

Power of Attorney



This booklet is for people who want to know -

- What is a power of attorney?
- Who can be a power of attorney?
- What are the attorney's powers and responsibilities?



THIS BOOKLET PROVIDES PUBLIC LEGAL INFORMATION ONLY.
IF YOU NEED LEGAL ADVICE YOU SHOULD CONTACT A LEGAL PROFESSIONAL.

FREE

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Glossary of Terms

Attorney:	A person legally appointed or empowered to act on behalf of another.
Committee:	One or more people appointed by the court to look after your legal and financial affairs in the event that you become mentally incompetent.
Enduring Power of Attorney:	A legal document that enables the adult to appoint another person(s) to manage the adult's financial affairs and property while capable and continues if the adult becomes mentally incapable.
General Power of Attorney:	Covers all financial and legal affairs.
Notarized:	When a notary 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.

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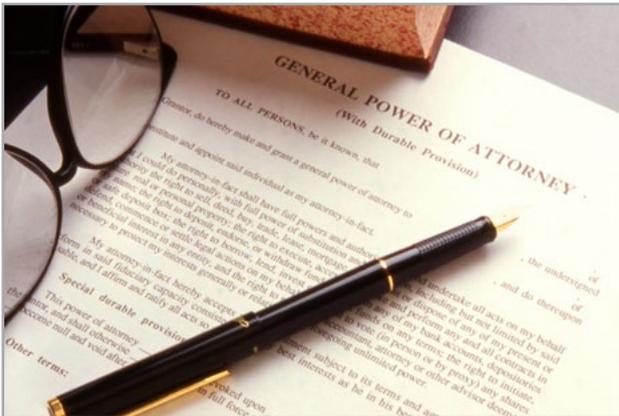
Terms used in this glossary are underlined in their first instance of use.

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 adult.

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



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.

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 a 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.

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. 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.

For the legal remedy that best suits your circumstances, you should consult with a lawyer or **notary public**.

Who can be an attorney?

You can choose anybody as your attorney, so long as they are:

- 19 years or older,
- 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.

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.

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



What are 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.

You can also 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: 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.

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, i.e., the piece of property is sold, or on the date it says. You can also cancel a power of attorney at any time.

A general power of attorney automatically ends:

- if you become incapable; unless you include an "enduring" clause, or if you are certified as "incapable" by a Director of a Mental Health facility,

- 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.

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.

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.

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 which are covered through a representation agreement.



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.

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

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.

Frequently Asked Questions

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.



How can I resign as power of attorney?

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.

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.

You can find "Procedures to Cancel or revoke an Enduring Power of Attorney" at: www.nidus.ca/PDFs/Nidus_Info_Revoke_EPA.pdf.

Nidus has information about resignation. You can find "Procedures for Resigning as an Attorney": www.nidus.ca/PDFs/Nidus_Info_Resign_Attorney.pdf.

How do I cancel a power of attorney?

You can 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.

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.”*

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.

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 out-of-pocket expenses. If you want 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.

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 Helpful Information on page 10 of this publication for help finding a legal professional.



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.

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. 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.

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, or a public legal education and information service 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 real estate property. If possible, you should make a new power of attorney.

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.”

Glossary continued

Notice of Revocation:	A signed and dated statement given to your attorney(s) 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 Agreements:	A legal document to authorize someone to assist you or to act on your behalf for health care and personal care matters.
Specific Power of Attorney:	A more detailed legal document outlining the specific duties for which the power of attorney is granted.

All fees stated in this booklet were accurate at time of publishing. Contact service provider to check rates.

Booklets are available online at:



www.publiclegaled.bc.ca



www.clicklaw.bc.ca

Helpful Information

Ministry of Attorney General	Provides information about incapacity planning, including an Enduring Power of Attorney form.	www.ag.gov.bc.ca/incapacity-planning
Public Guardian and Trustee of BC	The office can investigate the misuse of Power of Attorney where the donor 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 Phone: 604 660-4444 www.trustee.bc.ca
Lawyer Referral Service	Offers referrals to lawyer who can provide up to a half-hour consultation for \$25.	In the Lower Mainland: 604.687.3221 Outside the Lower Mainland: 1.800.663.1919 lawyerreferral@bccba.org
The Society of Notaries Public of BC	Offers a list of notaries near you.	In the Lower Mainland: 604.681.4516 Outside the Lower Mainland: 1.800.663.0343 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: 604.822.5791 Victoria: 250.385.1221 www.lslap.bc.ca
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: 604.408.2172 Outside the Lower Mainland: 1.866.577.2525
Clicklaw	A portal for public legal information and education in British Columbia.	www.clicklaw.bc.ca
Access Pro Bono Society of BC	If you cannot afford a lawyer, you can make an appointment for free legal assistance from volunteer lawyers with Access Pro Bono Society of BC.	In the Lower Mainland: 604.878.7400 Outside the Lower Mainland: 1.877.762.6664
Nidus Personal Planning Resource Centre and Registry	Provides detailed information about enduring power of attorney and representation agreements.	info@nidus.ca www.nidus.ca
The Alzheimer Society of BC	Provides materials and information to help, families, individuals, and caregivers prepare for the future.	www.alzheimerbc.org
Self Counsel Press	Self Counsel Press publishes do-it-yourself guides on legal topics for BC.	www.self-counsel.com
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.	

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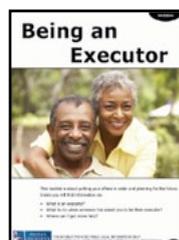
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