

10 October 2023

C A Lane

By email: fyi-request-24109-e813d03d@requests.fyi.org.nz

To Whom It May Concern,

1. We refer to your request under the Official Information Act 1982 for the following information:

“What process has to be taken by public trust to verify mental capacity of donors signing EPOAs via public trust in-order for that EPOA to be valid/processed/completed.

Can some one (a donor) sign an EPOA if not mentally capable, eg which can't read fully or write fully? Which is a brain injured person which can't under documentation?

What type of document would such person mentioned above be entitled to if not an EPOA?

What process/measures does public trust have to take in-order to complete signing of an EPOA of a donor with a brain injury which has obvious signs of brain damage”.

2. Trustees are required to consider capacity when setting up an enduring power of attorney (EPA). The starting point is that the donor is presumed to have capacity.¹ The fact that a donor chooses to make decisions that someone exercising ordinary prudence would not, is not enough to establish incompetence.²
3. It is not necessary for the donor to be fully capable of managing their affairs. It is sufficient that the donor understands the nature and effect of the EPA, namely that:
 - a. he or she is giving power of attorney to a third party, and
 - b. the EPA may either come into force immediately, or when the donor becomes incapable.

¹ Protection of Personal and Property Rights Act 1988, s 93B(1).

² Protection of Personal and Property Rights Act 1988, s 93B(2).

4. Except in cases of urgency, Public Trust's usual practice is to obtain a medical certificate when the trustee has doubt about a donor's capacity.
5. The donor must sign the EPA in the presence of an authorised trustee. The trustee must explain the implications of the EPA to the donor, and then certify that the explanation has been provided and that there is no reason to doubt the donor's capacity.
6. The Protection of Personal and Property Rights Act 1988 contains the requirements for appointment of property managers and welfare guardians by the Court, where a person has lost the capacity to manage their own affairs and does not have enduring powers of attorney in place.
7. Please find **attached** documents summarising Public Trust's requirements in relation to capacity, as well as signing and witnessing EPAs. To provide you with a more targeted response, we have redacted information that is not relevant to your request.
8. It is Public Trust's policy to proactively release responses to official information requests where possible. We will consider publishing our response to your request at www.publictrust.co.nz, with your personal information removed.

Yours sincerely,



Kelly Reuben

Corporate Solicitor

Enclosures: EPA Capacity
 EPA Signatures Witnessing