

# Power of Attorney

Making a Power of Attorney in British Columbia

# Contents

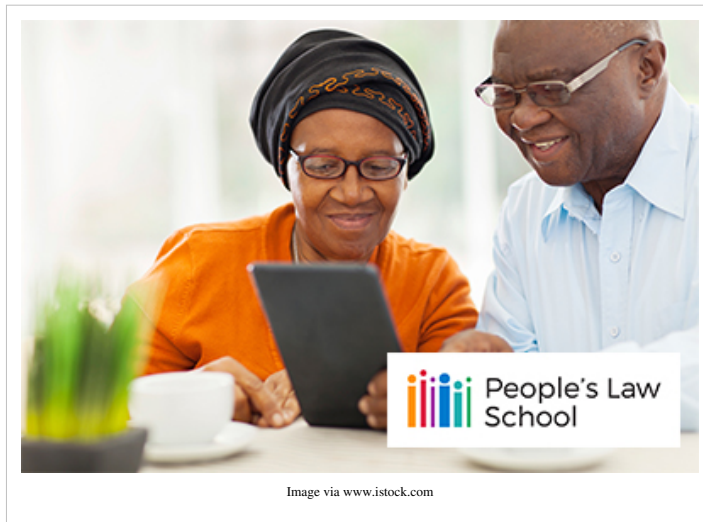
Introduction	1
Why Make a Power of Attorney	2
Enduring Powers of Attorney	6
Making a Power of Attorney	9
Ending a Power of Attorney	14
<b>Resources</b>	<b>17</b>
Where to Get Help	17
Glossary	20

# Introduction

---

*Power of Attorney* tells you how a legal document called a **power of attorney** can be used to give someone the authority to take care of financial and legal matters for you. It explains the types of power of attorney, who can be an attorney, how to make a power of attorney, and how to end a power of attorney.

We have tried to use clear language throughout. See the "Glossary" section for definitions of key legal terms, which are also bolded in the text.



## Copyright & disclaimer

 *Power of Attorney*, © People's Law

School is, except for the images, made available under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada Licence.

At People's Law School, we believe accurate, plain English information can help people take action to work out their legal problems. This publication explains in a general way the law that applies in **British Columbia, Canada**. It is **not intended as legal advice**. For help with a specific legal problem, contact a legal professional. Some sources of legal help are highlighted in the "Where to Get Help" section.

## Contributors & acknowledgements

Contributors to this publication:

- Legal review: Kevin Smith
- Content review: Hassan El Masri and Joan Letendre, notaries public practicing in British Columbia
- Writing, editing and layout: Marisa Chandler, Drew Jackson, Gayla Reid, Elena Renderos

This publication was made possible through the financial support of the Law Foundation of BC <sup>[1]</sup>, the Notary Foundation of BC <sup>[2]</sup>, the Department of Justice Canada, and the Province of British Columbia.

## About People's Law School



People's Law School is a non-profit society in British Columbia, Canada dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life. Contact us at [info@peopleslawschool.ca](mailto:info@peopleslawschool.ca)<sup>[3]</sup> or visit us online at [www.peopleslawschool.ca](http://www.peopleslawschool.ca)<sup>[4]</sup>.

## References

- [1] <http://www.lawfoundationbc.org/>
- [2] <http://www.notaryfoundationofbc.ca/>
- [3] <mailto:info@peopleslawschool.ca>
- [4] <http://www.peopleslawschool.ca>

# Why Make a Power of Attorney

---

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2017.

A **power of attorney** is a legal document in which you authorize another person to take care of financial and legal matters for you. It is one of several options for “personal planning”, which involves making arrangements for while you are alive but may need assistance.

## What a power of attorney allows you to do

When you make a power of attorney, you give someone the authority 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 home.

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 personal care or health 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.



## It can help if you physically can't take care of matters



"I plan to spend the summer visiting my grandchildren in France. I'll be gone for several months, and I want to enable my niece to pay my bills while I'm away. I learned I can do that by making a power of attorney that is **limited**. In it, I authorized my niece to access my bank account only to deposit my pension cheques and pay my bills, and only until I come home from my trip."  
— Helga, Victoria

There are several reasons you might make a power of attorney. A power of attorney can be a good option if you are physically unable to look after your affairs due to travel or injury.

A power of attorney enabling someone to look after your affairs while you are traveling would be an example of a **limited power of attorney**. This is also called a **specific power of attorney**. Your attorney's powers are limited to a specific task or a specific period of time. For example, you give someone power of attorney to sign the papers on the sale of your home while you're out of the country on vacation.

## It can help if you become mentally incapable



"My husband William had an accident at work. He is in hospital in a coma. We have a joint bank account, so I can pay the bills. But our car is in William's name and the insurance is due. William can't sign. I wish William had made an enduring power of attorney appointing me as attorney. That way I could renew the insurance."  
— Anita, Burnaby

Another reason you might make a power of attorney is to prepare for the chance you become mentally incapable due to age, accident or illness. With an **enduring power of attorney**, you can name someone to act on your behalf for financial and legal affairs, and make the appointment continue in effect—or endure—if you become incapable of making decisions. (With a **general power of attorney**, the appointment ends if you become mentally incapable.)

See the section "Enduring Powers of Attorney" for more on this type of power of attorney.

A power of attorney can also be set up to come into effect only when something happens to trigger it. This is called a **springing power of attorney**. You can appoint someone to act on your behalf if the triggering event happens. The triggering event can be if you become mentally incapable. For example, the appointment can be worded to come into effect "when two physicians have determined that I am no longer capable of managing my affairs". Such a springing power of attorney is not active **until** you are incapable.

TYPES OF POWER OF ATTORNEY		
	CAPABLE	INCAPABLE
General	✔ Can be active right away	✘ Ends with incapability
Enduring	✔ Can be active right away	✔ Continues after incapability
Springing	✘ Created, but dormant	✔ Triggered, e.g., with incapability
Limited	✔ Specific time or purpose	✔ Specific time or purpose

The types of power of attorney are not mutually exclusive. For example, an enduring power of attorney or a springing power of attorney can be limited to a specific purpose or time period.

## How it compares to other planning options

### For health care and personal care decisions

A power of attorney deals **only** with your financial and legal affairs. It does not enable your attorney to make decisions about your health care and personal care. For example, a power of attorney would not allow your attorney to consent to surgery on your behalf or to make decisions about where you will live.

Under BC law, if you want to have someone of your choice make decisions about your health care and personal care when you no longer can, you can make a **representation agreement**. In a representation agreement, you name a "representative" to make health and personal care decisions for you, or assist you in making decisions. You can name whoever you want as your representative—a friend, relative, spouse or adult child.

Another option for health care planning is an **advance directive**. It allows you to write instructions to your health care provider about what kind of health care treatment you want and don't want, including life support or life-prolonging medical interventions. No one will be asked to make a decision for you when the advance directive applies.



With a "section 7 representation agreement", your representative can be authorized to handle "routine management" of financial affairs and most legal matters, in addition to health care and personal care. This would allow them to pay your bills, deposit your pension and other income, and make investments for you. However, they can not handle financial matters beyond the routine, such as buy or sell your real estate or take out a new loan in your name. See Nidus Personal Planning Resource Centre <sup>[1]</sup> for more on representation agreements.

## For financial and legal matters

A power of attorney is a simple and inexpensive way to arrange help with your financial and legal affairs. It is the most common way to ensure the person of your choice is able to step into your shoes and handle your finances if you become incapable of doing so.

But there are other planning options to be aware of.

In a **trust agreement**, you can put all your property and income in a trust. You can name someone of your choice to be the trustee, and spell out terms of how the property is to be managed. The trust continues if you become incapable. It can even survive death, ensuring that your affairs continue to be managed in a way that is consistent with the terms in the trust.

If your finances are not complicated, a **pension trusteeship** can be an option. Let's say your income is limited to federal income security programs such as Old Age Security and the Canada Pension Plan, and your expenses are just rent, food and utilities. A capable family member or friend can sign up with the income security programs to receive your pension funds as trustee to pay the rent and bills.

If your income is directly deposited into your bank account, you could set up a **joint bank account** with a trusted relation or friend. That person could help you with paying bills and making withdrawals. (A joint bank account introduces some risks that other planning options don't. For example, any person named on the joint account is able to withdraw money at any time. As well, if one of the account holders dies, the surviving account holder becomes the owner of the account.)

If you become incapable of making decisions independently, and you do not have an enduring power of attorney or another planning tool in place, your loved ones may need to go to court to get the legal authority to handle your affairs. This is called getting "committeeship". Going to court is an expensive and time-consuming process. There is no guarantee the court will decide to grant the legal powers asked for.

## The time to make a power of attorney

If you become incapable of making decisions independently, it is too late to make a power of attorney. You have to plan ahead and do it in advance.

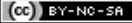
In considering personal planning options, be aware there are different "legal capacity" requirements. Legal capacity refers to a person's ability to make binding decisions or agreements.

Someone who doesn't have the legal capacity to make an enduring power of attorney may still be able to make a representation agreement. A person can make a "section 7 representation agreement" even if they cannot manage their routine financial affairs or look after their daily needs. This makes a section 7 representation agreement a very useful "last resort" document when someone has not made any planning documents and they are starting to lose their capacity.



A lawyer or notary public can guide you on which planning documents best fit your situation. See the "Where to Get Help" section for help finding a legal professional to work with.

If you decide to make a power of attorney, see the steps involved in "Making a Power of Attorney" and the unique considerations when making an enduring power of attorney.

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada Licence.

## References

[1] <http://www.nidus.ca/>

# Enduring Powers of Attorney

---

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2017.

With an **enduring power of attorney**, you can name another person to make financial and legal decisions for you, and the appointment continues—or “endures”—in the event you become mentally incapable. Special considerations apply for this type of power of attorney.

## What an enduring power of attorney allows you to do

With an enduring power of attorney, you can name someone of your choice 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.



"My wife Susan is the owner of our second car. If she becomes mentally incapable, I learned I wouldn't have the legal authority to sell the car. So she made an enduring power of attorney appointing me as her attorney. That gives me the legal authority to sell the car if Susan becomes mentally incapable."  
— George, Nelson

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



## **An enduring power of attorney covers financial and legal decisions**

An enduring power of attorney covers financial and legal decisions. This might include paying bills, depositing or withdrawing money from your bank account, investing your money, insuring or selling your car, or selling your home.

Your attorney cannot make personal care or health care decisions for you, such as consenting to dental work or surgery for you. To appoint someone to make personal care or health care decisions on your behalf, you can make 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.

## **Requirements for an enduring power of attorney**

### **You must have the capacity to make an enduring power of attorney**



"Suffering from Alzheimer's disease, my client Elizabeth is not able to recall what she owns—her bank accounts, vehicles, real estate, and so on—or understand what a power of attorney might involve. She would be considered incapable of making an enduring power of attorney. However, she may still be capable of making a 'section 7 representation agreement'."  
— Sylvia, Lawyer, Kelowna

You may make an enduring power of attorney if you are 19 years of age or older, and are capable of understanding the nature and consequences of the power of attorney.

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.

Under the law <sup>[1]</sup>, you will be considered incapable of making an enduring power of attorney if you cannot understand **all six of these things**:

- 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 (subject to any restrictions set out in the power of attorney),
- that the value of your business and property may decline if your attorney fails to manage them prudently,
- that your attorney might misuse their authority, and
- that you may, if capable, revoke the enduring power of attorney.



Someone who doesn't have the legal capacity to make an enduring power of attorney may still be able to make a representation agreement. A person can make a "section 7 representation agreement" even if they cannot manage their routine financial affairs or look after their daily needs. This makes a section 7 representation agreement a very useful "last resort" document when someone has not made any planning documents and they are starting to lose their capacity.

## Who you can name as your attorney

Most people making an enduring power of attorney name a spouse, family member or friend as their attorney.

As with a general power of attorney, the law <sup>[1]</sup> has two restrictions on who you can name as an attorney 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 a facility where you live if the facility provides personal or health care services.

These restrictions do not apply if the person providing the care is your child, parent or spouse.

## Making an enduring power of attorney


### Should you 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. An enduring power of attorney is a very powerful legal document. A lawyer or notary can help you understand its risks and benefits. They can also suggest ways you can create your enduring power of attorney so that it will be both safe and effective. As well, they can help you understand what your attorney can and cannot do. For example, a lawyer or notary can help you with rules about the gifts, loans and donations an attorney can make on your behalf.

### An enduring power of attorney usually takes effect immediately

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. To the extent reasonable, your attorney must foster your independence and encourage your involvement in any decision-making that affects you.

An enduring power of attorney can also take effect at a specified time you name in the document, such as when you become incapacitated. This is known as a **springing power of attorney**.

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada Licence.

## References

[1] <http://canlii.ca/t/8491>

# Making a Power of Attorney

---

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2017.

After considering why you might make a power of attorney, here are the steps involved in **making a power of attorney**.

## Key considerations

### Choosing your attorney

When you make a power of attorney, the person you authorize to take care of financial and legal matters for you is called the **attorney**.

You can choose as your attorney someone who is:

- age 19 or older, and
- able to understand the responsibilities involved.

The law has two restrictions on who you can name as an attorney. You cannot name:

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



These restrictions do not apply if the person providing the care is your child, parent or spouse.

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), but you need to check in with them first.

You can name more than one person as your attorney. If you do, you must write in the document whether they will act together or individually. If you don't specify, the default is that they must act together.



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

## The attorney's powers and responsibilities

When you make a power of attorney, you can put **limits** on the power you give your attorney. For example, if you create a limited power of attorney giving your son only the power to deposit your pension cheques, then your son will have the legal power to do only that—deposit your pension cheques.

A power of attorney does not give the attorney authority to make decisions about your health care or personal care. (There are other planning tools for dealing with health and personal care.)

The attorney is like your agent. He or she must act honestly, in good faith and in your best interests. Your attorney must not take a personal benefit from your property.

Your attorney must keep careful records of any financial activities, and must keep your affairs separate from his or her own.

Learn more about the attorney's duties in *Managing Someone Else's Money*, from People's Law School.

## You can still make decisions

Having a power of attorney does not remove your decision-making rights. Decision making is not given away; it is shared between you and the attorney whenever possible. Your attorney cannot override a decision made by you while you are capable.

Your attorney has a legal duty, to the extent reasonable, to foster your independence and encourage your involvement in any decision-making that affects you.

## What you can do to prevent misuse of your power of attorney

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.

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

Even a power of attorney that takes effect as soon as it is signed 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.

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.

## Timing of a power of attorney

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

A limited power of attorney (a power of attorney that limits the attorney's powers to a specific task or a specific period of time) ends when the task it describes is done, or on the date it specifies. For example, if you make a limited 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 the 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 or body (such as the Public Guardian and Trustee) appointed by the court to look after your legal and financial affairs in the event that you become incapable of managing your affairs.

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

## Special requirements

### There are 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 <sup>[1]</sup>.
- 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 with the Land Title Office <sup>[1]</sup> 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 (a power of attorney that continues to have effect if you are incapable) or you say in the power of attorney “Section 56 of the Land Title Act does not apply”.

### There are special considerations for enduring powers of attorney

With an enduring power of attorney, you can name another person to make financial and legal decisions for you, and the appointment continues—or “endures”—in the event you become mentally incapable. See the section "Enduring Powers of Attorney" to see the special considerations for this type of power of attorney.

## Steps to make the power of attorney

### Step 1. Choose your attorney

Your attorney will have significant power, so choose someone 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.

## Step 2. Prepare the power of attorney

The BC Ministry of Justice has an enduring power of attorney form available online <sup>[2]</sup>. You do not have to use this form, but it gives you an idea of how to make a power of attorney.

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 your attorney to have the power to deal with your real estate.



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 options for free or low-cost legal help.

## Step 3. Sign the power of attorney

You must sign a power of attorney with a handwritten signature. (It is one of the few documents that the law in BC dealing with electronic signatures does not apply to.)

Your signature must be witnessed. The witness must be present when you sign, and the witness must sign the power of attorney.

### If you want your attorney to have powers relating to real estate or vehicles

In order for your attorney to have the power to sell your real estate or deal with mortgages or easements, you must sign the power of attorney in the presence of a notary public or lawyer. The lawyer or notary must also sign.

In order for your attorney to have the power to sell your vehicle or renew its insurance, your power of attorney may need to be notarized. Notarizing means a 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 are making an enduring power of attorney

There are special requirements if you are making an enduring power of attorney (a power of attorney that continues to have effect if you are incapable).

You must sign and date the enduring power of attorney and have the signing witnessed by two witnesses. The witnesses must also sign and date the power of attorney in front of you.

You need only one witness if the witness is a notary public or a lawyer.

The attorney must also sign the enduring power of attorney in front of two witnesses. You and your attorney do not have to sign at the same time.



A person cannot witness a signature if they are being appointed as the attorney, or if they are a spouse, child or parent of the attorney. Nor can a person witness your signature if they are employed by the attorney, unless you are appointing a lawyer, notary public, the Public Guardian and Trustee, or a financial institution as your attorney.

#### **Step 4. Register the power of attorney for safekeeping**

If you have made an enduring power of attorney, you can register it with the Nidus Personal Planning Registry<sup>[3]</sup>. This secure online service is a centralized registry for storing enduring powers of attorney and other personal planning documents.

You are not required to register an enduring power of attorney. However, it is helpful as a safeguard for your affairs and making your power of attorney available to others who need to know. When you register a planning document, you can permit access to institutions and individuals you trust.

#### **Step 5. Register the power of attorney with the Land Title Office**

If your attorney needs to deal with real estate property on your behalf, the power of attorney must be registered with the Land Title Office<sup>[1]</sup>. Sometimes people do this at the time they make the power of attorney or let their attorney do it if the time comes.

### **Common questions**

#### **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.

#### **Can my attorney be someone who lives in another province?**

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

#### **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.

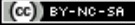
#### **What about powers of attorney made in another province or country?**

Each province in Canada has its own laws and procedures for powers of attorney. This information applies to residents of British Columbia 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<sup>[4]</sup>, or contact a public legal education and information provider in your province.

## **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.

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada Licence.

## **References**

- [1] <https://ltsa.ca/>
- [2] <https://www2.gov.bc.ca/gov/content/health/managing-your-health/incapacity-planning>
- [3] [http://www.nidus.ca/?page\\_id=238](http://www.nidus.ca/?page_id=238)
- [4] <http://www.self-counsel.com/>

# **Ending a Power of Attorney**

---

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2017.

If you make a power of attorney, naming someone to take care of financial and legal matters for you, you may decide you want to end it.

## **You can end a power of attorney**

If you make a power of attorney, you may end (“revoke”) it at any time as long as you are capable. The law presumes you are capable unless it is shown that you are not.

You must put your decision in writing. The written decision is called a Notice of Revocation. See below for suggested wording.

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.

You can also cancel a power of attorney by saying so in a new power of attorney replacing it.

## **A new power of attorney does not cancel the old one**

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 you can do if someone misuses your power of attorney**

Misusing a power of attorney is a crime. If your attorney abuses his or her power, end the power of attorney immediately and then seek 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 revoke your power of attorney, you or someone else can call the Public Guardian and Trustee <sup>[1]</sup> and report the situation. They will investigate.

## How to end a power of attorney

### Step 1. Put your decision in writing

To end a power of attorney you have made, put your decision in writing. The written decision is called a Notice of Revocation. You can use wording like this:

*I, \_\_\_\_\_ [insert your name], revoke the power of attorney that I made on \_\_\_\_\_ [insert date power of attorney was signed] that appointed the following people \_\_\_\_\_ [insert name of your attorney(s)] as my attorneys.*

*Date:* \_\_\_\_\_

*Signature:* \_\_\_\_\_

Sign and date the Notice of Revocation.



Nidus Personal Planning Resource Centre <sup>[2]</sup> provides detailed procedures for revoking a power of attorney, including a sample Notice of Revocation.

### Step 2. Give a copy of the revocation to your attorney(s)

Give a signed and dated copy of the written Notice of Revocation to each attorney appointed in your power of attorney. It is a good idea to also give it to any alternate attorneys.

There is no specific way you are required to deliver the notice. You may wish to send it by registered mail to the person's last known address, to be sure that they receive it.

### Step 3. Give a copy of the revocation to anyone else you gave the power of attorney

If you gave a copy of the power of attorney to a bank or other financial service, send them a copy of the Notice of Revocation.

If you filed your power of attorney with the Land Title Office <sup>[3]</sup>, you must also file your revocation with them.

## If your attorney refuses to act or decides to quit

If the attorney you appointed in a power of attorney wants to quit, they must put their decision in writing. The written decision is called a Notice of Resignation.

They must give the written Notice of Resignation to you as the person who appointed them and to any other attorneys named in the power of attorney.

If the adult is incapable of making decisions at the time an attorney is resigning, the attorney must also give the Notice of Resignation to a spouse, near relative, or close friend of the adult.

If your attorney resigns, 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.



Nidus Personal Planning Resource Centre<sup>[2]</sup> provides detailed procedures for resigning as an attorney, including a sample Notice of Resignation.



*Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada Licence.

## References

- [1] <http://www.trustee.bc.ca>
- [2] <http://www.nidus.ca>
- [3] <https://tsa.ca/>

---

# Resources

---

## Where to Get Help

---

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2017.

### 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

[www.accessprobono.ca](http://www.accessprobono.ca) <sup>[1]</sup>

### 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](http://www.alzheimerbc.org) <sup>[2]</sup>

### Clicklaw

A website offering one-stop access to legal information, education and help for British Columbians from trusted organizations.

[www.clicklaw.bc.ca](http://www.clicklaw.bc.ca) <sup>[3]</sup>

### Lawyer Referral Service

A service from the Canadian Bar Association, BC Branch that 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@cbabc.org](mailto:lawyerreferral@cbabc.org) <sup>[4]</sup>

[www.cbabc.org](http://www.cbabc.org) <sup>[5]</sup>

### **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](http://www.lslap.bc.ca) <sup>[6]</sup>

### **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 Justice**

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

[www.gov.bc.ca](http://www.gov.bc.ca) <sup>[7]</sup>

### **MyLawBC**

From Legal Services Society, the agency that provides legal aid in British Columbia, MyLawBC is an online resource that provides information about personal planning documents such as powers of attorney and representation agreements. The site features “guided pathways” in which you are asked a series of questions, and based on your answers, you are provided with an action plan of what planning documents you need, and how to get them.

[mylawbc.com/paths/wills](http://mylawbc.com/paths/wills) <sup>[8]</sup>

### **Nidus Personal Planning Resource Centre and Registry**

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

[info@nidus.ca](mailto:info@nidus.ca)

[www.nidus.ca](http://www.nidus.ca) <sup>[9]</sup>

### **Public Guardian and Trustee of BC**

This public body can investigate the misuse of a power of attorney where the adult has become mentally incapable. It also provides financial management and legal decision-making for vulnerable adults.

700 - 808 West Hastings Street

Vancouver, BC V6C 3L3

604-660-4444

[www.trustee.bc.ca](http://www.trustee.bc.ca) <sup>[10]</sup>

## 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](http://www.self-counsel.com) <sup>[11]</sup>


## Society of Notaries Public of BC

A notary public can help with making a power of attorney. The Society of Notaries Public of BC offers a list of notaries in the province.

Lower Mainland: 604-681-4516

Toll-free: 1-800-663-0343

[www.notaries.bc.ca](http://www.notaries.bc.ca) <sup>[12]</sup>

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada Licence.

## References

- [1] <http://www.accessprobono.ca>
- [2] <http://www.alzheimerbc.org>
- [3] <http://www.clicklaw.bc.ca>
- [4] <mailto:lawyerreferral@cbabc.org>
- [5] <https://www.cbabc.org/For-the-Public/Lawyer-Referral-Service>
- [6] <http://www.lslap.bc.ca>
- [7] <http://www2.gov.bc.ca/gov/content/health/managing-your-health/incapacity-planning>
- [8] <http://mylawbc.com/paths/wills/>
- [9] <http://www.nidus.ca>
- [10] <http://www.trustee.bc.ca>
- [11] <http://www.self-counsel.com>
- [12] <http://www.notaries.bc.ca>

# Glossary

---

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2017.

## Advance directive

A document specifying instructions to health care providers about what kind of health care treatment a person does or does not want, including life support or life-prolonging medical interventions.

## Attorney

A person legally appointed or empowered to act on behalf of another. An attorney is a type of agent known as a **fiduciary**.

## Capacity

A person's ability to make their own choices and decisions.

## Committee

A person or body (such as the Public Guardian and Trustee) 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 an adult to appoint another person to make financial and legal decisions for them, and specifies that the appointment continues—or “endures”—in the event the adult becomes mentally incapable.

## Fiduciary

A legal relationship where one person has an obligation to act for another's benefit.

## General power of attorney

A power of attorney that gives general powers to the attorney for an unlimited period of time while the adult is mentally capable of managing their own affairs. It ends if the adult becomes mentally incapable.

## Joint bank account

A bank account in which two or more people have ownership rights over the same account.

## Legal capacity

A person's ability to enter into legal relations with others or to make binding decisions or agreements. Generally, the ability to appreciate the nature and consequences of a proposed relation or decision.

## Limited power of attorney

A power of attorney that limits the attorney's powers to a specific task or a specific period of time—for example, to sign papers completing the sale of a specific property.

## Notarized

When a notary public puts his or her seal on a document to confirm that a person signed the document in front of the notary.

## Notary public

A legal professional authorized to provide many non-contentious legal services to the public, including preparing wills and powers of attorney and notarizing signatures on documents.

## Notice of Resignation

A written statement by an attorney to resign from their appointment under a power of attorney.

Notice of Revocation

A written statement by an adult given to their attorney revoking the authority granted to the attorney under a power of attorney.

Power of attorney

A legal document that enables an adult to give another person (or more than one person) the authority to make financial and legal decisions for them.

Public Guardian and Trustee

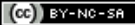
A public body established by law to protect the interests of British Columbians who lack legal capacity to protect their own interests.

Representation agreement

A legal document that enables an adult to authorize someone to make decisions for them when they can no longer manage on their own. The “representative” can make decisions relating to health care and personal care matters. With a “section 7 representation agreement”, the representative can also be authorized to handle “routine management” of financial affairs and most legal matters.

Springing power of attorney

A power of attorney that only becomes effective when a triggering event happens, such as a finding that the adult is mentally incapable.

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Canada Licence.