



## ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. New sections inserted</p> <p>    9A. Grant of administration to holder of enduring power of attorney</p>	<p>9B. Further provisions relating to grant of administration to holder of enduring power of attorney</p>
--	---

---

1998, No. 82

**An Act to amend the Administration Act 1969**

[2 July 1998]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Administration Amendment Act (No. 2) 1998, and is part of the Administration Act 1969 (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

**2. New sections inserted**—The principal Act is amended by inserting, after section 9, the following sections:

**“9A. Grant of administration to holder of enduring power of attorney**—(1) For the purposes of this section and section 9B,—

“‘Attorney’, in relation to a donor, means the holder of a power of attorney granted by the donor:

“‘Donor’, in relation to the estate of a deceased person, means—

    “(a) A person who is the sole executor, or the last surviving executor, of a will made by the deceased person; or

“(b) A person who has the right, in respect of the estate of the deceased person, to apply for letters of administration with or without a will annexed:

“ ‘Mentally incapable’, in relation to a donor, means that the donor is not wholly competent to manage his or her own affairs in relation to his or her property:

“ ‘Power of attorney’, in relation to a donor, means an enduring power of attorney (as described in section 95 of the Protection of Personal and Property Rights Act 1988) that—

“(a) Authorises the attorney to act generally in relation to the whole of the donor’s affairs in relation to the donor’s property (whether or not the attorney is also authorised to act in relation to the donor’s personal care and welfare); and

“(b) Is not subject to any conditions or restrictions that prohibit the attorney from applying for a grant of administration on behalf of the donor.

“(2) If,—

“(a) On the date of a person’s death or within 3 months after that date, the donor is or becomes mentally incapable; and

“(b) There is an attorney in respect of that donor,—  
the Court may, on the application of the attorney, make a grant of administration to the attorney.

“(3) If—

“(a) An attorney applies under subsection (2) for a grant of administration; and

“(b) The donor dies before the Court finally determines that application,—

the Court may make a grant of administration under subsection (2) to the applicant, even though, because of the donor’s death, the applicant is no longer an attorney.

“(4) If—

“(a) A donor applies for a grant of administration in respect of the estate of a deceased person; and

“(b) The donor becomes mentally incapable before the Court finally determines that application; and

“(c) There is an attorney in respect of that donor,—  
the Court may make a grant of administration under subsection (2) to the attorney.

“(5) In the circumstances set out in subsection (4), an attorney does not need to make a separate application for a grant of administration, but may, if the attorney wishes, continue the proceedings in the attorney’s own name.

“(6) A grant of administration under subsection (2) continues until—

“(a) The attorney is discharged or removed as administrator under section 21; or

“(b) The power of attorney ceases to have effect in accordance with section 106 (other than subsection (1) (b)) of the Protection of Personal and Property Rights Act 1988; or

“(c) The attorney is removed as administrator, as specified in section 9B (3) (b) or section 9B (4).

**“9B. Further provisions relating to grant of administration to holder of enduring power of attorney—**(1) Where the Court has made a grant of administration under section 9A (2), the following provisions of the Protection of Personal and Property Rights Act 1988 do not apply in respect of the attorney’s decision to apply for the grant of administration, or any act or omission of the attorney in his or her capacity as administrator of the estate:

“(a) Section 101:

“(b) Section 102 (2) (a):

“(c) Section 102 (2) (c):

“(d) Section 102 (2) (d):

“(e) Section 102 (2) (e):

“(f) Section 102 (2) (f):

“(g) Section 102 (2) (g):

“(h) Section 103:

“(i) Section 105 (1).

“(2) If the donor dies while the attorney is acting as administrator, the attorney must, within 3 months after the date of death of the donor, apply to the Court for directions relating to whether the attorney may continue to act as administrator.

“(3) If an application is made under subsection (2), the Court may—

“(a) Direct the attorney to continue to act as administrator;  
or

“(b) Remove that attorney as administrator under section 21.

“(4) If—

“(a) The donor dies; and

“(b) The attorney fails to make an application under subsection (2) within 3 months after the date of death of the donor; and

“(c) Any person interested in the estate in respect of which the attorney is acting as administrator, or the Public

Trustee, or the Maori Trustee, or any creditor of the testator or intestate, applies to the Court under section 21 to have the attorney removed as administrator,—  
the Court must remove that attorney as administrator under section 21.”

---

This Act is administered in the Ministry of Justice.

---