

REVISED 2015

Power of Attorney



This publication tells you how a power of attorney can be used to give someone the legal power to take care of financial and legal matters for you. It explains the types of power of attorney, who can be an attorney, what powers and responsibilities the attorney has, and how to end a power of attorney.



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Introduction

This publication tells you how a power of attorney can be used to give someone the legal power to take care of financial and legal matters for you. It explains the types of power of attorney, who can be an attorney, what powers and responsibilities the attorney has, and how to end a power of attorney.

The information is produced for educational purposes and is not intended as legal advice. If you need advice about a specific legal problem, please contact a legal professional. Some sources of legal help are highlighted in the Where to Get Help section.

We have tried to use clear language throughout. See the Glossary section for definitions of key legal terms.

The information is current to October 2015.



**PEOPLE'S
LAW SCHOOL**

People's Law School is a non-profit society in British Columbia providing free education and information on the legal problems of daily life.



Making a 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 **adult**.

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

A power of attorney is different from a will, which provides for the distribution of the things you own after your death. A power of attorney is a way to plan for the handling of your affairs during your lifetime.

Why Have a Power of Attorney?

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 is in case they become **mentally incapable** due to illness, disease or accident. With an **enduring power of attorney**, you can appoint someone to act on your behalf for financial and legal affairs in case you become mentally incapable.



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.

If you become mentally incapable and you do not have an enduring power of attorney, your family may have to go to court to get the legal right to manage your affairs.

A power of attorney is a simple and inexpensive way to plan ahead and choose who will help you with your finances.

What if I want to name someone to make health care decisions?

The law sets out who will make health care and treatment decisions for you when you no longer can. You can plan ahead by making a **representation agreement** that names whoever you want to make those decisions, such as a friend, relative, spouse, or adult children. A representation agreement can also cover routine financial and legal matters.

In considering the differences between a power of attorney and a representation agreement, a lawyer or notary public can guide you on which documents best fit your situation.

Choosing Your Attorney

When making a power of 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 spouse, a family member or a friend as their attorney.

For a fee you can choose a trust company as your attorney. You can also name the **Public Guardian and Trustee** (a government official).



Tips & Tools

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.

You can appoint more than one person as your attorney. If you do, you must write in the document whether they will act together or individually.

What if something happens to my attorney?

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.



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.

Do I have to pay my attorney?

Your attorney is entitled to be paid back for any reasonable out-of-pocket expenses. If you want to pay your attorney a fee, you must write this in the power of attorney. The document must authorize the fee and set out the rate.

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.

The Attorney's Powers and Responsibilities

The attorney is like your agent. He or she must act honestly, in good faith and 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't do for yourself. This could include dealing with bank or credit union accounts, getting information from Canada Revenue Agency in order to do your income tax, insuring or selling your car, or selling real estate.

Can I have a power of attorney for a specific purpose?

You can limit your attorney's powers by making a specific 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

Prior to travelling outside the country, 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 bank account, and only until Anita comes home from her trip.

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.

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. 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.

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.

Are there special requirements relating to 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" in the power of attorney. 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 in the power of attorney "Section 56 of the *Land Title Act* does not apply."



Timing of a Power of Attorney

When does the power 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 does the power of attorney end?

A specific power of attorney ends when the job it describes is done, or on the date it specifies. For example, if you make a specific power of attorney to sell a piece of property, the power of attorney ends when the property is sold.

A general power of attorney automatically ends in these circumstances:

- If you become incapable, **unless** you have an enduring power of attorney clause that makes a power of attorney continue to have effect if you are incapable.
- If your attorney dies, unless you name an alternate or more than one attorney.
- If you die.
- If the court appoints a **committee** to make decisions for you. A committee (pronounced caw-mi-tay or caw-mi-tee, with emphasis on the end of the word) is a person appointed by the court to look after your legal and financial affairs in the event that you become mentally incompetent.

You can also cancel a power of attorney at any time.

If 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.

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.

Questions about Jurisdiction

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 publication applies to residents of BC who have finances and property in BC. For information about powers of attorney in another province or country, it's best to consult a legal professional. You may also want to check your local library or bookstores for a book called *Power of Attorney Kit* by Self Counsel Press, or contact a public legal education and information provider in your province.

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

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

Is a power of attorney made in one province okay in another?

It is likely the power of attorney made in one province will be recognized in another. However, it may not be effective in dealing with all real estate matters.

Preparing the Power of Attorney

Do I need professional help?

Most people will go to a notary public or a lawyer to prepare their power of attorney. In

fact, you must sign the power of attorney in the presence of a notary public or lawyer in order for the power of attorney to be recognized at the Land Title Office (see above).

According to ICBC, your power of attorney must be **notarized** for your attorney to have the power to renew the insurance or sell your vehicle (if you can't do it yourself). Notarizing 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.

Particularly if you have a complicated or unusual situation, it's best to get some professional help. If you go to a lawyer or notary public, find out how much they will charge you. Phone around and compare prices. See the Where to Get Help section for help finding a legal professional.

Enduring Power of Attorney

An enduring power of attorney allows you to appoint someone to make financial and legal decisions for you in case you become mentally incapable because of age, accident or illness. An enduring power of attorney does not stop you from managing your own affairs as long as you are capable of making your own decisions.

The key difference between an enduring power of attorney and a general power of attorney has to do with when they are in effect. Only an enduring power of attorney can be in effect when you are mentally incapable.

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

Suppose you become unable to make decisions because of an accident. If you have an enduring power of attorney, your attorney can make financial and legal 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.



Example

George's wife Susan is the owner of the family's second vehicle. If Susan becomes mentally incapable, George would not have the legal authority to sell the vehicle. If Susan made an enduring power of attorney appointing George as her attorney, George would have legal authority to sell the vehicle.

By making an enduring power of attorney, you can appoint someone else to make decisions regarding your property in case you become mentally incapable.

What does an enduring power of attorney cover?

An enduring power of attorney covers financial and legal decisions. Your attorney cannot make health care or personal care decisions for you, such as consenting to surgery or dental work for you. For these decisions, you need to make what's called a **representation agreement**.

An enduring power of attorney may be limited to dealing with specific matters, such as managing a specific bank account. It may also be limited to a specific time period.

Making an Enduring Power of Attorney

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.

The *Power of Attorney Act* says you must understand the nature and consequences of all of these six factors, or you are considered incapable of making an enduring power of attorney:

- the property you have and its approximate value,
- the obligations you owe to your dependants,
- that your attorney will be able to do on your behalf anything in respect of property that you could do if capable, except make a will,
- that the value of your business and property may decline if your attorney fails to manage them prudently,
- that the attorney might misuse their authority, and
- that you may, if capable, revoke the enduring power of attorney.



Example

Suffering from Alzheimer’s disease, Elizabeth is not able to recall what she owns (her bank accounts, vehicles, real estate, and so on). She would be considered incapable of making an enduring power of attorney.

Who can I appoint as my attorney?

As with a general power of attorney, most people making an enduring power of attorney appoint a spouse, family member or friend as their attorney.

The law has some restrictions on who can be appointed under an enduring power of attorney. 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 facility 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.



Tips & Tools

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 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.

A notary public or lawyer can help you with rules about the gifts, loans and donations an attorney can make on your behalf.

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 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.

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.

Is an enduring power of attorney made in one province okay in another?

The *Power of Attorney Act* and the Regulation under the Act have some provisions relating to enduring powers of attorney made outside

British Columbia. You should ask a lawyer or notary how those provisions affect the enduring power of attorney in your situation.

Ending a Power of Attorney

Can I cancel my power of attorney?

You can revoke your power of attorney at any time as long as you are capable. You must put your decision in writing. The written decision is called a Notice of Revocation.



Example

I, _____ (*your name*), revoke the power of attorney that I made on _____ (*date power of attorney was signed*) that appointed the following people _____ (*name of your attorney(s)*).

Date: _____

Signature: _____

You must give a signed and dated copy of the written Notice of Revocation to each attorney appointed in your power of attorney.

The revocation takes effect when it is given to everyone required. You can also list a specific future date in the Notice of Revocation when it will take effect.

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

Nidus Personal Planning Resource Centre and Registry provides detailed procedures for revoking a power of attorney, including a sample Notice of Revocation; see www.nidus.ca.

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 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.

Does a new power of attorney 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.”

What can I do if someone misuses my power of attorney?

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.

Can I resign as attorney?

If you want to resign as the attorney, 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 named in the power of attorney.

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

Nidus provides detailed procedures for resigning as an attorney, including a sample Notice of Resignation; see www.nidus.ca.

Where to Get Help

Access Pro Bono

Volunteer lawyers provide free legal advice to qualifying persons who cannot obtain legal aid or afford a lawyer.

Lower Mainland: 604-878-7400

Toll-free: 1-877-762-6664

accessprobono.ca

Alzheimer Society of BC

Provides information and support to families, individuals, and caregivers to alleviate the personal and social consequences of Alzheimer's disease and other dementias.

www.alzheimerbc.org

Clicklaw

Clicklaw offers one-stop access to legal information, education and help for British Columbians from trusted organizations.

www.clicklaw.bc.ca

Lawyer Referral Service

Offers referrals to lawyers who can provide up to a half-hour consultation for \$25.

Lower Mainland: 604-687-3221

Toll-free: 1-800-663-1919

lawyerreferral@bccba.org

Law Students' Legal Advice Program Clinics

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

604-822-5791

www.lslap.bc.ca

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.

Lower Mainland: 604-408-2172

Toll-free: 1-866-577-2525

Ministry of Attorney General

Provides information about planning for incapacity, including an enduring power of attorney form.

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

Nidus Personal Planning Resource Centre and Registry

Provides detailed information about enduring powers of attorney and representation agreements.

info@nidus.ca

www.nidus.ca

Public Guardian and Trustee of BC

The office can investigate the misuse of a power of attorney where the adult has become mentally incapable, and can become trustee of people's finances if no one else is willing.

700 - 808 West Hastings Street

Vancouver, BC V6C 3L3

604-660-4444

www.trustee.bc.ca

Self Counsel Press

Self Counsel Press publishes do-it-yourself guides on legal topics for BC, including a *Power of Attorney Kit*.

www.self-counsel.com

Society of Notaries Public of BC

Offers a list of notaries in British Columbia.

Lower Mainland: 604-681-4516

Toll-free: 1-800-663-0343

www.notaries.bc.ca

Glossary

Attorney: A person legally appointed or empowered to act on behalf of another.

Committee: A person appointed by the court to make legal, financial and medical decisions for someone who is mentally incapable and cannot manage their own affairs.

Enduring power of attorney: A legal document that enables you to appoint another person to make financial and legal decisions for you in case you become mentally incapable. It can also be effective when you are capable.

Notarized: When a notary public or lawyer certify or attest to the validity of a signature on a document.

Notary public: A public official who is legally authorized to administer oaths, attest and certify certain documents.

Notice of Resignation: A signed and dated statement written by the attorney to resign as appointed attorney.

Notice of Revocation: A signed and dated statement given to your attorney indicating you are ending the authority granted to them under the power of attorney.

Public Guardian and Trustee: Operates under provincial law to protect and provide support for financial and personal decision-making where there is no one else able to do so.

Representation agreement: A legal document to authorize someone to assist you or to act on your behalf for health care and personal care matters. It can also cover routine financial and legal matters.

About this Publication

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About People's Law School

People's Law School is a non-profit society in British Columbia, passionate about making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.



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How Did We Do?

Which publication did you read?

After reading the publication, how would you rate your understanding of the subject matter:

- much better
 better
 not much better
 no better

Please rate how much the publication helped you decide on what step to take next:

- a great deal
 quite a bit
 a little
 not at all

Would you recommend this publication to others? yes no

We welcome your feedback or suggestions:

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You can also fill out our feedback form online at www.publiclegaled.bc.ca.
Thank you for providing feedback; we value your time and opinion.

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