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Compass Epoa Checklist Vic User Guide



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EPOA Checklist VIC

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



A PDF version of this checklist is also available if you would prefer to download and print out the checklist to complete offline. The links to the resources offline won't work in a printed copy, but you can easily find them via the underlined links in the online version.



The checklist is divided into six sections. Tick the boxes once you've completed each of the following steps:

(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: 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 EPOAs? Do you know where you can find out more?

- Compass <u>Introduction to enduring power of attorney</u>
- Compass Powers of attorney in Victoria
- Office of the Public Advocate <u>Making an enduring power of attorney</u>
- Office of the Public Advocate, 'Your voice-trust your choice' booklet
- State Trustees <u>Learn more about powers of attorney</u>

□ Do you understand the key terms that relate to powers of attorney in Victoria?

If you're unsure about any of these, visit the Compass 'Helpful terms to know' or the Office of the Public Advocate website.

- Principal (you, the person making the power of attorney)
- Attorney (the person you appoint under a power of attorney to make decisions for you)
- Alternative attorney (someone you appoint to act only if your appointed attorney is unable or unwilling to act when needed)
- 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)
- Lose capacity (you become unable to make your own decisions)

- General non-enduring power of attorney (a legal document that authorises an attorney to make financial decisions on your behalf while you still have capacity)
- Enduring power of attorney (a legal document that authorises an attorney to make financial and/or property decisions on your behalf if you lose capacity)
- Supportive attorney (an attorney you authorise to help you make decisions, but not make them for you, while you still have capacity)
- **Jointly** (2 or more attorneys must all make decisions together)
- **Jointly and severally** (2 or more attorneys can make decisions either on their own or together)
- Majority (most of the appointed attorneys must agree on the decision)
- Revoke (cancel)



- ☐ Are you confident that you understand the difference between Victoria's general non enduring power of attorney (GPOA); enduring powers of attorney (EPOA) and supportive power of attorney documents?
- Compass Powers of attorney in Victoria
- Office of the Public Advocate Your rights
- State Trustees Types of power of attorney
- ☐ Have you decided that what you need is a power of attorney that covers your personal and/or financial decisions if you lose capacity to make them yourself?
- If so, an EPOA is the right option for your needs.
- If you want your legal and 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 GPOA. Forms and information are available from the Office of the Public Advocate's website.
- If you'd like to appoint someone to help you make your own decisions while you still have capacity, you should
 make a supporting attorney document. The supportive attorney forms and information are available from the
 Office of the Public Advocate's website.
- ☐ Because your EPOA cannot authorise your attorney to make your medical decisions, do you also want a future planning tool that will cover medical decisions for you?
- You will need to appoint a **medical treatment decision maker**, who will be authorised to make medical decisions for you if you cannot do so.
- You can also make an advance care directive, which is a record of the health care treatments you'd like to

have, or refuse to have, if you become unable to make the decisions yourself. • Find out more about these future planning options on the Office of the Public Advocate's 'Your rights' 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 statements must be true for you to be able to make your EPOA:
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 legal and financial decisions.
There is a lot of support and assistance available to people who are making their EPOAs. 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 EPOA is highly recommended. They can also help you complete the EPOA form. Fees will apply.
• If you don't currently have a solicitor, you can find one via the <u>Find Your Lawyer Referral Service</u> on the Law Institute Victoria website.
☐ You may also be able to get information and help from these services:
 Seniors Rights Victoria – an advocacy service for seniors. State Trustees.
Now you should be ready to start making your EPOA.
NOTES

(2) GET STARTED

The best way to make your EPOA is to complete one of the official forms that are available. You can download a form from the Office of the Public Advocate website.

☐ Do you know which of the forms to use?

- If you want to appoint an attorney and up to 2 alternative attorneys, use the **EPOA short form**.
- If you want to appoint 2, 3 or 4 attorneys and up to 3 alternative attorneys for each of them, use the <u>EPOA long</u> form.

□ Download the appropriate EPOA form and save a copy to your computer. Print off a copy if you'd like to fill it in by hand. (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 information attached to it. The form 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 <u>'Powers of attorney' webpage</u>
- You decide who decides, a booklet compiled by the Australian Guardianship and Administration Council.
- Office of the Public Advocate's <u>'Take control' booklet</u>.
- Office of the Public Advocate's advice service—phone 1300 309 337
- State Trustees
- Seniors Rights Victoria
- · your solicitor
- · your accountant
- · trusted family members
- · close friends whom you trust.

You'll need to decide who you'd like to be your attorney(s). Remember that in Victoria you can appoint up to 4 people to act as your attorney, and you can also nominate alternative attorneys for each of them in case one resigns. To appoint someone as an attorney or alternative attorney, you must get their written acceptance of the role in the EPOA form.

Read about how to <u>choose an attorney</u> on Compass.
☐ There are lots of people you can consider to be your attorney, 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.
State Trustees (for financial matters only)
An independent trustee company (for financial matters only)
☐ Check that your chosen person(s) meets the criteria for being your attorney:
They are over 18 years old.
They are not bankrupt.
You trust them.
They are not your care worker, health provider or accommodation provider
□ Talk to your chosen attorney(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:
Read the Compass webpage, <u>'Being an attorney'</u>
 You decide who decides booklet, <u>section 1 'Choose someone you trust'</u>, pages 15-20
□ Now that you've had the discussion, has the person agreed to be your attorney?
• If the person you've chosen doesn't agree, consider someone else and talk to them about it.
If they do agree, they will need to sign your completed EPOA form in section 7.
☐ If you chose more than one attorney, decide how you'd like this to work and whether you want to include any specific instructions for sharing the role. You'll need to indicate in section 3 of the long form whether you want your attorneys and alternative attorneys to act:
• jointly (all attorneys must make decisions together and all sign any document)

• **jointly and severally** (they can make decisions together or independently, so that either all attorneys sign a document together or one can sign a document alone)

- **severally** (any one attorney can make decisions independently of the others and sign a document alone)
- by majority (more than half of the attorneys need to agree on a decision and sign a document)?

☐ Have you chosen alternative attorneys in the same way? Consider what should happen if your EPOA has taken effect and one of your attorneys resigns from the role because they no longer can, or no longer wish to, be your attorney.

- Remember, you will already have lost capacity for your EPOA to be in effect, so if your attorney resigns, you won't be able to appoint a replacement or alternative attorney then. You need to decide it now.
- If you have chosen one attorney, you may appoint up to 2 alternative attorneys.
- If you have chosen 2 to 4 attorneys, you may appoint up to 3 alternative attorneys for each of them.
- If you decide to nominate alternative attorneys, you'll provide the details in the EPOA form and state whether they may act jointly, jointly and severally, or by majority.

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

☐ When do you want the EPOA to take effect? (You'll note this in section 4.)

- Once you've made the EPOA?
- When you've lost your decision-making capacity?
- In particular circumstances or on certain occasions?
- **Note:** if you don't complete this section of the form, your attorney(s) will be authorised to start making decisions as soon as the form has been completed, signed and witnessed.

Think which decisions you might need your attorney to look after and consider how you'd like each of them to be made. You'll indicate these in section 2 of the form.

- Are they to handle personal matters only: for example, where you live, who you see, what care services you
 receive?
- Are they to handle financial matters only: for example, paying bills, transacting real estate, managing investments, carrying on a business?
- Would you like certain attorneys to manage personal matters and others, financial matters?
- Are there any other specific matters you'd like an attorney to manage?

Are there any particular conditions, limits or instructions you'd like to record? If so, you will need to note these in section 5 of the EPOA form. Here are some examples, but you may think of others that are relevant to your circumstances.

- Should your attorney notify someone (e.g. your lawyer, your bank) that the EPOA is taking effect before they
 make any of your decisions?
- Do you authorise for your attorney in a financial EPOA to give gifts from your finances?
- Can your financial attorney 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 attorneys to submit your accounts to your accountant every year?
- Are there any specific instructions about personal matters that you'd like to record?

 The short EPOA form is for appointing one attorney and up to 2 alternative attorneys for that attorney. So, you will need to have ready the details of up to 3 people if you are completing the short form. The long EPOA form is for appointing from one to 4 attorneys and up to 3 alternative attorneys for each appointed attorney. So, you will need to have ready the details of between 4 and 12 people if you are completing the long form.
Once you have thought through all your preferences and found answers to your questions, you should be ready to fill in the EPOA form.
NOTES
(3) COMPLETE THE FORM

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

Both <u>long</u> and <u>short</u> EPOA forms are in PDF format. You can complete your form on a computer if you have a PDF-editing program, such as <u>Adobe Acrobat Reader</u> (a free program—download from the Adobe website 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 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 what you have chosen to put in your EPOA?

- The short EPOA form is for appointing one attorney and up to 2 alternative attorneys for that attorney.
- The long EPOA form is for appointing from one to 4 attorneys and up to 3 alternative attorneys for each
 appointed attorney.
- ☐ Read the information on pages i to iv of the form before you start completing it.
- ☐ For both long and short forms, turn to page 1 and section 1, 'Principal (You)'.
- Fill in your full name and home address in the boxes.
- If you already have an EPOA and want all or part of it to continue alongside this new EPOA, write in the next box the details of what is to continue. Otherwise, rule a line through this box and leave it empty.
- ☐ Page 1 is complete. Turn to page 2 and section 2, 'Your attorney'.
- If you're using the short form, record the name and address of your chosen attorney in the first 2 boxes.
- Then indicate what you authorise this attorney to do by ticking the corresponding check box. If you want them to handle any kind of decisions for you, tick only the first check box. If you want to be more specific, tick whichever of the next three check boxes apply.
- If you tick 'the following specified matters', write the details in the large box at the bottom of the page.
- If you're using the long form, record the name and address of your first chosen attorney in the first 2 boxes.
- Then indicate what you authorise this attorney to do by ticking the corresponding check box.
- If you want them to handle any kind of decisions for you, tick only the first check box. If you want to be more specific, tick whichever of the next three check boxes apply.

☐ Page 2 is complete. Turn to page 3.

- Tick the appropriate check box to indicate whether you do or don't want to appoint alternative attorneys for this attorney. If you tick 'no', you can then turn to page 4.
- If you tick 'yes', write the name and address of each alternative attorney in a set of boxes.
- If you are nominating only one alternative attorney, tick 'no' in response to the next question and move to the next column.
- If you are nominating more than one alternative attorney, tick 'yes' in response to the next question and provide details for the next alternative attorney in the 2 boxes. Repeat this for each alternative attorney.
- Indicate when your alternative attorneys can start to act for you.

□ Page 3 is complete, and on the <u>short form</u> section 2 is now done. On the <u>long form</u>, turn to page 4.

- On page 4 of the <u>long form</u>, you can indicate whether you want to appoint a second attorney. If you do, complete pages 4 and 5 in the same way as pages 2 and 3.
- If you also want to appoint a 3rd and/or 4th attorney, turn to page 18 of the long form and complete both pages of section A2, 'Appointment of attorneys' in the same way.
- Then return to page 5 and the end of section 2.

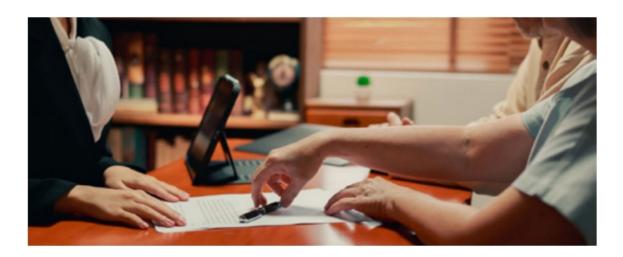
□ For both forms, section 2 is now complete. Turn the page to section 3, 'How your attorneys can act' (in the long form) or 'How must the alternative attorneys act?' (in the short form).

☐ Are you completing the short EPOA form? If so, follow these steps:

- In the **short form**, section 3 is about your alternative attorneys.
- Only complete section 3 if you have appointed 2 alternative attorneys. Otherwise, rule a line across this page.
- If you have appointed 2 alternative attorneys in the short form, indicate in the large box whether your alternative attorneys are to act jointly or may act jointly and severally.
- If you want them to act differently for personal matters to financial matters, write the details of your preferences in the large box.

☐ Are you completing the long EPOA form? If so, follow these steps:

- In the long form, section 3 is about all of your attorneys and how you want them to act.
- Only complete section 3 if you have appointed more than one attorney. Otherwise, rule lines across these pages.
- **Note:** if you have appointed more than one attorney and you don't complete section 3 in the long form, your attorneys will have to act jointly (together).
- Indicate whether you want your attorneys to act jointly, severally, jointly and severally, or by majority by ticking only one checkbox. (Each option has a brief explanation to remind you what it will mean.)
- If you want different attorneys to look after different matters, write the details in the large box.
- On page 7, write in the large box how you want your alternative attorneys to act in place of the attorneys. State whether you want them to act jointly, severally, jointly and severally, or by majority, and any instructions for how you want them to act in different matters.



☐ Section 3 is now done in both forms. Turn to section 4, 'Start date'.

- **Note:** if you do not complete section 4, your attorneys will be able to start making decisions as soon as your form has been completed, signed and witnessed. So if you want to continue making your decisions yourself for now, you should complete section 4.
- You need to complete only one of the 2 columns on this page—either the left column or the right column.
- If you want your attorney(s) to start making decisions at the same time for everything, use the left column and tick the first check box at the top of the column. Then tick only one of the next three check boxes. If you tick

- 'From the time, in the circumstance or on the occasion', write in the large box the specific details of this preference. Rule a line through the right column.
- If you want your attorney(s) to start making decisions at different times for different matters, use the right column and tick the first check box at the top of the column. Then tick as many of the following three check boxes as you want and write the specific details of your choice in the blank boxes under each checkbox.

☐ Section 4 is now done. In both forms, turn to section 5, 'Conditions and instructions (optional)'.

- Complete this section only if you want to place any conditions on the actions of your attorneys or record any specific instructions about particular matters.
- You do not have to complete this section. It is optional.
- The first 4 boxes are for particular categories of conditions or instructions. If you want to set any conditions or instructions relating to these categories, write the details in the appropriate box.
- The last box is for writing details of any other conditions or instructions that you might want to make.
- Cross out any boxes you do not wish to use, or rules lines across both pages if you do not want to make any specific conditions or instructions.

☐ Section 5 is now done. In both forms, turn to section 6, 'Principal's signature'.



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(4) SIGN AND WITNESS		

You must sign your EPOA in front of 2 witnesses. The witnesses must be aged 18 years or older and cannot be:

- · your relative
- your attorney or alternative attorney, or a relative of your attorney or alternative attorney
- · your care worker or accommodation provider.

One witness must be an 'authorised witness', which means someone who is either authorised to witness affidavits in Victoria or a registered medical practitioner. Fees may apply for the service.

• To find an authorised witness, visit the Department of Justice and Community Safety's 'Affidavits' webpage.

☐ Arrange to meet face-to-face with the 2 witnesses together in one place at the same time to sign your EPOA.

In Victoria, you may choose to have your EPOA signed and witnessed remotely instead of in person. This means everyone can sign electronically and they do not have to get together physically. In-person signing is usually the best option, but remote witnessing can be useful for people who live in rural, regional or remote areas, have mobility issues, or would find it difficult to meet up with others outside their home.

- The remote witnesses must be in Victoria.
- One of the remote witnesses of an EPOA must be a 'special witness', which means an Australian legal practitioner or a justice of the peace, and they must follow particular steps when witnessing your EPOA.
- The remote witnesses must make sure that you are making the document voluntarily and not under coercion.
- For details and requirements for remote witnessing, visit the Victorian <u>Department of Justice and Community</u>
 <u>Safety website</u>.

☐ Before you sign, turn to section 6 of your EPOA and ask both witnesses to read the text beginning with 'Each witness certifies that ...'. Make sure they agree with all the statements following that sentence.

• The witnesses should explain the effect of the EPOA to you and be satisfied that you understand their explanation before they certify your signature in section 6.

☐ Are you able to sign your EPOA for yourself? Follow these steps.

- Do not sign your EPOA alone or in the presence of only one witness. Both witnesses must see you sign and date your EPOA in section 6.
- Turn to section 6, 'Principal's signature'.
- Write your name under 'Name of principal', then sign and date your EPOA.
- Your authorised witness should complete their details in the top of the right-hand column and sign and date the EPOA.
- The other witness can then complete their details in the bottom of the right-hand column and sign and date the EPOA.

☐ Do you need to have someone sign your EPOA for you at your direction (for example, because of a physical disability)? Follow these steps.

- Do not use section 6. Instead, turn to section A1, 'Signed at the direction of the principal'.
- Do not have your EPOA signed alone or in the presence of only one witness. Both witnesses must see your EPOA be signed and dated for you in section A1.
- Have the person who's signing for you write your name under 'Name of principal', then their own name and address in the spaces below that.
- They then sign and date the EPOA in front of you and the 2 witnesses.
- Your authorised witness should use the top part of the right-hand column to provide their name and address
 details and sign and date the EPOA.
- The other witness should then use the bottom part of the right-hand column to provide their name and address details and sign and date the EPOA.

□ Have your attorney(s) complete section 7, 'Statement of acceptance of appointment by attorney'.

- Your attorney(s) must sign their acceptance of the appointment in front of one witness. The witness provides their name, address, signature and the date on the same page, in the spaces below the attorney's signature.
- The long form has spaces for 2 attorneys to sign their acceptance in section 7. If you have more than 2 attorneys, turn to page 22 and section A3, 'Acceptance by attorneys' for more spaces.

☐ Have your alternative attorney(s) complete section 8, 'Statement of acceptance of appointment by alternative attorney'.

- Your alternative attorney(s) must sign their acceptance of the appointment in front of one witness. The witness
 provides their name, address, signature and the date on the same page as the attorney, in the spaces below
 the attorney's signature.
- The long form has spaces for 2 alternative attorneys to sign their acceptance in section 8. If you have more than 2 attorneys, turn to page 24 and section A4, 'Acceptance by alternative attorneys' for more spaces.

Your EPOA 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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(5) REGISTER AND STORE

In Victoria, you are not required to register your EPOA. You may store it at home yourself.

However, the State Trustees provides a free registry service for wills and powers of attorney made in Victoria. You can either store the original documents with the State Trustee, or store them yourself and register their location

with the State Trustee.

Details of this service and instructions for depositing your EPOA are on the **State Trustees' website**.

■ Make several copies of your EPOA and have them certified.

- Visit the Department of Justice and Community Safety <u>'Certified copies of original documents'</u> webpage for up-to-date information on how to do this and who is authorised to certify documents.
- Get an extra copy if you decide to store your EPOA with the State Trustees, because you will need to deposit
 the original document and keep one of the certified copies for yourself.

☐ Distribute the certified copies of the original, signed EPOA.

- If you want to store the original EPOA yourself, keep it in a safe place at home—perhaps with your will and other important papers.
- If you decide to store your EPOA with State Trustees, follow their instructions for how to do this.
- Give certified copies to all your attorneys and alternative attorneys.
- 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 EPOA.

And finally ...

☐ Make a diary note to review your EPOA 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 attorney, alter the preferences that you recorded in your EPOA, or revoke (cancel) your EPOA completely.



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•	REVOKING YOUR EPOA y change or revoke (cancel) your EPOA at any time as long as you still have capacity.
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n Victoria, you ma	y change or revoke (cancel) your EPOA at any time as long as you still have capacity. why you want to change your EPOA and what the changes will be.
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Now you should be prepared to make the changes that you want.

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

☐ Complete the revocation form provided by the Office of the Public Advocate.

- Download the revocation form
- Complete the form. You'll need to know the date you made your previous EPOA.
- Sign the completed form in front of 2 witnesses (one an authorised witness), just like you did with your EPOA.
- If you are unable to sign the form yourself, you can have someone sign for you in section A1, just like you did with your EPOA.
- ☐ Tell all attorneys and alternative attorneys that you have revoked your EPOA.
- Provide them with copies of the revocation.
- Make a note of how and when you tell them.
- Ask to have their copies of the previous EPOA back.
- ☐ If you registered or stored your previous EPOA with State Trustees, notify them of the revocation.
- ☐ To make a new EPOA, follow this checklist again to complete a new long or short form.

To change an existing EPOA in Victoria, you have two options. For either one, you must still have decision-making capacity.

- 1. You can write a whole new EPOA on a new form, following the steps in this checklist again and changing whatever instructions and appointments you like. The new EPOA will automatically revoke the previous one.
- 2. Or, if you only want to record additional instructions but not change anything else in your existing EPOA, you may make an additional EPOA and specify in section 1, 'Principal (You)', that you are not revoking the existing one. Both EPOAs would then exist concurrently, and both must be followed by your attorneys if they need to begin acting for you. (Be aware that this option could be confusing and lead to complications in making your decisions later.)

However, although you are legally allowed to have two concurrent EPOAs, it's not recommended, and very few people take this option.

Having two co-existing EPOAs could cause a lot of confusion and complications for everyone involved in supporting you. They would need to find and check two separate and different copies of your instructions, and it would be very easy for misunderstandings to arise and your EPOAs to be misused.

The simplest and safest way to safeguard the integrity of your instructions is to write a completely new EPOA that will supersede the original one.

- ☐ Follow this checklist again to complete a new long or short form.
- If you do want to make an additional EPOA without changing your existing instructions, you must specify in

• If you do not specify this on in section 1, the new EPOA will automatically revoke the existing one completely.
☐ Provide your attorneys and alternative attorneys with certified copies of the new EPOA.
☐ Provide certified copies of the new EPOA to any other relevant people, such as your solicitor and bank.
☐ If you registered or stored your previous EPOA with State Trustees, repeat the deposit process with your new one. (Remember to store your original EPOA, not a copy.)
☐ 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.
NOTES

section 1, 'Principal (You)' that you are **not** revoking the existing EPOA. (This is not a recommended option.)

EPOA Instructional Checklist VIC

Documents / Resources



Compass Epoa Checklist Vic [pdf] User Guide Epoa Checklist Vic, Checklist Vic, Vic

References

- C Help tackling elder abuse, starts here. â€" Compass
- User Manual

Manuals+, Privacy Policy

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