause cannot be an authorised witness for your EPA.

There are 2 copies of the form provided with the information kit. You should complete both copies if you want to register your EPA with Landgate, the State Government registry of land ownership in Western Australia (see step 5 'Register and store' below for more information about this).

☐ Read the information on pages 1 to 24 of the information kit before you start completing the form, which follows page 24.

If you cannot read, write and/or understand English, have an interpreter or someone that you trust read it to you. They should make sure you understand what you are doing.

☐ Turn to page 1 of the form 'Enduring power of attorney'.

- Fill in the date, your full name and home address, and your date of birth in the spaces provided.
- In clause 1 'Appointment of attorney(s)', first choose whether you are recording a sole attorney, 2 joint attorneys, or 2 'joint and several' attorneys.
- In the appropriate section for your choice, record the name(s) and address(es) of your chosen attorney(s).
- There is space for you to sign the bottom of page 1 if you want to, and this should be done later with your witnesses present. Signing each page is not compulsory but may provide a safeguard against other people substituting pages later.

☐ Page 1 is complete. Turn to page 2.

- In clause 1a 'Appointment of substitute attorney(s)', first choose whether you are recording a sole substitute attorney or 2 substitute attorneys.
- In the appropriate section for your choice, record the name and address of your substitute attorney(s) and the name of the attorney(s) for whom each one will substitute. Cross out and initial any sections that you do not need to use.
- If you are nominating 2 substitute attorneys, indicate how you want them to act (either jointly, or, jointly and severally) by clearly crossing out and initialling the unwanted option.
- Record the circumstances in which you would want the substitute attorney(s) to act, e.g. if the corresponding attorney is unavailable, or becomes unsuitable, or cannot act for some other reason.
- Clause 2 'Authorisation' does not require you to do anything. It is simply a legal statement that you are authorising your attorney(s) to act on your behalf.
- In clause 3 'Conditions or restrictions', record any conditions or restrictions you want to place on the actions of your attorney(s). (We recommend you seek legal advice about deciding these). If you do not have any conditions or restrictions, cross out and initial this section to make that clear.
- There is space for you to sign the bottom of page 2 if you want to, and this should be done later with your witnesses present. Signing each page is not compulsory but may provide a safeguard against other people substituting pages later.

☐ Page 2 is complete. Turn to page 3.

- You **must** record a choice in clause 4 for your EPA to be valid.
- If you want to authorise your attorney(s) to start making decisions immediately (i.e. as soon as your EPA has been completed and witnessed), **cross out and initial part b of clause 4**.
- If you want to authorise your attorney(s) to start making decisions only if you lose full legal capacity, **cross out and initial part a of clause 4**. (Note that your attorney(s) will have to apply to the State Administrative Tribunal for a declaration that you have lost capacity before they can start acting on your behalf.)

☐ Clause 4 is now done. The rest of page 3 relates to signing and witnessing the EPA, which is covered in step 4 of this checklist.

If you will be lodging your EPA with Landgate (explained in step 5 below), fill in the second copy of the form up to this point in exactly the same way. Make sure the information in both copies is completely identical.



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4

SIGN AND WITNESS

Your attorney(s) do not need to be present when you complete and sign your EPA, but you must have 2 witnesses present.

☐ Check that your witnesses meet the following criteria.

- Both must be aged 18 years or older.
- Both must have full legal capacity.
- At least one must be an 'authorised witness', which means a person authorised to witness statutory declarations. (The information kit includes a list of authorised witnesses in Appendix B. Depending on who you choose, fees may apply for providing the service.)
- It is best if the authorised witness is not one of your attorneys or a party to the EPA in any other way, so that they are independent.
- If the second witness is not an authorised witness, they cannot be one of your attorneys or a party to the EPA in any other way.

☐ Arrange to meet face-to-face with the 2 witnesses together in one place at the same time for the signing of your EPA

☐ If you are able to sign the form yourself, follow these steps.

- Sign page 3 in front of the 2 witnesses.
- If you wish to sign the bottom of pages 1 and 2, do so now in front of the 2 witnesses and have them sign these pages as well.
- Have the authorised witness sign and date the form and complete their details in the section immediately beneath your signature.
- Next, have the second witness sign and date the form and complete their details in the section immediately beneath the authorised witness's.



☐ **If you are unable to sign the form yourself, because you cannot write and/or understand English, follow these steps. We recommend that you seek legal advice before doing so.**

- Have your interpreter and/or marksman (the person who has read the form to you) with you for this part.
- Turn to appendix C in the information kit (pages 21 and 22).
- You and your marksman and/or interpreter will need to complete whichever one of the 4 questions in appendix C applies to your situation.
- **Whichever question you choose**, you must make a mark in the relevant space. This mark can be, for example, a thumbprint, an initial or a cross.
- **If you are completing questions 1, 2 or 3**, your marksman should sign their name where the question says 'Signed by (name of marksman)'.
- **If you are completing questions 1 or 2**, your authorised witness should now sign, date and complete the rest of the question.
- **If you are completing questions 3 or 4**, your interpreter should sign their name where the question says '(interpreter's signature)'. They should also fill in their full name and address and the date.
- **If you are completing question 4**, your interpreter should also state the language in which they read you the form ('second language').
- Once the applicable question has been completed, cross out the other question on the same page and discard the other page of appendix C. Insert the page into your EPA document behind section 4 (page 3).
- If you wish to sign or make your mark on the bottom of pages 1 and 2, do so now in front of the 2 witnesses and have them sign these pages as well.
- In section 4 of the EPA form (page 3), have the authorised witness sign and date the form and complete their details where the form says 'Witnessed by a person authorised to witness statutory declarations'.
- Next, have the second witness sign and date the form and complete their details in the section immediately beneath the authorised witness's.

☐ **If you are completing both copies of the form, repeat the steps for witnessing the second EPA form. (If appropriate, complete second copies of any marksman or readover clauses, too.)**

☐ **Page 3 is complete. Turn to page 4, 'Acceptance of the enduring power of attorney'. (Note that your EPA is not complete until your attorneys have completed and signed page 4.)**

First, your donee(s) should:

- write their full name(s) in the space at question 1 on page 4
- beneath 'Accept the appointment and acknowledge', cross out either A or B (whichever does not apply) and sign the remaining option; this choice must match clause 4
- sign and date their acceptance and acknowledgement next to space '1' under 'Signed'.

Next, if you have appointed any substitute attorney(s), they should now:

- write their full name(s) in the space at question 1A on page 4
- beneath 'Accept the appointment and acknowledge', sign the chosen option, which must match clause 4
- sign and date their acceptance and acknowledgement next to space '1a' under 'Signed'.

- ☐ **If you are completing both copies of the form, your donee(s) and substitute attorney(s) should now repeat the steps for accepting the EPA on the second form.**

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

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

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5 REGISTER AND STORE

In Western Australia you are not required to register your EPA, so you can store it at home yourself. However, if your donee(s) will be handling property matters for you, you should register your EPA with Landgate.

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

- The 'Enduring power of attorney information kit' has information about having documents certified in Appendix A and a list of people who can provide this service in Appendix B.
- Keep the original EPA in a safe place at home—perhaps with your will and other important papers.

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

- Give certified copies to all your donees and substitute attorneys.
- Give certified copies to any other relevant people, such as your lawyer, bank, accountant, family members and trusted close friends.
- You might like to keep a copy of this checklist with the certified copies of your EPA.

☐ **Decide whether you should register your EPA with Landgate.**

- If you own property, you can lodge your EPA with Landgate. This will allow Landgate to recognise your donee's authority to make transactions relating to that property if they need to do so.
- Landgate requires an original EPA (not a certified copy) to be held on their records at the time of a property transaction. Ideally, you should submit both of the originals, and one will be returned to you.
- For details of how to lodge your EPA, see part 4 'Noting and filing' on Landgate's 'POA-03 Powers of attorney—enduring' webpage
- Landgate has an 'Enduring power of attorney checklist and cover sheet', which you should download and complete ready for lodging.
- Lodgement, in person or by post, should be done within 3 months of making the EPA, although it is possible to lodge it later. Information about where to lodge documents is available on Landgate's 'Form lodgement' webpage.
- A fee will apply for the lodgement. Visit Landgate's 'Lodgement and search forms' webpage for up-to-date information in the 'Lodgement and search fees' section.

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, change the conditions that you recorded in your EPA, or revoke (cancel) your EPA completely.

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6**CHANGING OR REVOKING YOUR EPOA**

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

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

- Has a donee lost full legal capacity, died or become bankrupt? These events would mean they could not continue as your attorney.
- Has your good relationship with a donee changed, or do you now have doubts that the person you appointed will act in your best interests?
- Will someone else now be better to handle your financial decisions for you?
- Have your financial circumstances changed significantly?
- How do you now 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 Western Australia?**

- Compass [‘Making and changing powers of attorney in Western Australia’](#) webpage
- Office of the Public Advocate [‘Enduring power of attorney information kit’](#) (PDF, 1.1MB or DOCX, 76.14KB), section 9.0
- Office of the Public Advocate [‘A guide to enduring power of attorney in Western Australia’](#) booklet (PDF, 1.99MB), section 9
- Landgate’s [‘POA-04 Powers of attorney—revocation or termination’ webpage, section 2 ‘Revocation of an enduring power of attorney’](#)

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

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

A revocation of an EPA should be made in writing. It will not take effect until you have advised your attorney(s) that you are revoking it and, if applicable, notified Landcare.

☐ **Write, date and sign a letter addressed to your attorney(s), explaining clearly that you wish to revoke your existing EPA.**

☐ **Advise all donees, substitute attorneys and anyone else who holds a copy of your existing EPA (such as your bank, lawyer, accountant, family members or close friends) that you are revoking it.**

- Make a note of how and when you tell them.
- Where possible, ask for their copies of the old EPA back.

☐ **Make a new EPA, following this checklist again to complete another form.**

☐ **Attach signed copies of the written revocation letter and certified copies of the new EPA to copies of the previous EPA (this will help to make it clear which version is in force).**

- ☐ **Provide these bundled copies to your donees, substitute attorneys and other people who held a copy of your previous EPA (such as your bank, lawyer, accountant, family members or close friends).**
- ☐ **File copies for yourself with your other important paperwork.**
- ☐ **If you lodged your previous EPA with Landgate, the revocation will not be effective until it is also lodged (a lodgement fee will apply to the revocation). There are 2 ways you can do this.**
 - Write the word 'revoked' and the date of revocation across a copy of the previous EPA. Sign next to that endorsement in front of a witness and have the witness sign next to your signature (they must also write their full name, address and occupation). Then lodge the copy with Landgate.
 - Alternatively, download a copy of a 'Revocation of power of attorney' form from Landgate's 'Land titling forms' webpage. Complete and sign it, have it witnessed, and lodge this with Landgate. Keep a certified copy for yourself.
 - For details of both of these options, go to Landgate's webpage

In Western Australia, changes to an existing EPA can be made either directly to the original document or by writing a letter.

- ☐ **Make the changes you want to the original document.**
 - If you make changes to the donee acceptance page of the EPA, the donee(s) should sign the changes. No witness is needed.
 - If you make changes to the other pages of the EPA, both you and a qualified witness (ideally, the one who originally witnessed the EPA) should sign the changes.
 - This information is outlined on Landcare's POA-03 Powers of attorney—enduring' webpage in part 6 'Making amendments to an enduring power of attorney'.
- ☐ **Alternatively, you can make changes by writing a letter (as described above for revoking the EPA completely).**
- ☐ **Provide certified copies of the amended EPA or letter to your donees, substitute attorneys and other people who hold a copy of your EPA (such as your bank, lawyer, accountant, family members, friends).**
- ☐ **File a certified copy for yourself with your other important paperwork.**

Disclaimer: The information provided on this website is not a substitute for individual legal advice.

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