



## 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](http://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

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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](http://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](http://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](http://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](http://www.nidus.ca)

Detailed information about enduring power of attorney and representation agreements.

**Office of the Public Guardian and Trustee**

[www.trustee.bc.ca](http://www.trustee.bc.ca)

Information about personal planning tools.

## Ministry of Attorney General

[www.ag.gov.bc.ca/incapacity-planning](http://www.ag.gov.bc.ca/incapacity-planning).

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

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