



Enduring Power of Attorney

THIS FACT SHEET PROVIDES GENERAL INFORMATION ONLY. YOU SHOULD NOT RELY ON IT FOR LEGAL ADVICE.

The laws about **enduring power of attorney** changed in September 2011. This fact sheet updates information in our 2010 **Power of Attorney** booklet.

What is an enduring power of attorney?

An **enduring power of attorney** is effective when you are not capable of making your own decisions. An enduring power of attorney does not stop you from managing your own affairs, as long as you are capable.

Who can make an enduring power of attorney?

You may make an enduring power of attorney if you are 19 years of age or older, and are capable of making decisions. The law presumes you are capable unless it is shown that you are not. The way you communicate is not a factor in deciding whether you are capable.

Why is it important to have an enduring power of attorney?

Suppose you become incapable. If you have an enduring power of attorney, your attorney can make legal and financial decisions on your behalf. If not, the courts may have to decide.

Nobody, not even a spouse, has legal authority over an adult's financial or legal affairs, even if you become incapable.

Who should I appoint?

You **cannot** appoint:

- A caregiver who is paid to provide you with personal or health care services.
- An employee at the facility where you live if the place provides health or personal care services.

This rule does not apply if the person providing the care is a spouse, a parent, or a child. For more detail, see **Power of Attorney** booklet and read the section "Naming an Attorney".

What does enduring power of attorney cover?

An enduring power of attorney covers legal and financial decisions only. It does **not** cover healthcare and personal decisions.

How do you make an enduring power of attorney?

The BC Ministry of Attorney General has an **Enduring Power of Attorney** form available. It is online at: www.ag.gov.bc.ca/incapacity-planning. You do not have to use this form, but it gives you an idea of how to make an enduring power of attorney.

Should I see a notary public or a lawyer?

It is a good idea to go to a lawyer or notary public to make an enduring power of attorney. You can talk with a lawyer or notary public about what your attorney can do. Note:

- There are rules about the gifts, loans and donations an attorney can make on your behalf.
- Your attorney cannot make or change a will.
- Your attorney cannot delegate decision-making to others except to qualified investment specialists.

When does an enduring power of attorney take effect?

An enduring power of attorney usually takes effect as soon as you and your attorney sign the documents. You can continue to manage your financial and legal affairs for as long as you are capable. But your attorney can help you with any complicated matters. An enduring power of attorney can also take effect at a specified time you name in the document.

What do I need to know about signing the documents?

You must sign the enduring power of attorney and have the signing witnessed. You need only one

Enduring Power of Attorney

THIS FACT SHEET PROVIDES GENERAL INFORMATION ONLY. YOU SHOULD NOT RELY ON IT FOR LEGAL ADVICE.

witness if you use a notary public or a lawyer.

Any attorney appointed after September 1, 2011, must also sign the enduring power of attorney document in front of witnesses before they can act. You and your attorney do not have to sign at the same time.

Can I cancel an enduring power of attorney?

You can end your enduring power of attorney as long as you are capable. You must put your decision in writing. The written decision is called a “Notice of Revocation”. You must give a signed and dated copy of the written Notice of Revocation to your attorney, or attorneys.

Nidus (www.nidus.ca) has information about cancelling. You can find “Procedures to Cancel (Revoke) an Enduring Power of Attorney” at:

www.nidus.ca/PDFs/Nidus_Info_Revoke_EPA.pdf.

I was appointed enduring power of attorney. I want to resign. How can I do this?

If you want to resign, you must put your decision in writing. The written decision is called a “Notice of Resignation”. You must give a signed and dated copy of the written Notice of Resignation to the person who appointed you and any other attorneys.

If the adult is incapable, you must also give the Notice of Resignation to the adult’s spouse, near relative or close friend.

Nidus has information about resigning. You can find “Procedures for Resigning as an Attorney” at:

www.nidus.ca/PDFs/Nidus_Info_Resign_Attorney.pdf.

Where can I get more information?

Nidus Personal Planning Resource Centre and Registry NOTE: FORMERLY CALLED THE REPRESENTATION AGREEMENT RESOURCE CENTRE.

www.nidus.ca

Detailed information about enduring power of attorney and representation agreements.

Office of the Public Guardian and Trustee

www.trustee.bc.ca

Information about personal planning tools.

Ministry of Attorney General

www.ag.gov.bc.ca/incapacity-planning.

Information about incapacity planning, including an Enduring Power of Attorney form.

© September 2011

The People’s Law School

Offers public legal education and information for individuals, organizations, and groups in British Columbia.

Factsheets and other publications are available online.

For more information, visit us:



Suite 150 - 900 Howe Street, Vancouver, BC V6Z 2M4

telephone: 604.331.5400 • fax: 604.331.5401

www.publiclegaled.bc.ca • info@publiclegaled.bc.ca

Follow us:



This factsheet is made possible through funding from the Law Foundation of BC, Notary Foundation, and Ministry of Public Safety and Solicitor General:

Gaming Policy Enforcement Branch.



The People’s Law School works within its budget to keep information up-to-date. However, it is the responsibility of the individual using the information to be sure it is accurate. The People’s Law School is not responsible for the interpretation of this information.

Permission is granted to reproduce this fact sheet for non-commercial use and with credit to the People’s Law School. Authorization to photocopy text does not include permission to reproduce graphic images.

UPDATED

DECEMBER 2002

POWER OF ATTORNEY



This booklet explains how a power of attorney can help you to look after your current and future financial affairs. It describes some common examples. See page 10 for where to get help with your particular situation.

You should not rely on this booklet for legal advice. It provides general information only.

**the
people's
law
school**



Suite 150
900 Howe Street
Vancouver, B.C.
V6Z 2M4
TEL 604.331.5400
FAX 604.331.5401

What is power of attorney?

A power of attorney is a legal document. When you give someone power of attorney you give him or her the legal power to take care of financial and legal matters for you. This might include paying bills, depositing or withdrawing money from your bank account, investing your money or selling your house.

The person you give this power to is called THE ATTORNEY (in this case, attorney does not mean lawyer). You are called THE DONOR.

Power of attorney does not give the attorney authority to make decisions about your health care. It covers financial and legal matters only.

FREE

What powers of attorney are used for

There are many reasons people make a power of attorney. One reason is because they are physically unable to look after their affairs due to travel or injury.



EXAMPLE: Anita is leaving the country to visit her grandchildren. She may be gone for a long time. She wants to give her niece the authority to pay her bills when she is away. Anita makes a power of attorney.

Another reason people often make a power of attorney is in case they become “mentally incapable” due to illness, disease or accident. See the sample on page 6.

A power of attorney is a simple and inexpensive way to plan ahead and choose

who will help you with your finances. If you become “mentally incapable” and you do not have a power of attorney, your family may have to go to court to get the legal right to manage your affairs.

EXAMPLE: Franz had an accident at work. He is in hospital in a coma. Franz and his wife Helga have a joint bank account so Helga can pay the bills. However, their car is in Franz’ name and the insurance is due. Franz can’t sign. Helga wishes Franz had made an enduring power of attorney so she could use it to renew the insurance.

In this case, Helga will have to go to court to get “committeeship” (the legal authority to handle Franz’ affairs). Going to court is expensive, it usually takes several months, and the court might decide not to appoint Helga, as “committee,” or might not give her all the powers she asks for.

Therefore, many people make an EN-DURING power of attorney to plan ahead in case they become “mentally incapable.”

EXAMPLE: Ruth’s doctor has told her that she has early signs of Alzheimer Disease and she will gradually lose her mental abilities. Ruth makes an “enduring” power of attorney

Pre-planning for health care decisions

The law sets out who will make health care and treatment decisions for you when you no longer can. Usually, this is your closest relative, such as your spouse or child. You can plan ahead by making a representation agreement that names whoever you want to make those decisions, such as a friend.

For the legal remedy which best suits your circumstances, you should consult with a lawyer or Notary Public.

naming her son, Hiram, as her attorney. He will be able to manage her money for her when she can no longer act for herself.

See ENDURING powers of attorney, page 4.

Naming an attorney

You can choose anybody as your attorney, so long as they are 19 years or older and able to understand the responsibilities involved. Most people choose their husband, wife, friend or other family member.

You can appoint more than one person. If you do, you must write in the document whether they will act together or individually. (For instance, do both of them have to sign any papers, or can either one sign?)

If you name only one attorney, it is very important to name an alternate who will take over if something happens to your attorney. However, you also need to describe very clearly the circumstances when an alternate may take over.

Your attorney will have significant power, so choose somebody you trust, and who is comfortable with financial matters. Take the time to talk with that person about what you want and would expect them to do. Ask if he or she is willing to be your attorney.

You can choose a trust company as your attorney. Ask the trust company how much it will charge you. You can also name the Public Guardian and Trustee (a government official). The Public Guardian and Trustee also charges fees.

The attorney's powers and responsibilities

The attorney is like your agent. He or she must act honestly and in good faith, in YOUR best interests. Your attorney must keep careful records of any financial activities, and must keep your affairs separate from his or her own.

A GENERAL POWER OF ATTORNEY gives your attorney the power to do anything financial or legal that you can do for yourself. This could include dealing with bank or credit union accounts, getting information from Canada Customs and Revenue Agency (Revenue Canada) in order to do your income tax, insuring or selling your car, or selling real estate.

You can also limit your attorney's powers by making a power of attorney only for a SPECIFIC TASK. For example, you can give someone power of attorney to sell a particular piece of property or you can give them powers for a limited period of time.

EXAMPLE: Anita makes a specific power of attorney so that her niece can deposit Anita's pension cheques and pay her bills. The niece only has access to Anita's chequing/savings account, and only until Anita comes home from her trip.

If you want your attorney to sell your real estate or deal with mortgages or easements, there are special requirements. See POWERS OF ATTORNEY FOR REAL ESTATE, page 9.

When powers of attorney start

A power of attorney comes into effect as soon as it is signed. However, it does not have to be used immediately. Make sure your attorney knows when you want him or her to act.

When powers of attorney end

A **SPECIFIC** power of attorney ends when the job it describes is done (for instance, the piece of property is sold) or on the date it says (for instance, the day Anita comes back from her trip).

A **GENERAL** power of attorney automatically ends:

- if you become incapable (**UNLESS** you include an “enduring” clause, see next heading),
- if your attorney dies (unless you name an alternate, or more than one attorney),
- if you die,
- if you are certified as “incapable” by a Director of a Mental Health facility,
OR
- if the court appoints a “committee” to make decisions for you.

You can also **CANCEL** a power of attorney at any time. See page 5.

Enduring powers of attorney

A power of attorney automatically ends if you become “mentally incapable” **UNLESS** you add a sentence that says you want it to continue. This sentence makes it an “enduring” power of attorney:

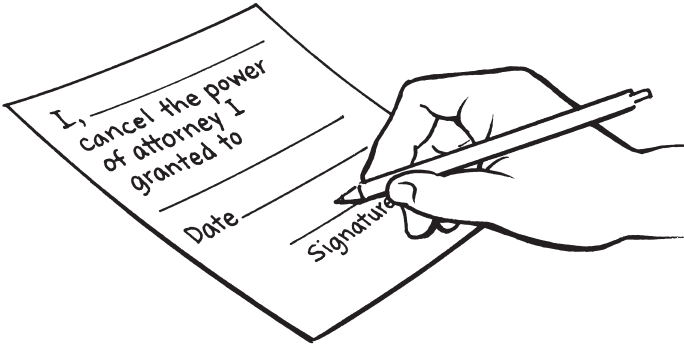
“In accordance with the Power of Attorney Act, I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.”

An enduring power of attorney does **NOT** cover health care or personal care decisions.



Plan ahead – before things get out of control.

Some common questions about powers of attorney



How do I cancel a power of attorney?

You can cancel (revoke) your power of attorney at any time. Notify your attorney in writing.

EXAMPLE: "I, (your name), cancel the Power of Attorney I granted to (name of your attorney).

Date: _____ Signature: _____

Send a copy of the notice to any organizations, companies or individuals your attorney deals with.

If I make a new power of attorney, does it automatically cancel the old one?

No. More than one power of attorney can be in effect at the same time. If you want to be sure you have only one power of attorney in effect, when you make a new power of attorney, write at the beginning:

"I revoke any and all powers of attorney I have previously made."

Can my attorney be someone who lives in another province?

Yes. The person you name as your attorney does not have to live in BC.

Can my attorney decide to quit?

Yes. Your attorney must tell you (preferably in writing) that he or she does not wish to continue. When that happens, you (or the attorney) need to notify any organizations, companies or individuals that the attorney deals with, and then you will need to make a new power of attorney.

Do I have to pay my attorney?

Your attorney is entitled to be paid back for any out-of-pocket expenses. If you also wish to pay your attorney a fee, you must write this in the document. If a trust company or the Public Guardian and Trustee is your attorney, they will ask you to sign an agreement that says they can charge fees.

Banks and powers of attorney

Banks and credit unions often have their own power of attorney forms. Those forms are only for your dealings with that particular financial institution.

Some banks or credit unions may refuse to accept power of attorney documents you write yourself or that you make with a lawyer or Notary Public. They have no legal right to refuse. Speak to the manager. If necessary, call a lawyer.

Sample

Here is an example of a general power of attorney with two attorneys and an “enduring clause.” (See notes on page 7.)

SAMPLE

Power of Attorney

This general power of attorney is given on date, by your name (the donor), of your-full address.

← ①
← ②

I appoint name of attorney, of attorney's address

and name of attorney, of attorney's address

← ③

who may act separately to be my attorneys in accordance with the Power of Attorney Act and do on my behalf anything that I can lawfully do by an attorney.

← ④

In accordance with the Power of Attorney Act, I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

← ⑤

This power of attorney is not subject to any conditions or restrictions.

← ⑥

Signature of Witness: _____

← ⑦

Name of Witness (print): _____

Address of Witness: _____

Signature of Donor: _____

This format will not allow your attorney to deal with real estate. Replace this section with the box at bottom of page 7.

The notes below refer to SAMPLE Power of Attorney on page 6.

- ① This is the date you sign the document.
- ② Use your full name as it appears on your bank accounts, taxes, or financial papers (for example “Harold John Armstrong” instead of “Harry Armstrong”).
- ③ To name an alternate, write: I appoint (name) of (address) to be my attorney if (name of attorney) dies, or is unable or unwilling to act.”
- ④ If there is more than one attorney you must say EITHER “who shall act together” OR “who may act separately.”
- ⑤ This is the “enduring” clause (please see page 4).
- ⑥ You can list any conditions or restrictions on your attorney’s power.
- ⑦ The witness must be 19 years or older and should NOT be your spouse or the person you are naming as the attorney. It could be a neighbour, friend, etc.

If you want your attorney to be able to sell your vehicle or renew the insurance on your vehicle (if you are not able to do it) you and the witness must sign the power of attorney in front of a lawyer or Notary Public who will then “notarize” it (put their seal on it). (Not shown in SAMPLE.)

If you want the power of attorney to deal with real estate matters (see page 9), a lawyer or Notary Public must witness this section. The box below would replace the witness section in the sample on page 6.

Execution Date								
Officer Signature(s) <i>(stamp and signature of lawyer or notary)</i>	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 33%; text-align: center;">Year</td><td style="width: 33%; text-align: center;">Month</td><td style="width: 33%; text-align: center;">Date</td></tr><tr><td style="height: 40px;"></td><td></td><td></td></tr></table>	Year	Month	Date				Transferor(s) Signature <i>(signature of person giving power of attorney)</i>
Year	Month	Date						
<p>Officer Certification Statement: Your signature constitutes a representation that you are a solicitor or Notary Public or other person authorized by the Evidence Act, RSBC 1996 c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.</p>								



Do I need professional help?

It's best to get some professional help, especially if you have a complicated or unusual situation.

According to ICBC and the motor vehicle branch, your power of attorney must be "notarized" if you want your attorney to have the power to renew the insurance or sell your vehicle (if you can't do it yourself). This means a lawyer or Notary Public puts his or her seal on the document when you make it, to confirm that you and the witness signed it in front of him or her.

If you go to a lawyer or Notary Public, find out how much they will charge you. Phone around and compare prices. See page 10 about how to find a lawyer or Notary Public.

If your power of attorney deals with real estate, you **MUST** go to a lawyer or Notary Public. See page 9.

What can I do to prevent misuse of my power of attorney?

Before you make a power of attorney you may want to talk to a friend, family member, community advocate, or legal professional. You can also insist that your attorney get legal advice about his or her responsibilities. For example, attorneys

must keep accurate records, and attorneys must not take a personal benefit from the person's assets.

Be sure you choose someone you **TRUST** as your attorney. If possible, name more than one person. Talk to these people before you appoint them and make sure they understand what you expect from them, and when you expect them to act.

Remember that a power of attorney takes effect as soon as it is signed, but it does not have to be used until you need help. You may want to give the power of attorney document to someone else you trust, and tell him or her when to give it to the attorney.

You can put limits on the power you give your attorney. You can require the attorney to keep records of your finances and show you those records regularly. You should also review your bank statements.

Misusing a power of attorney is a crime. If your attorney abuses his or her power, cancel the power of attorney immediately and then get legal advice. You may be able to sue your attorney to get back any money or property that has been taken.

If you are incapable and cannot cancel your power of attorney, you or someone else can call the Office of the Public Guardian and Trustee and report the situation. They will investigate.

I made a power of attorney ten years ago. Is it still good?

Yes. However, you should check it over to make sure that it will do what you want and the information is accurate. You may decide to make a new one.

Powers of Attorney for Real Estate

If you want your attorney to have the power to sell your real estate property or deal with mortgages or easements, there are special requirements. You must go to a lawyer or Notary Public to have the document prepared, and here are a few things you should know:

- Your power of attorney must use the *exact* name that is listed on your real estate property at the land title office. For instance, if the name on the property deed is “Chung Hon Lee, you cannot use “C.H. Lee.” If you are not sure of the exact name, do a search at the land title office.
- A power of attorney for real estate gives your attorney the power to sell or transfer property to someone else, but NOT TO HIM OR HERSELF. If you want to include that power, it has to be specifically written in. Discuss this with your lawyer or notary.
- You must sign the power of attorney in the presence of a lawyer or notary, and the lawyer or notary must also sign.
- You must register the power of attorney at the land title office and pay the registration fee. Check at your local land title office for the current fee. You can wait to register it, but don’t wait to check with the office to make sure it meets the requirements.
- A power of attorney for real estate ends automatically in three years UNLESS it is an “enduring” power of attorney OR you say, “Section 56 of the Land Title Act does not apply.”

It’s a good idea to review all your financial affairs (including your will) every two or three years. Addresses change, and so do people’s lives. Stay up to date.

What about powers of attorney made in another province or country?

Each province in Canada has its own laws and procedures for powers of attorney. This booklet applies to residents of BC who have finances and property in BC. For information about powers of attorney in another province or country, consult a legal professional. You may also want to read a book called “Power of Attorney” by Self Counsel Press, which is sold at stationery and bookstores, and is in many libraries.

If I have property in another province, will my BC power of attorney apply?

Possibly. However, the safest approach is to check with a lawyer in that province.

My mom made a power of attorney in Alberta before she moved to BC. Is her power of attorney still okay?

It is likely the power of attorney made in Alberta will be recognized in BC. However, it may not be effective in dealing with real estate property. If possible, she should make a new power of attorney.

Where can I get more help?

Public Guardian and Trustee of BC

The Public Guardian and Trustee can become trustee of people's finances if no one else is willing and able to help them. The office can investigate the misuse of Power of Attorney where the donor has become "mentally incapable."

Office of the Public Guardian and Trustee
700 - 808 West Hastings Street
Vancouver, BC V6C 3L3
Phone: 604 660-4444
Web: www.trustee.bc.ca

Lawyer Referral Service

The Lawyer Referral Service will give you the name and telephone number of a lawyer who can provide up to a half-hour consultation for \$25.

- In the Lower Mainland, phone: 604 687-3221
- Outside the Lower Mainland, phone toll-free: 1-800-663-1919

The Society of Notaries Public of BC

Phone or visit the website to obtain the name and telephone number of a Notary Public near you. Ask the Notary Public how much it will cost for a first meeting.

- In the Lower Mainland, phone: 604 681-4516
- Outside the Lower Mainland, phone toll-free: 1-800-663-0343
- Web: www.notaries.bc.ca/

Law Students Legal Advice Clinics

Law students from the University of British Columbia and University of Victoria offer free legal help with some legal matters.

- In the Lower Mainland, phone: 604 822-5791
- In Victoria, phone 250 388-4516

The Legal Services Society Call Centre

Staff on the Legal Services Society Call Centre can answer legal questions and direct people to other information or services that can help them solve their legal problems. They do not give legal advice.

- In the Lower Mainland, phone: 604 408-2172
- Outside the Lower Mainland, phone toll-free: 1-866-577-2525

Electronic Law Line

The Electronic Law Line (ELL) provides references to online information. Visit the site at www.bcpl.gov.bc.ca/ell/

Access Justice

If you cannot afford a lawyer, you can make an appointment for free legal assistance from volunteer lawyers with Access Justice. In the Greater Vancouver area call **604-878-7400**. Outside Greater Vancouver call their toll-free number at **1-877-762-6664**.

The Representation Agreement Resource Centre

The Representation Agreement Resource Centre (RARC) has a user-pay online regis-

try, *Nidus eRegistry*, for Enduring Powers of Attorney and Representation Agreements.

You can self-register by going to www.nidus.ca and filling in the on-screen forms. Or ask family or friends to help. You can also get help from a lawyer, Notary Public or designated staff at community organizations. For details, call the RARC at 604 408-7414. You will need a computer and a fax for registration.

The fees are \$25.00 for set-up and first registration; \$10.00 for each additional registration; and \$3.00 for any changes made to a registration at any one time.

The Representation Agreement
Resource Centre
411 Dunsmuir Street
Vancouver, BC V6B 1X4
Phone: 604 408-7414
Web: www.rarc.ca

The Alzheimer Society of BC

The Alzheimer Society provides materials and information to help individuals, caregivers, and families prepare for the future.

Alzheimer Society of BC
300 - 828 West 8th Avenue
Vancouver, BC V5Z 1E2
Phone: (604) 681-6530
Fax: (604) 669-6907
Web: www.alzheimerbc.org/

Useful Publications

Self Counsel Press publishes **do-it-yourself** guides on legal topics for BC. They have a **Power of Attorney Kit**. You can read it at the library, or it can be purchased

at most book or stationery stores throughout BC.

COMMUNITY RESOURCES

Local senior citizen organizations, information centres, public libraries, Royal Canadian Legion, support groups and community agencies may have information and people who can help.

Acknowledgements

Thanks to lawyer **Hugh McLellan** for reviewing this edition.

Writer: Gayla Reid

Illustrations: Nola Johnston,
Don Monet

Coordination: Gordon McLeod Hardy,
Bernice DeWitt

The People's Law School also thanks lawyer Barbara Lindsay, and Notary Public Stan Nichol for their input into the original development of this booklet. We also thank the Public Legal Education Program of the **Legal Services Society of BC** for its support of the first edition.



You should not rely on this booklet for legal advice. It provides general information only.

The People's Law School

The People's Law School is a non-profit society whose purpose is to provide British Columbians with reliable information about their rights and responsibilities under the law.

the
people's
law
school



Suite 150
900 Howe Street
Vancouver, B.C.
V6Z 2M4
TEL 604.331.5400
FAX 604.331.5401

You can read this booklet on our website at:

www.publiclegaled.bc.ca

The People's Law School is generously supported by the:

- Law Foundation of BC
- Notary Foundation
- Department of Justice Canada
- Ministry of Attorney General of BC
- Province of British Columbia
- City of Vancouver
- Canadian Heritage