

# Power of Attorney Collection

Legal Essentials: Making and Using a Power of Attorney in British Columbia

# Contents

Introduction to this Collection	1
<b>Power of Attorney   For the Adult</b>	<b>4</b>
Introduction	4
Why Make a Power of Attorney	5
Enduring Powers of Attorney	9
Making a Power of Attorney	12
Ending a Power of Attorney	12
Where to Get Help	14
Glossary	16
<b>Managing Someone Else's Money   For the Attorney</b>	<b>18</b>
Introduction	18
You Have Been Appointed as an Attorney	20
Power of Attorney Questions & Answers	23
Four Key Duties of a Fiduciary	25
More Things You Should Know About Being an Attorney	33
Keeping the Adult Safe	35
Your Attorney Toolkit	38
Where to Get Help	42
Glossary	46

# Introduction to this Collection

---

*Power of Attorney Collection* brings together two titles from People's Law School on powers of attorney in British Columbia:


- *Power of Attorney* explains how an adult can **make a power of attorney** to give someone the legal power to take care of financial and legal matters for them. It explains the types of power of attorney, how to make a power of attorney, and how to end a power of attorney.
- *Managing Someone Else's Money* is a guide for the **attorney** appointed under a power of attorney. It explains the attorney's duties and responsibilities, offers tips to avoid problems, and provides tools to stay organized.



Image via [www.istock.com](http://www.istock.com)

The information in this collection **applies in British Columbia, Canada**.

## Copyright & Disclaimer

 *Power of Attorney Collection* © People's Law School is, except for the images, licensed 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" sections.

The cases we refer to are not always real but show a typical situation. We have included them to help you think about how to deal with your own situation.

## Acknowledgements

### Writers & Reviewers

The information in the *Power of Attorney Collection* has been written and reviewed for legal accuracy by legal professionals.



**Kevin Smith**, Barrister & Solicitor

**Kevin Smith** is a retired lawyer, having worked for several years with Seniors First BC<sup>[1]</sup> (formerly BC Centre for Elder Advocacy and Support) in Vancouver. A graduate of Osgoode Hall Law School, he has an LLM in Elder Law from the Center for Excellence in Elder Law at Stetson University. Prior to joining Seniors First BC, he worked as a legal aid lawyer in Ontario for 30 years, including as the Clinic Director of Parkdale Community Legal Services, a community clinic associated with Osgoode. His work with Seniors First BC focused on elder abuse matters including financial abuse and financial exploitation, capacity issues, issues in seniors housing and residential care, and pension appeals.



**Drew Jackson**, People's Law School

[www.peopleslawschool.ca](http://www.peopleslawschool.ca)<sup>[2]</sup>

**Drew Jackson** is a lawyer and librarian in Vancouver, BC. He is passionate about making legal information more accessible and understandable. In various roles he has developed legal publications and programs for the public and the legal community. While working with Courthouse Libraries BC, he led the creation of Clicklaw Wikibooks. He works as Digital & Content Lead with People's Law School and on freelance projects that help people understand the law, such as *Transitioning an Existing Society: A How-to Guide for Non-profits in BC* and the consumer and debt section of *Legal Help for British Columbians*.

## Other Contributors

Also reviewing content were Hassan El Masri and Joan Letendre, notaries public practicing in British Columbia. Writing and layout support was provided by Gayla Reid and Elena Renderos.

This publication was made possible through the financial support of the Law Foundation of BC, the Notary Foundation of BC, 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, 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. Visit us online at [www.peopleslawschool.ca](http://www.peopleslawschool.ca)<sup>[2]</sup>.

## References

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

[2] <http://www.peopleslawschool.ca>

---

# Power of Attorney | For the Adult

---


## Introduction

---

*Power of Attorney* tells you how a power of attorney can be used to give someone the authority to take care of your financial and legal affairs. It explains the types of power of attorney, who can be an attorney, their powers and responsibilities as attorney, and how to end such an arrangement.

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 4.0 International 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
- Writing, editing and layout: Veronica Lorimer, Drew Jackson, Bruce Grierson, and 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 [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 2019.*

A **power of attorney** is a legal document. It gives someone you trust the power to look after your legal and financial affairs. 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” doesn’t mean “lawyer.” It simply means the person you’ve chosen to be your decision-maker.

### Why you should consider a power of attorney

A power of attorney is a simple and inexpensive way to plan ahead. The power you give to your attorney can be limited to a single decision, or it can extend more broadly. There are different types of powers of attorney.



A power of attorney is different from a will. A will helps others distribute your possessions after your death. A power of attorney helps you plan out the management of your affairs **during your lifetime**.

With a **general power of attorney**, your attorney can manage your affairs while you are **still mentally capable of managing your own affairs, but physically unable**. This may be a good option if you have mobility issues or are ill. You can give your attorney broad powers to do almost anything with your finances and property.



“I was diagnosed with chronic fatigue syndrome in the fall. Sure, I could still calculate how much I owe the credit card company, if you asked me to. But I just don’t have the energy to juggle my everyday finances. Now is a time to focus on my health.”  
— Akira, South Burnaby

If you prefer, you can restrict your attorney's powers to a **specific task or time period**. This is called a **limited power of attorney** (also called a **specific power of attorney**). It's often used by people who can't manage their affairs because they're injured or away travelling.



"My house is on the market. My father got sick and I had to make a last-minute trip to Germany. I prepared a limited power of attorney so my niece Sara could sign the papers if my home sells while I'm gone. The authority ends when I come home from my trip."  
— Walter, Victoria

With an **enduring power of attorney**, you can **plan in advance for any future incapacity**. A family member, or someone else of your choice, is entrusted to manage your financial affairs if you can't. Their authority to act for you can start right away, and then continue — or "endure" — after you are mentally incapable, whether due to illness or an accident or age-related decline. For more, see the section Enduring Power of Attorney.



"My husband's in a coma — he had an accident at work. We have a joint bank account, so I can still pay the bills. But the car insurance is due and the insurance company won't let me renew it. They say it's because our car is in his name. So, on top of everything else, I've got a car I can't drive and two young kids. If we'd thought to prepare enduring powers of attorney, I could have easily renewed the insurance."  
— Anita, Burnaby

A **power of attorney can be set up so that it doesn't become active until something triggers it**. This is called a **springing power of attorney**. The triggering event might be that two physicians have declared you mentally incapable. At that point, your attorney can take over your affairs.

Both an enduring power of attorney and a springing power of attorney can be **limited** to a specific purpose or time period.



A power of attorney deals only with your financial and legal affairs. You can choose someone to help you make your **health care and personal care decisions** if you become incapable by signing a **representation agreement**.

### You can still make decisions

You needn't worry that drawing up a power of attorney will immediately strip you of the ability to run your own life. Your attorney can't override decisions you make while you're mentally capable. And even if you become incapable, your attorney has a legal duty to encourage your involvement, as much as possible, in any decision-making that affects you.

### You need to be "mentally capable" to sign a power of attorney

To make a decision for yourself or to take an action (like signing a document), the law says you must be "**mentally capable**." Generally, this means you have to demonstrate you understand what you're doing and the consequences of your actions.

It's important to appreciate mental capability in the following two contexts:

1. **You must be mentally capable at the time you sign the power of attorney.** You have to understand that you're giving your attorney the power to deal with your financial and legal affairs. There is a specific six-part capacity test (see the section on Enduring Power of Attorney), and special rules for signing an enduring power of attorney.
2. **Mental capability also matters at the moment the power of attorney is used.** For example, a general power of attorney can no longer be used when the person who prepared it can't manage their own legal and financial affairs.



But an enduring power of attorney can continue to be used even after someone is mentally incapable.



Even if someone can't sign a power of attorney, they may still be able to prepare a standard representation agreement (commonly known as a section 7 representation agreement). With it, a trusted person can help make their routine financial and legal decisions (and it can cover health care and personal care decisions too). It's often used as a last resort if someone hasn't done other planning.

## Choosing your attorney

Choosing your attorney is an important decision, and it's not always easy. Your attorney will have significant powers and responsibilities.

Most people ask a family member or close friend to be their attorney. You can also ask a lawyer, a **notary public**, a private trust company, or the **Public Guardian and Trustee**.

Important things to consider when choosing an attorney include the following:

- **Trust.** The most important thing is to choose someone you trust. Your attorney will have access to all of your money and property. You need to be confident they won't misuse their power.
- **Ability.** The law says the person you choose needs to understand the responsibilities involved. Think about how complex your finances are, and choose someone you know can deal with them.
- **Loyalty.** Will the person you choose ensure your needs and wishes — not theirs — come first? Take the time to talk with your candidate about what you want and would expect of them. Make sure they're comfortable making decisions for you.
- **Age and proximity.** Your attorney must be at least 19 years old. They *can* be someone who lives outside the province, but that's not always recommended. Think about what you're asking your attorney to do. It's often more convenient if they live close by.



If you name only one attorney, it's important to consider also naming an alternate who will take over if something happens to your first attorney. You need to clearly describe the circumstances in which an alternate may take over.

**There are two restrictions on who can be appointed attorney.** You cannot appoint:

1. a caregiver who is paid to provide you with personal or health care services, or
2. an employee at a facility where you live if the facility provides personal or health care services.

These restrictions don't apply if the person providing the care is your child, parent, or spouse.

## You can pay your attorney

If you choose to pay your attorney, your power of attorney document must authorize the fee and set the rate.

Even if you don't agree to pay them, your attorney is entitled to be paid back for any reasonable out-of-pocket expenses.

If a trust company or the Public Guardian and Trustee is your attorney, they'll charge fees.

## The attorney's powers and responsibilities

When you create a power of attorney, you give someone the legal right to take care of **financial and legal matters** for you. This often includes paying bills and managing bank accounts. It can include bigger things like investing your money, insuring your car, or selling your assets.

With a **general power of attorney**, you can give your attorney broad powers to do anything with your property and money that you can't do for yourself. Or you can restrict your attorney's power with a **limited power of attorney**.



Nidus Personal Planning Resource Centre and Registry<sup>[1]</sup> offers a fact sheet on the **general and specific** authorities you can give to your attorney under an enduring power of attorney. Talk to a lawyer or notary if you have questions about what powers you want to give to your attorney.

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

There are things you can do to ensure your power of attorney isn't abused. You can choose to:

- Talk to a friend, family member, community advocate, or legal professional before preparing a power of attorney.
- Name more than one person. Make sure the people you name will work well together to make decisions on your behalf.
- 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.
- Appoint a monitor to oversee the activities of your attorney.
- Give the power of attorney document to someone else you trust, and tell them when to give it to the attorney.
- Insist that your attorney get legal advice about their responsibilities.
- Learn about an **attorney's responsibilities**. The attorney is like your agent. They must:
  - act honestly, in good faith, and in your best interests,
  - not take any personal benefit from your assets,
  - keep accurate records of any financial activities, and
  - keep your affairs separate from their own.



You and your attorney can learn about an attorney's responsibilities in the publication *Managing Someone Else's Money*.

### There are special requirements relating to real estate

If you own real estate, you may want your attorney to be able to sell it or otherwise handle it. Anyone who owns their own home should consider this. If you want your attorney to be able to deal with real estate, here are a few things you should know:

1. **You need to have a lawyer or a notary public prepare the document.** You must sign the power of attorney in the presence of a lawyer or notary, and the lawyer or notary must also sign.
2. **Your power of attorney must use the exact name that's listed on your property with the Land Title Office.** For instance, if the name on the property deed is "Chung Hon Lee," you can't use "C.H. Lee" in the power of attorney. Do a search through the Land Title Office if you're not sure what name you used.
3. **You must register the power of attorney at the Land Title Office and pay the registration fee.** Check with the office to make sure your power of attorney meets the requirements as soon as you've prepared it.
4. **Your attorney can't sell or transfer your property to themselves.** If you want to include that power, it has to be specifically written in. Discuss this with your lawyer or notary.
5. **A power of attorney for real estate ends automatically in three years.** This applies unless it's an enduring power of attorney or you say in the power of attorney "Section 56 of the *Land Title Act* does not apply."

## Preparing the power of attorney


Most people go to a notary public or a lawyer to prepare their power of attorney. If you have a complicated or unusual situation, it's best to get professional help. Phone around and compare prices. You should be able to get free quotes. See the [Where to Get Help](#) section for help finding a legal professional.

You *must* go to a notary public or lawyer if you want:

- The power of attorney to be recognized at the Land Title Office (see above).
- Your attorney to have the power to sell your vehicle or renew its insurance. In this case, your power of attorney will need to be **notarized**.



You can choose when you want your power of attorney to start. A power of attorney can be written so that your attorney has the legal authority to act as soon as it's signed. However, this doesn't mean it has to be *used* immediately. Make sure your attorney knows when you want them to act.

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International 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 2019.*

An **enduring power of attorney** allows you to appoint someone you trust to make financial and legal decisions for you in case you become mentally incapable. This doesn't stop you from managing your own affairs as long as you're capable of making your own decisions. An enduring power of attorney can be used when you are mentally incapable, while a general power of attorney cannot.

## Why you should consider an enduring power of attorney

None of us know when illness or accident or cognitive impairment will strike. You may one day be in a position where you're unable to handle your own financial affairs. In that case, someone may need to step in to continue managing them for you. Even day-to-day decisions about money can become difficult. It's wise to consider in advance who you'd like to handle your financial decisions — big and small — for you.

Nobody, not even your spouse, has the automatic right to step in and manage your legal and financial affairs. If you don't put plans in place, the court may have to appoint someone to make decisions for you, or the Public Guardian and Trustee may step in.



"Last year, I found my husband Dave lying on the kitchen floor. He'd had a stroke. It was so sudden. Dave was smart with our money. A lot of it was tied up in investments — in his name. I was shocked that the bank wouldn't let me access his money. After all, I need the money to help to care *for him*. They said I didn't have authority — I'm his wife — isn't that enough?"  
— Patrice, Surrey



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

## There are other tools you can use to plan for your future care

In BC, an enduring power of attorney is the most common document used to give another person the authority to handle your financial and legal affairs if you become mentally incapable. But there are other options you can put in place to plan for future incapacity.

For in-depth discussion on planning for your future care and the planning options that are available to you, visit the People's Law School website at [peopleslawschool.ca](http://peopleslawschool.ca) <sup>[1]</sup>.

## Preparing an enduring power of attorney

### Who can prepare an enduring power of attorney

The law says you can make an enduring power of attorney if you're at least 19 years of age and are **mentally capable** of understanding the nature and consequences of the power of attorney.

The law presumes you are capable unless you've demonstrated that you're not. The way you communicate isn't a factor in deciding whether you are capable.

The *Power of Attorney Act* <sup>[2]</sup> says you must understand the nature and consequences of all of the following six factors to be capable of making an enduring power of attorney:

1. The obligations you owe to your dependants (such as children).
2. The property you own and its approximate value.
3. That your property may decrease in value if your attorney doesn't manage it carefully.
4. That your attorney will be able to do anything with your property that you could do if you were capable, except make a will.
5. That your attorney might misuse their authority.
6. That you can revoke the enduring power of attorney while you are mentally capable.

### A notary public or lawyer can help

It's a good idea to ask a lawyer or notary public to help you prepare your enduring power of attorney. You can talk with them about what an attorney can do. They can also help you with rules about the gifts, loans, and donations an attorney can make on your behalf.



The BC government has an enduring power of attorney form available online on their Incapacity Planning webpage <sup>[3]</sup>. You don't have to use this form, but it will give you an idea of how to make a power of attorney.

## Signing the enduring power of attorney

**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.

If the witness is a notary public or a lawyer, you only need one witness.

**Your attorney must also sign** the enduring power of attorney in front of two witnesses. Your attorney doesn't have to sign at the same time as you.

The following people can't witness a signature:

- the person you're appointing as attorney
- a spouse, child, or parent of the attorney
- anyone employed by the attorney, unless you are appointing a lawyer, notary public, the Public Guardian and Trustee, or a financial institution.




You can **choose to register** your enduring power of attorney (and other documents) with the Nidus Personal Planning Registry<sup>[4]</sup>. You can share the documents with others (such as banks, your attorney, and other family members).

## When an enduring power of attorney can be used

Enduring powers of attorney usually give the attorney authority to start acting right away. But you can continue to manage your financial and legal affairs as long as you are capable. You may want your attorney to help you with complicated matters only — or not at all. It's your choice. You can tell your attorney you only want them to start acting when you really need help.

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

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

[1] <http://peopleslawschool.ca>

[2] [https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-370/latest/rsbc-1996-c-370.html#sec12\\_smooth](https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-370/latest/rsbc-1996-c-370.html#sec12_smooth)

[3] <http://gov.bc.ca/incapacityplanning>

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

# Making a Power of Attorney

---


*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2019.*

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

It's likely the power of attorney made in one province will be recognized in another. It may not be effective in dealing with all real estate matters. You should ask a lawyer or notary about the validity of the power of attorney in your situation.

## If I prepared a power of attorney ten years ago, is it still good?

Yes. However, check it over to make sure that it will do what you want and that it's still accurate. It's a good idea to review all your financial affairs 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 4.0 International Licence.

# Ending a Power of Attorney

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2019.*

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

A **general power of attorney** automatically ends in each of these circumstances:

1. If you become mentally incapable, unless you have an enduring power of attorney clause.
2. If your attorney dies, unless you name an alternate or more than one attorney.
3. If you die.
4. If a **committee of estate** is appointed to make legal and financial decisions for you.

## You can cancel your power of attorney

You can revoke — that is, cancel — your power of attorney at any time as long as you are mentally 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 each attorney appointed in your power of attorney. Send a copy of the revocation notice to any organizations, companies, or individuals your attorney deals with. Keep a copy of the notice of revocation for your own records.

The revocation generally takes effect **when it is given** to everyone who needs to receive it. Or you can specify a future date when it should take effect.



Nidus Personal Planning Resource Centre and Registry<sup>[1]</sup> provides a sample notice of revocation and more information on how to revoke a power of attorney.

## Your attorney can quit

If your attorney wants to resign, they must say so 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 you're incapable of making decisions at the time your attorney is resigning, the attorney must also give the notice of resignation to your spouse, near relative, or close friend.

You'll need to notify any organizations, companies, or individuals that the attorney deals with if they resign.



Nidus Personal Planning Resource Centre and Registry <sup>[1]</sup> provides a sample notice of resignation and more information on how an attorney can resign.

## A new power of attorney doesn't automatically cancel the old one

You can also cancel a power of attorney by saying so in a new power of attorney replacing it. But be aware that 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 play, when you prepare a new power of attorney, write at the beginning:

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



Beware of signing a power of attorney provided by your bank, which may revoke your own power of attorney and undo your careful incapacity planning.

## If someone misuses your 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 seek legal advice. You may be able to sue your attorney to get back any money or property that has been taken.

If you're incapable and can't cancel your power of attorney, you or someone else can call the Public Guardian and Trustee <sup>[2]</sup> or a **designated responder**, and report the situation. They will investigate.



*Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

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

[2] <http://www.trustee.bc.ca>

# Where to Get Help

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2019.*

## 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](http://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.

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

## Clicklaw

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

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

## Lawyer Referral Service

A service of Access Pro Bono, offering referrals to lawyers who can provide a free 15-minute consultation.

Lower Mainland: 604-687-3221

Toll-free: 1-800-663-1919

[lawyerreferral@accessprobono.ca](mailto:lawyerreferral@accessprobono.ca) <sup>[4]</sup>

[www.lrsbc.org](http://www.lrsbc.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, including wills, powers of attorney, and representation agreements for people with low incomes.

604-822-5791

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

## Ministry of Health

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

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



## Nidus Personal Planning Resource Centre and Registry

Provides detailed information about enduring powers of attorney and other planning documents.

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

[nidus.ca](http://nidus.ca) <sup>[8]</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.

604-660-4444

[trustee.bc.ca](http://trustee.bc.ca) <sup>[9]</sup>

## Self Counsel Press

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

[self-counsel.com](http://self-counsel.com) <sup>[10]</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

[notaries.bc.ca](http://notaries.bc.ca) <sup>[11]</sup>

 *Power of Attorney* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

- [1] <http://www.accessprobono.ca>
- [2] <http://www.alzheimerbc.org>
- [3] <http://www.clicklaw.bc.ca>
- [4] <mailto:lawyerreferral@accessprobono.ca>
- [5] <http://www.lrsbc.org>
- [6] <http://www.lslap.bc.ca>
- [7] <http://gov.bc.ca/incapacityplanning>
- [8] <http://www.nidus.ca>
- [9] <http://www.trustee.bc.ca>
- [10] <http://www.self-counsel.com>
- [11] <http://www.notaries.bc.ca>

# Glossary

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in March 2019.*

## Attorney

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

## Certificate of incapability

A certificate issued by a provincial health authority after a medical and functional assessment that finds an adult is mentally incapable.

## Committee of estate

A person or body (such as the Public Guardian and Trustee <sup>[1]</sup>) appointed to make legal and financial decisions for someone who is mentally incapable and cannot manage their own affairs. A committee is appointed by the court, with the exception of the Public Guardian and Trustee, who can automatically become committee after a **certificate of incapability** is issued.

## Designated responder

A person from a local health authority or community agency who will follow up with reports of abuse or neglect of a vulnerable adult. The Public Guardian and Trustee <sup>[1]</sup> has an online list of designated responders.

## 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.

## 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.

## 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 certain non-contentious legal services to the public. For example, a notary public can create wills and powers of attorney, and notarize 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 (that is, cancelling) 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 to authorize someone to assist an adult or act on their behalf for health and personal care matters. It can also cover routine financial and legal matters.

**Springing power of attorney**

A power of attorney that only becomes effective when an 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 4.0 International Licence.

## References

[1] <http://www.trustee.bc.ca>

---

# Managing Someone Else's Money | For the Attorney

---


## Introduction

---

In a **power of attorney**, a person can authorize someone else—their **attorney**—to take care of financial and legal matters for them.

If you've been appointed as an attorney under a power of attorney, *Managing Someone Else's Money* is for you. This guide will help you understand what you can and cannot do in your role as an attorney. It offers tips to help you avoid problems, tools to help you stay organized, and resources for finding more information.

## Copyright & disclaimer

 *Managing Someone Else's Money*, © 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**. Legal advice applies the law to an individual's specific situation. If you want assurance that any information is appropriate to your specific situation, or recommendations on next steps with a specific legal problem, please contact a legal professional. Some sources of legal help are highlighted in the Where to Get Help section.

## Contributors & acknowledgements

### Writer

This publication was written by Kevin Smith, adapted from a guide from the Consumer Financial Protection Bureau.



**Kevin Smith**, Barrister & Solicitor

**Kevin Smith** is a retired lawyer, having worked for several years with Seniors First BC <sup>[1]</sup> (formerly BC Centre for Elder Advocacy and Support) in Vancouver. A graduate of Osgoode Hall Law School, he has an LLM in Elder Law from the Center for Excellence in Elder Law at Stetson University. Prior to joining Seniors First BC, he worked as a legal aid lawyer in Ontario for 30 years, including as the Clinic Director of Parkdale Community Legal Services, a community clinic associated with Osgoode. His work with Seniors First BC focused on elder abuse matters including financial abuse and financial exploitation, capacity issues, issues in seniors housing and residential care, and pension appeals.

### Acknowledgments

This publication was adapted from a guide prepared by the Consumer Financial Protection Bureau <sup>[2]</sup> working closely with the American Bar Association Commission on Law and Aging <sup>[3]</sup>.

This publication was made possible through the financial support of the Law Foundation of BC <sup>[4]</sup>, the Notary Foundation of BC <sup>[5]</sup>, the Department of Justice Canada, and the Province of British Columbia.

Writing, editing and layout support was provided by Drew Jackson and Elena Renderos. Seniors First BC contributed support and enthusiasm for the project.



Image via [www.istock.com](http://www.istock.com)

## 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>[6]</sup> or visit us online at [www.peopleslawschool.ca](http://www.peopleslawschool.ca)<sup>[7]</sup>.

## References

- [1] <http://www.seniorsfirstbc.ca>
- [2] <https://www.consumerfinance.gov/>
- [3] [https://www.americanbar.org/groups/law\\_aging.html](https://www.americanbar.org/groups/law_aging.html)
- [4] <http://www.lawfoundationbc.org/>
- [5] <http://www.notaryfoundationofbc.ca/>
- [6] <mailto:info@peopleslawschool.ca>
- [7] <http://www.peopleslawschool.ca>

## You Have Been Appointed as an Attorney

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

Like many people, you may never have been an attorney under a power of attorney before. That's why *Managing Someone Else's Money* was created. This guide will help you understand what you can and cannot do in your role as an attorney.

In the role of attorney, you are a **fiduciary**. A fiduciary is someone who is in a position of trust toward another person. A fiduciary has duties and responsibilities. This guide will help you understand what those are. It also offers tips to help you avoid problems, and resources to find more information.

This guide is for family and friends serving as an attorney, not for professionals or organizations. The guide does not give you legal advice. Talk with a legal professional if you have questions about your duties or responsibilities.

## Your duties depend on the type of power of attorney

The most common type of power of attorney is called an **enduring power of attorney**. In this type, the attorney's appointment continues—or "endures"—if the person making it becomes mentally incapable. The duties and responsibilities in this guide apply to enduring powers of attorney.

Powers of attorney can also be "general" or "limited". In a general power of attorney, the attorney's appointment **ends** if the person making it becomes mentally incapable. In a limited power of attorney, the attorney's powers are limited to a specific task or a specific period of time. For example, to sign the papers on the sale of a home while the person making the power of attorney is out of the country on vacation.

Not all the duties and responsibilities in this guide apply to an attorney appointed under a general or a limited power of attorney. That said, if you are an attorney under a general power of attorney for a long time period, it is advisable to do all the things covered in this guide.

If you want to learn about **making** a power of attorney, this guide is not designed for you. Talk with a lawyer or notary public. These resources are also helpful:

- The publication *Power of Attorney* and the website <sup>[1]</sup> from People's Law School.
- The "Enduring Power of Attorney Fact Sheet" <sup>[2]</sup> from Nidus Personal Planning Resource Centre.

## A scenario



"I worry that as I get older I might get sick and won't be able to pay my bills or make decisions about money. I'd like to appoint someone to make decisions for me in case I become mentally incapable."  
— Martina, Vancouver

Let's start with a scenario about how you might have become an attorney under a power of attorney.

Your family member or friend is worried she will get sick and won't be able to pay her bills or make other decisions about her savings and her house. For this guide, let's call her **Martina**. Martina has signed an **enduring power of attorney**. This kind of power of attorney continues if the person making it becomes mentally incapable. In it, Martina names you as her attorney. She gives you the power to make decisions about money, property and other legal matters for her.

The law gives you a lot of responsibility as Martina's attorney under her power of attorney. You are now a fiduciary with **fiduciary duties**.

## What is a fiduciary?

Having been named to manage money and property for someone else, you are a fiduciary. You are in a position of trust toward Martina. The law requires you to manage Martina's money and property for her benefit, not yours.

When you act as an attorney for Martina, you have four key duties you must keep in mind:

1. Act honestly, in good faith and in Martina's best interest.
2. Manage Martina's money and property carefully.
3. Act within the authority you are given and within the law.
4. Keep good records.

These duties are explained in the section "Four Key Duties of a Fiduciary". They apply whether you are managing a lot of money or a little. They apply whether you are a family member or not.

If you do not carry out these duties, you could be removed as an attorney, sued or have to repay money.

It is even possible the police or a public official (the Public Guardian and Trustee<sup>[3]</sup>) could become involved. They can investigate you and bring you before a court.

It's always important to remember: **It's not your money!**

## Before you start

Before you first act as an attorney, consider the job you are about to take on. Consider the nature of the fiduciary duties you will have to follow and the potential for difficulties to arise.

For example, consider whether acting as attorney is likely to put you in situations where your personal interests conflict with your fiduciary duties.

Consider how difficult the task is likely to be. Take into account things such as:

- the value and nature of the adult's property
- how organized their affairs and papers are
- views of family members and concerned friends, and the potential for disagreement among them
- if there are multiple attorneys, the potential for disagreement with them

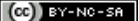
Consider whether the power of attorney provides for the attorney to be paid for their time. The law<sup>[4]</sup> says you can be paid for acting as an attorney under an enduring power of attorney **only** if the document says you can and sets out the amount or rate.

If you decide not to act as attorney, you may resign. You can do so by giving written notice to the adult and any other attorneys named in the power of attorney. If the adult is incapable of making decisions at the time you resign, you must also give written notice of the resignation to a spouse, near relative or (if known to you) close friend of the adult.



In your role as attorney, you may deal with other types of fiduciaries. These may include:

- **Trustee under a trust:** A person who holds property for the benefit of another person, the beneficiary.
- **Representative under a “section 7 representation agreement”:** A person authorized to make decisions for another person—including on “routine” financial affairs and most legal matters—when the person can no longer manage on their own.
- **Pension trustee or, for veterans, pension administrator:** A person appointed by a government agency to manage government money that is paid to someone.
- **Guardian or committee:** A person appointed by a court to manage money and property for someone who needs help.

 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

[1] <https://www.peopleslawschool.ca/category/plan-your-future-care/financial-legal-matters/>

[2] [https://www.nidus.ca/PDFs/Nidus\\_FactSheet\\_EPA.pdf](https://www.nidus.ca/PDFs/Nidus_FactSheet_EPA.pdf)

[3] <http://www.trustee.bc.ca>

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



# Power of Attorney Questions & Answers

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

## What is a power of attorney?

A **power of attorney** is a legal document. There are several types of power of attorney. With an **enduring power of attorney**, your friend Martina can give you the legal authority to take care of her money and property. That authority will continue if Martina becomes incapable and can't make her own decisions.

Under the power of attorney, Martina is called the **adult** or **principal**.

You are called the **attorney** or **agent**.

A special type of power of attorney can come into effect when something happens to trigger it. This is called a **springing power of attorney**. Martina can appoint you to act on her behalf if the triggering event happens. The triggering event can be if Martina becomes mentally incapable. For example, the appointment can 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** Martina is incapable.

For more on the types of power of attorney, see the People's Law School publication *Power of Attorney*.

## On what matters does the attorney have authority?

A power of attorney covers financial and legal matters. These might include depositing or withdrawing money from Martina's bank account, paying her bills or investing her money. They might include insuring or selling her car, or selling her home.

A power of attorney does not cover health care or personal care matters, such as whether Martina will undergo a medical procedure, where she lives, or who her visitors are.

For health care and personal care decisions, Martina could make a **representation agreement** to name someone (a "representative") to make decisions for her if she can no longer manage on her own. There is a type of representation agreement that covers "routine" financial affairs and most legal matters, in addition to personal care and health care decisions. This guide doesn't cover representation agreements. If you want more information about this option for personal planning, see the Nidus Personal Planning Resource Centre website at [www.nidus.ca](http://www.nidus.ca) <sup>[1]</sup>.

## Can Martina still manage her own affairs after signing a power of attorney?

Yes, Martina can still manage her own money and property as long as she is able to make decisions.

Having a power of attorney does not remove Martina's decision-making rights. Decision-making is not given away; it is shared between Martina and you whenever possible. You cannot override a decision made by Martina while she is capable.

## Can a power of attorney be changed or revoked?

Yes, Martina can take away (or revoke) your authority to act as her attorney at any time, as long as she is still able to make decisions.

If Martina does take away your authority as her attorney, you must stop making decisions for her. Martina should tell any people or businesses you dealt with that you are no longer her attorney. Further information about revoking an enduring power of attorney is available from Nidus.<sup>[2]</sup>

## **What if you think the change was the result of fraud or abuse?**

You may think Martina did not understand her decision to remove you as her attorney. You may worry that she is being abused or exploited by someone else. If so, talk to a trusted family member, a lawyer, or an official from the Public Guardian and Trustee's office<sup>[3]</sup>.

You can make a report to the Public Guardian and Trustee if you believe that:

- an adult was incapable of revoking an enduring power of attorney, or
- fraud, undue pressure or some other form of abuse was used to cause an adult to revoke an enduring power of attorney.

You can make a report to the Public Guardian and Trustee by completing and filing a referral form<sup>[4]</sup>.

If you have concerns that Martina may be the victim of abuse, you can call the Seniors Abuse and Information Line. They can offer advice, support and possibly legal representation. See the "Where to Get Help" section for contact details.

You can also ask an agency designated under the law<sup>[5]</sup> in BC to investigate her situation. The provincial health authorities<sup>[6]</sup> are designated agencies. The agency will investigate and offer support to Martina or take steps to protect her.

## **When do your responsibilities as attorney end?**

Your authority as attorney ends in any circumstances set out in the power of attorney document.

If Martina revokes your authority to act as her attorney, your responsibilities end.

If a court names someone as Martina's "committee" because she is incapable and requires assistance, your authority as attorney ends.

If the Public Guardian and Trustee<sup>[7]</sup> is named as Martina's "statutory property guardian", your authority as attorney is suspended. The Public Guardian and Trustee will determine whether they should take over and end the power of attorney, or whether you should continue to act.

As well, your authority as Martina's attorney ends when she dies. Any executor under a will would then take over. If there is no will, a court can appoint someone to administer her estate.

If you are Martina's spouse, your authority to act as her attorney ends if your marriage or marriage-like relationship ends. The exception is if the enduring power of attorney document says otherwise.

Your authority as attorney also comes to an end in any of these situations:


- you become incapable
- you are bankrupt
- you are convicted of a crime in which Martina is a victim
- you die



When your responsibilities as attorney end, promptly notify any bank and other businesses you dealt with as attorney. Even if it is easy to continue some tasks—such as paying the adult's outstanding bills—you should not do so. You will no longer have the authority to act on the adult's behalf.

## What happens if you can no longer serve as attorney?

If you can not continue acting as Martina's attorney and she cannot name someone else to act for her, tell a trusted family member or the Public Guardian and Trustee <sup>[3]</sup>'s office. If you cannot act as her attorney, she will need someone else to help her.

 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

- [1] <http://www.nidus.ca>
- [2] [http://www.nidus.ca/PDFs/Nidus\\_Info\\_Revoke\\_EPA.pdf](http://www.nidus.ca/PDFs/Nidus_Info_Revoke_EPA.pdf)
- [3] <http://www.trustee.bc.ca>
- [4] <http://www.trustee.bc.ca/services/services-to-adults/pages/assessment-and-investigation-services.aspx>
- [5] <http://canlii.ca/t/84gj>
- [6] [http://www.trustee.bc.ca/Documents/designated-agency-responders/Designated\\_Agencies\\_Contacts.pdf](http://www.trustee.bc.ca/Documents/designated-agency-responders/Designated_Agencies_Contacts.pdf)
- [7] <http://www.trustee.bc.ca/>

## Four Key Duties of a Fiduciary

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

When you are appointed as an attorney under a power of attorney, you are a **fiduciary**. A fiduciary is someone who is in a position of trust toward another person. The law places **duties** on the fiduciary.

When your friend Martina names you as her attorney under an enduring power of attorney, you must:

1. Act honestly, in good faith and in Martina's best interest.
2. Manage Martina's money and property carefully.
3. Act within the authority you are given and within the law.
4. Keep good records.

## Duty 1. Act honestly, in good faith and in Martina's best interest

Under the law <sup>[1]</sup>, you must act honestly and in good faith. Because Martina has placed trust and confidence in you and has given over power to you, the law imposes a duty on you to honour that trust.

In managing and making decisions about Martina's affairs, you must act in her **best interests**. This means that you must make decisions that are best for her. You must ignore your own interests and needs, or the interests and needs of other people.

If any decision you make benefits you, it must only be done with Martina's full knowledge and consent.

To help you act honestly, in good faith and in Martina's best interest, follow these guidelines.

### Understand when the power of attorney is in effect

Understand when the power of attorney starts. It may be right away or only on some "triggering event"—for example, when Martina can no longer make her own decisions (this type is called a "springing power of attorney"). Check to see if the power of attorney document says how you will know when Martina can no longer make her own decisions.



Image via [www.istockphoto.com](http://www.istockphoto.com)

### Be guided by Martina's wishes, beliefs and values

Many things can affect your decisions about Martina's money and property. For example, you might feel pressure from others. Martina's abilities to make decisions might change from time to time.

When managing and making decisions about Martina's financial affairs, you must take into account her current wishes, known beliefs and values.

Ask her what she wants. If she can't say what she wants, try to find out what she would have wanted. Be guided by her beliefs and values. Look at past decisions, actions and statements. Ask people who care about Martina what they think she would have wanted.

Make the decisions you think Martina would have wanted, unless doing so would harm her.

### Avoid conflicts of interest

A **conflict of interest** is a situation in which you have competing interests or loyalties. Where you make a decision about Martina's property that benefits you or someone else at Martina's expense, you are in a conflict of interest. As a fiduciary, you have a strict duty to avoid conflicts of interest. You should avoid even the appearance of a conflict of interest.

Here are a couple of common examples of possible conflicts of interest.

**Whose car is it?** You use Martina's money to buy a car. You use it to drive her to appointments, but most of the time you drive the car just for your own needs. This is likely to be a conflict of interest (unless Martina wants her money used this way).

**Should you do business with family?** Martina needs repair work in her apartment. You hire your son and pay him from Martina's money. This may be a conflict of interest, even though the work was needed. It appears that you have put your

personal interest to benefit your son in conflict with Martina's interests.



Because you are now a fiduciary, you should avoid any conflicts of interest. Sometimes people have good intentions, but do things they shouldn't. As a fiduciary, you have a duty to avoid making decisions about Martina's property that may benefit you or someone else at Martina's expense.

### Don't give or loan Martina's money to yourself or others

Be very careful when it comes to giving Martina's money—or even loaning it—to yourself or others.

You can make a gift or loan from Martina's property if the power of attorney says you can. Still, be very cautious. For example, make sure that any gifts do not increase or complicate Martina's taxes or change her plans to give away her property when she dies.

Any gifts or loans should be in line with what Martina would have wanted. For example, Martina may have made some regular gifts or loans, such as to a preferred charity. You can continue this, as long as **both** of these conditions are met:

1. Martina will have enough remaining to meet her personal care and health care needs as well as those of her dependants, and to satisfy any other legal obligations.
2. You don't spend over a certain amount. Under the law <sup>[2]</sup>, there is a maximum value of all gifts and loans of this type that an attorney can make in one year. The maximum is the smaller amount as between (a) \$5,000 and (b) 10% of the adult's taxable income for the previous year.

For example, let's say Martina's taxable income for a year is \$20,000. 10% of that amount would be \$2,000. That amount is smaller than \$5,000. So \$2,000 would be the total maximum value of all gifts and loans (of the type Martina regularly made) you could make in the following year.

### Don't pay yourself unless the power of attorney allows it

Don't pay yourself for the time you spend acting as Martina's attorney, unless the power of attorney allows it. The law <sup>[1]</sup> says that you can be paid for acting as an attorney **only if** the power of attorney document says you can and sets out the amount or rate.

If you do pay yourself, be sure to charge a reasonable fee based on the amount or rate set out in the power of attorney. Carefully document how much time you spend and what you do.

Even if you are not paid for your time, you are entitled to be paid back for any reasonable out-of-pocket expenses. For example, let's say you use your own funds to buy a journal or chequebook to be used for Martina's benefit.



Be mindful of how reimbursing yourself for driving expenses might impact your car insurance. If an attorney uses their car for duties on behalf of the adult, and they reimburse themselves for mileage, this may put the attorney in a different "rate class" <sup>[3]</sup> for insurance purposes. Check with your insurance broker or ICBC.

## Duty 2. Manage Martina's money and property carefully

As Martina's attorney, you might pay bills, oversee bank accounts, and pay for things she needs. You might also make investments, pay taxes, collect rent or unpaid debts, get insurance if needed, and do other things written in the power of attorney.

You have a duty to manage Martina's money and property very carefully. Under the law <sup>[1]</sup>, you need to "exercise the care, diligence and skill of a reasonably prudent person". As a fiduciary, you must be even more careful with Martina's money than you might be with your own!

Follow these guidelines to help you make careful decisions.

### List Martina's money, property and debts

To make careful decisions, you need to know what Martina owns and owes. Under the law <sup>[2]</sup>, you must make a reasonable effort to determine Martina's property (what she owns) and liabilities (what she owes) as of the date when you start to act on her behalf. You also must maintain a list of that property and those liabilities.

Your list might include:

- chequing and savings accounts
- cash
- investments such as any Guaranteed Investment Certificates (GICs), stocks, bonds, Registered Retirement Savings Plans (RRSPs), and Registered Retirement Income Funds (RRIFs)
- real estate
- cars and other vehicles
- insurance policies
- trusts for which Martina is a beneficiary
- jewelry, furniture, and any other items of value
- unpaid credit card bills and other outstanding loans



### Make sure bills are paid and finances are in order

Pay Martina's bills and taxes on time.

Make sure bank accounts earn interest if possible and have low or no fees. Review bank and other financial statements promptly.

Find out if anyone owes Martina money, and try to collect it. This may include going to court.



Can Martina get any benefits? Find out if Martina is eligible for any financial or health care benefits from an employer or government agency. These benefits might include pensions, disability, social assistance, veterans benefits and housing assistance. Use the federal government's Benefits Finder <sup>[4]</sup>. See the People's Law School publication *When I'm 64: Benefits for Older Adults* <sup>[5]</sup>. Help Martina apply for any benefits she is eligible for. Contact Seniors First BC <sup>[6]</sup> for assistance.

## Protect Martina's property

Keep Martina's property safe. You may need to put valuable items in safety deposit boxes or change locks on property.

Make sure her home and any other property is heated (in cold weather) and insured. Check any insurance policies.

Cancel any policy Martina doesn't need.



As the attorney, you should check any insurance policies for the adult's property. If the adult will be out of their home for any extended period of time, consider getting vacancy coverage. Without it, insurance coverage may be denied if a home is vacant for a certain period of time.

## Take steps to have the power of attorney accepted

As soon as you need to act as Martina's attorney, contact any banks, businesses or people that she deals with and give them copies of the power of attorney. Never give away the original document. You can get certified copies of the original. (A lawyer or notary public can certify a copy as a true copy of the original document.)

Sometimes banks or other businesses won't do what you, acting as Martina's attorney, want them to do. A bank might refuse to accept the power of attorney, or might want Martina to sign its own form of power of attorney. This is particularly a problem if Martina has lost the ability to act for herself. You should get advice, as the bank's form may undo careful planning done for Martina's benefit.

If someone will not accept your authority to act on behalf of Martina, talk to a supervisor. If they still won't accept it, talk with a lawyer. Under the law, in Martina's enduring power of attorney, she can authorize you to do anything she may lawfully do by an agent in relation to her financial and legal affairs.



Don't expect others to know what an attorney is or does. They may not understand that you have been named as an attorney. They may think that you have more authority or less authority than you really have. You may need to educate them. You could show them this guide. You can also refer to the factsheet "Roles and Responsibilities of an Attorney" <sup>[7]</sup> from Nidus Personal Planning Resource Centre.

## Duty 3. Act within the authority you are given and within the law

An attorney must act within the authority **given in the power of attorney** and **under the law**.

In managing Martina's affairs, you must take into account any directions she made in the power of attorney document. Don't do something different from her directions, even if you have the best intentions.

You must also follow these six guidelines set out under the law <sup>[1]</sup>.



Image via [www.istockphoto.com](http://www.istockphoto.com)



### **Give priority to Martina's health and personal care needs**

To the extent reasonable, when managing Martina's financial affairs, give priority to meeting her health care and personal care needs. Make sure she is safe and comfortable, and her needs are met. Put her well-being above saving money for others who may inherit her money and property.

If Martina has appointed a representative under a representation agreement, work with them to help meet Martina's health care and personal care needs. Martina and her representative decide how to best meet these needs—not you.

### **Invest carefully**

Under the law <sup>[8]</sup> in BC, when investing Martina's property, you must "exercise the care, skill, diligence and judgment that a prudent investor would exercise". This is a high standard. The exception to this rule is if the enduring power of attorney document says something different.

If you make investment decisions for Martina, talk to a financial professional. The BC Securities Commission's investRIGHT website <sup>[9]</sup> provides tips on investing and knowing your financial advisor. Discuss choices and goals for investing based on Martina's needs and values.

### **Foster Martina's independence and involvement in decisions**

As Martina's attorney, you have a legal duty, to the extent reasonable, to foster her independence and encourage her involvement in any decision-making that affects her.

You should practice "supported decision-making" with Martina if at all possible. Supported decision-making is when people use friends, family members and professionals to help them understand the situations and choices they face, so they can make their own decisions. We all do this to some extent. Martina just may need more of this support.

Being as independent as possible and making your own decisions is an important aspect of mental health. Try to help Martina recognize her concerns, goals and values. Explore the range of choices with her, and have her make the decision herself if at all possible.

A "gradual counselling" <sup>[10]</sup> approach might help Martina. In this approach, you clarify and reflect her thoughts and feelings. You help her to recognize the pros and cons of various options, and how they relate to her goals and values.

### **Avoid changing Martina's plans for her property when she dies**

If any of Martina's property is part of a specific gift in her will, you should not dispose of this property unless necessary to meet your duties as her attorney.



If you are considering a decision that would change Martina's plans for her property when she dies, you should get legal advice.



### Allow Martina to access her property

To the extent reasonable, keep Martina's personal effects at her disposal.

### Keep Martina's money and property separate

Never mix Martina's money or property with your own or someone else's. There are two exceptions to this rule: if the property is owned jointly, or the enduring power of attorney document says you can.

Mixing money or property makes it unclear who owns what. Confused records can get you in trouble with Martina's family and also with government agencies such as the Public Guardian and Trustee<sup>[11]</sup>.

Never deposit Martina's money or property into your own or someone else's bank account or investment account. Avoid joint accounts.



If Martina already has money or property in a joint account with you or someone else, get legal advice before making any change.

Pay Martina's expenses from her funds, not yours. Spending your money and then paying yourself back makes it hard to keep good records. If you really need to use your own money, keep receipts for the expense and maintain a good record of why, what and when you paid yourself.

Keep title to Martina's property in her own name. This is so other people can see right away that the property is Martina's and not yours.



Know how to sign as attorney. Sign all cheques and other documents relating to Martina's money or property to show that you are Martina's attorney. Never just sign "Martina Roe". For example, you might sign:  
"Juan Doe, as attorney under power of attorney for Martina Roe."

## Duty 4. Keep good records

As an attorney under a power of attorney, you must keep good records.

Under the law<sup>[2]</sup>, an attorney under an enduring power of attorney has a duty to keep these records:

- A current list of Martina's property and liabilities. This includes an estimate of their value if it is reasonable to do so.
- Accounts and other records showing how you have exercised your authority under the enduring power of attorney.
- All invoices, bank statements and other records to keep track of money you have spent or received on behalf of Martina.



Image via [www.istockphoto.com](http://www.istockphoto.com)

## Practice good record-keeping habits

Keep a detailed list of everything you receive or spend for Martina. Records should include amounts of cheques written or deposited, dates, reasons, names of people or companies involved, and other important information.

Keep receipts and notes, even for small expenses. For example, write “\$50, groceries, ABC Grocery Store, December 2, 2017” in your records soon after you spend the money. Get into the habit of always asking the store for a receipt.

Avoid paying in cash. Try not to pay Martina’s expenses with cash. Also, try not to use her ATM card to withdraw cash or write cheques to “Cash”. If you need to use cash, be sure to keep receipts or notes.

Insist the bank provide you with monthly statements and cancelled cheques, to help with your record keeping.

## Keep records of any payments to yourself

The law <sup>[1]</sup> says that you can be paid for acting as an attorney under an enduring power of attorney only if the document says you can and sets out the amount or rate. If you will be paid, be sure you charge a reasonable fee based on the amount or rate set out in the power of attorney. It is up to you to keep detailed records as you go along of what work you did, how much time it took, when you did it, and why you did it.

Even if you are not paid for acting as an attorney, you are entitled to be paid back for reasonable “out-of-pocket” expenses while acting as the attorney. Be sure to keep records of these expenses.

## If others ask to see your records

If Martina asks to see your records, you must produce them for her to inspect and copy.

The Public Guardian and Trustee <sup>[12]</sup>’s office can also review your records to check up on you. If that happens, unless the power of attorney says you can’t share your records or Martina objects, you may want to let another family member or friend of Martina’s see the records as a precaution.

 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

- [1] <http://canlii.ca/t/849l>
- [2] <http://canlii.ca/t/8p5w>
- [3] <http://www.icbc.com/autoplan/costs/Pages/Whats-a-rate-class.aspx>
- [4] <http://www.canadabenefits.gc.ca/>
- [5] <https://www.peopleslawschool.ca/publications/when-im-64-benefits-seniors>
- [6] <http://seniorsfirstbc.ca>
- [7] [http://www.nidus.ca/PDFs/Nidus\\_Info\\_Role\\_Attorney.pdf](http://www.nidus.ca/PDFs/Nidus_Info_Role_Attorney.pdf)
- [8] <http://canlii.ca/t/84f1>
- [9] <https://www.investright.org>
- [10] <http://seniorsfirstbc.ca/for-professionals/supported-decision-making/gradual-counselling/>
- [11] <http://www.trustee.bc.ca/>
- [12] <http://www.trustee.bc.ca>

# More Things You Should Know About Being an Attorney

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

When you are appointed as an attorney under a power of attorney, here are more things you should know.

## What if there are others involved in making decisions?

### If there are multiple attorneys

The adult making a power of attorney may name more than one attorney.

For example, in making an enduring power of attorney, your friend Martina might name you and two other people as her attorneys. If so, the power of attorney document should set out how multiple attorneys are to act—for example, whether they can act on their own, as a group or in some combination. If it doesn't, the attorneys must act **unanimously**. That means they have to all agree before they can act.

Where the power of attorney says one attorney can act independently, you must coordinate with any other attorneys and share information about decisions.

Even where you and another attorney don't have to agree on all decisions, you cannot let another attorney do something that harms Martina. You are still responsible for her and must act in her best interest.

### If the power of attorney names an alternate attorney

Martina may have named an "alternate attorney" to act for her if you are not able to be the attorney. An alternate attorney has no authority if you are willing and able to act as Martina's attorney.

### If there are other types of fiduciaries involved

Other fiduciaries may have authority to make decisions for Martina. For example, she may have a "committee" appointed by a court. This is a person appointed by a court to manage money and property for someone who needs help. When a court appoints a committee, every power of attorney given by the person is **ended**.

The Public Guardian and Trustee may become involved as a "statutory property guardian" if a person is **determined** to be incapable of managing their financial affairs. If this happens, every power of attorney given by person is **suspended**. The Public Guardian and Trustee will determine whether they should take over and end the power of attorney, or whether the attorney should continue to act.

Alternatively, the adult may have a "pension trustee". This is a person appointed by a government agency to manage government money paid to someone (such as an Old Age Security pension). If Martina has a "pension trusteeship", your power of attorney should override that arrangement. Notify the person or agency appointed as pension trustee.

It is important to work with these other fiduciaries, and keep them informed.

## How can you avoid problems with family or friends?

Family or friends may not agree with your decisions about Martina's money and property. To help reduce any friction, follow the guidelines in the section "Four Key Duties of a Fiduciary".

Sharing information may help. For example, you might want to share any accounting records you prepare or summaries of how you've spent Martina's money—unless Martina has said you should not. It usually is easier to deal with questions about a decision when it happens than to deal with suspicion and anger that may build over a long time. In the end, you have to make the final decisions.

Some family or friends may be so difficult that it is better not to share information with them. Use your best judgment.

If family or friends don't agree with your decisions, try to get someone to help sort it out—for example, a family counselor or mediator. See the "Where to Get Help" section of this guide.

## What should you know about working with professionals?

In managing Martina's affairs, you may need help from professionals such as lawyers, financial advisors, accountants, real estate agents, appraisers, psychologists, social workers, doctors, nurses or care managers.

You can pay any professionals with Martina's money if there are sufficient funds.

If you need help from any professionals, here are some tips.

- **Check the professional's qualifications.** Many professionals must be licensed or registered by a government agency. Check their credentials with the government agency. Make sure the license or registration is current and the professional is in good standing. Check whether anyone has complained about the professional's services. For lawyers, check with the Law Society of BC <sup>[1]</sup>. For financial advisors, see the investRIGHT "Know Your Advisor" <sup>[2]</sup> page.
- **Interview the professional thoroughly.** See the investRIGHT "Conduct a Formal Interview" <sup>[3]</sup> page for questions to ask. See the Canadian Securities Administrator's "Check Before You Invest" <sup>[4]</sup> Workbook.
- **Review contracts carefully before signing.** Before hiring or "retaining" any professionals, get their proposed plan of work and expected fee. For investment fees, investRIGHT publishes a "Fee Guide" <sup>[5]</sup>. You may want to get legal advice about any contract.
- **Make your own decisions based on facts and advice.** Listen to the professional's advice, but keep in mind they are advising rather than making the decisions.



Image via [www.istockphoto.com](https://www.istockphoto.com)

 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

- [1] <https://www.lawsociety.bc.ca/apps/lkup/mbrsearch.cfm>
- [2] <https://www.investright.org/informed-investing/know-your-advisor/>
- [3] <https://www.investright.org/informed-investing/know-your-advisor/conduct-a-formal-interview/>
- [4] [http://www.securities-administrators.ca/uploadedFiles/General/pdfs/Check\\_Before\\_You\\_Invest\\_Workbook\\_FINAL\\_EN.pdf](http://www.securities-administrators.ca/uploadedFiles/General/pdfs/Check_Before_You_Invest_Workbook_FINAL_EN.pdf)
- [5] <https://www.investright.org/investing-101/types-of-charges/>

## Keeping the Adult Safe

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

When you've been appointed as an attorney under a power of attorney, you have an important role to play in keeping the adult safe.

### Watch out for financial exploitation

Family, friends, neighbours, caregivers, fiduciaries, business people and others may try to take advantage of an older adult. They may take the older adult's money without permission, fail to repay money they owe, charge them too much for services, or not do things the older adult has paid them to do. These are examples of **financial exploitation** or **financial abuse**.

When your friend Martina appoints you as her attorney, you should help protect her. You should know the signs of financial exploitation for several reasons.

1. Martina may still control some of her funds and could be exploited.
2. Even if Martina does not control any of her funds, she still may be exploited.
3. Martina may have been exploited already, and you may be able to do something about it (for example, making a claim in small claims court to have a loan repaid).
4. People may try to take advantage of you as Martina's attorney.
5. Knowing what to look for will help you avoid doing things you should not do, protecting you from claims that you have exploited Martina.

### Look for these signs

Look for these common signs of financial exploitation.

- You think some money or property is missing.
- Martina says that some money or property is missing.
- You notice sudden changes in Martina's spending or savings. For example, she:
  - tries to wire large amounts of money
  - takes out lots of money from the bank without explanation
  - uses the ATM a lot
  - is not able to pay bills that are usually paid
  - buys things or services that don't seem necessary
  - does not get bank statements or bills
- Someone new has entered Martina's life or takes on a larger role. For example, Martina:

- has a caregiver, friend, or relative who suddenly begins handling her money
- puts names on bank or other accounts that you do not recognize or that she is unwilling or unable to explain
- makes new or unusual gifts to family or others, such as a “new best friend”
- changes beneficiaries of a will, life insurance or retirement funds
- Martina says she is afraid or seems afraid of a relative, caregiver or friend.
- A relative, caregiver, friend or someone else keeps Martina from having visitors or phone calls, does not let her speak for herself, or seems to be controlling her decisions.



What can you do if Martina has been exploited?

- Call the emergency 911 number if Martina is in immediate danger.
- Call the Public Guardian and Trustee<sup>[1]</sup> or a designated agency<sup>[2]</sup>.
- Call the Patient Care Quality Office<sup>[3]</sup> in your area if Martina is in a nursing home.
- Call Seniors First BC's SAIL line<sup>[4]</sup>.
- Alert Martina's bank or credit card company.
- Consider talking to a lawyer about protecting Martina from more exploitation or getting back money or property taken from her.

Each agency or professional has a different role, so you may need to call more than one. For more information, see the “Where to Get Help” section of this guide.

## Be on guard for consumer scams

As Martina's attorney, be alert to protect her from **consumer scams**. Criminals and con artists often seek unsuspecting people who have access to money. Learn to spot consumer scams against Martina—and against you as her attorney.

### Spotting a consumer scam

Consumer scams happen on the phone, through the mail, email, or over the internet. They can occur in person, at home or at a business. Here are some tips to help you spot a scam.

- **Too good to be true?** Ask yourself why someone is trying so hard to give you a “great deal”. If it sounds too good to be true, it probably is.
- **Watch out for deals that are only “good today” and that pressure you to act quickly.** Be suspicious if you are not given enough time to read a contract or get legal advice before signing. Also watch out if you are told that you need to pay the seller quickly, for example by wiring the money or sending it by courier.
- **Never pay up front for a promised prize.** Suspect a scam if you are required to pay fees or taxes to receive a prize or other financial windfall.



Image via [www.istockphoto.com](http://www.istockphoto.com)

## Watch for signs Martina already has been scammed

Does Martina receive a lot of mail or email for sweepstakes? Has she paid people you don't know, especially in other provinces, states or countries? Has she taken a lot of money out of the bank while she was with someone she recently met? Does she have a hard time explaining how she spent that money? Is she suddenly unable to pay for food, medicine or utilities?

These could be signs that Martina has been the victim of a scam.

## Tips to avoid consumer scams

Here are tips to help you and Martina avoid being the victim of a consumer scam.


- **After hearing a sales pitch, take time to compare prices.** Ask for information in writing and read it carefully.
- **Don't share numbers or passwords** for Martina's accounts, credit cards or her Social Insurance Number (SIN), unless you know who you're dealing with and why they need the information.
- **Help Martina put her number on the National Do Not Call List.** Doing so can help reduce the number of unwanted calls that she receives. You can do so:
  - by registering online <sup>[5]</sup>
  - by phoning 1-866-580-3625
  - by TTY device at 1-888-362-5889

For more tips on how to spot and avoid consumer scams, see the People's Law School website <sup>[6]</sup>.

	<p>If you suspect a scam, get help. People's Law School describes what steps to take if you have been the victim of a scam <sup>[7]</sup>.</p>
--	--

	Common Consumer Scams
<b>Relative in need</b>	Someone pretending to be a family member or friend calls or emails you to say they are in trouble and need you to wire money right away.
<b>Charity appeal</b>	You get a call or letter from someone asking for money for a fake charity—either the charity does not exist or the charity did not call or write to you.
<b>Lottery or sweepstakes</b>	You get a call or email that you have a chance to win a lot of money through a foreign country's sweepstakes or lottery. The caller will offer tips about how to win if you pay a fee or buy something. Or the caller or email says you already have won and you must give your bank account information or pay a fee to collect your winnings.
<b>Home improvement</b>	Scammers take money for repairs and then they never return to do the work or they do shoddy work. Sometimes they break something to create more work or they say things need work when they don't.
<b>Free lunch</b>	Scammers invite you to a free lunch and seminar, and then pressure you to give them information about your money, and to invest the money with them. They offer you "tips" or "guaranteed returns".
<b>Free trip</b>	Scammers say you've won a free trip but they ask for a credit card number or advance cash to hold the reservation.
<b>Government money</b>	You get a call or letter that seems to be from a government agency. Scammers say that if you give a credit card number or send a money order, you can apply for government help with housing, home repairs, utilities or taxes.
<b>Identity theft</b>	Scammers steal your personal information—such as your name, date of birth, Social Insurance Number, account number, and mother's maiden name—and use the information to access your finances, make purchases in your name or commit other crimes.
<b>Fake "official" mail</b>	Scammers send letters or emails that look like they are from a legitimate bank, business or agency (such as the RCMP or Canada Revenue Agency) to try to get your personal information or bank account number.



 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

- [1] <http://www.trustee.bc.ca>
- [2] <http://www.trustee.bc.ca/services/services-to-adults/Pages/abuse-neglect.aspx>
- [3] <https://www.patientcarequalityreviewboard.ca/makecomplaint.html>
- [4] <http://seniorsfirstbc.ca/programs/sail/>
- [5] <https://www.lnnte-dncl.gc.ca/insnum-regnum-eng>
- [6] <https://www.peopleslawschool.ca/everyday-legal-problems/money/scams-identity-theft>
- [7] <https://www.peopleslawschool.ca/everyday-legal-problems/money/scams-identity-theft/if-youve-been-scammed>

## Your Attorney Toolkit

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

These tools are designed to help you in your role as an attorney under a power of attorney.

### New attorney checklist

When you start as an attorney under a power of attorney, here are the first things you should do.

- **Review the power of attorney document.** Understand when it takes effect and what powers it gives you. Are there multiple attorneys? Does it provide for you to be paid?
- **Discuss your role with the adult.** Talk with the adult about your role. Be clear on when you will start acting as their attorney. Discuss how you will support them in making decisions. Review how you will keep records.
- **Deliver copies of the power of attorney.** Contact any banks, businesses or people that the adult deals with and give them copies of the power of attorney. (If required, a lawyer or notary public can certify a copy as a true copy of the original document.)
- **Make a list of the adult's property and liabilities.** Make an inventory of the adult's property and liabilities as of the date when you start to act on their behalf. Include an estimate of the value of the property and liabilities. See below for details.
- **Make a budget.** Prepare a budget of the adult's income and expenses. See below for details.
- **Set up record keeping.** Set up a filing system for the records you will keep. See below for details.
- **Review the adult's insurance.** Make sure the adult's property is adequately insured.

You can download a checklist <sup>[1]</sup> from the People's Law School website.



## Inventory

Under the law <sup>[2]</sup>, you must keep a current list of the adult's property and liabilities. The list should include an estimate of the value of the property and liabilities if it is reasonable to do so.

The list should include real estate, any vehicles, and personal property such as furniture, appliances, electronics, clothing, jewelry, collectibles and so on. It should also include financial assets such as bank accounts and investments such as any Guaranteed Investment Certificates (GICs), annuities, stocks, bonds, Registered Retirement Savings Plans (RRSPs), and Registered Retirement Income Funds (RRIFs).

As well, the list should include liabilities such as any mortgage, loans, credit cards, lines of credit and so on.

Here is an example of an inventory. You can download a template for an inventory <sup>[3]</sup> from the People's Law School website.

Room/Area	Item	Estimated value	Notes
<b>Furniture</b>			
Living room	Couch	\$800	Bought in 2015 from IKEA
Living room	Chair	\$400	Bought in 2012 from the Bay
...	...	...	...
Total est. value of furniture		\$6,500	
<b>Transportation</b>			
Garage	Car	\$10,000	2012 Toyota Corolla
Garage	Bicycle	\$500	2012 Norco
Total est. value of vehicles		\$10,500	
...	...	...	...

## Budget

While not specifically required under the law, you should have a budget that lists sources of income and expenses for the adult. This will help you keep track of spending within budget. It will also be the basis of reports you should send to the adult.

Here is an example of a budget. You can download a budget template <sup>[4]</sup> from the People's Law School website.

Area	Amount	Amount (monthly)
<b>Expenses</b>		
Housing	Mortgage or rent	\$750
	Electricity	\$100
	Gas	\$50
	Insurance	\$50
	Maintenance	\$50
<i>Total expenses for housing</i>		<i>\$1,000</i>
Transportation	Car loan payment	\$200
	Car insurance payment	\$125

	Gas	\$75
	Bus pass	\$100
<i>Total expenses value for transportation</i>		<i>\$500</i>
...	...	...
<b>Total expenses</b>		<b>\$2,000</b>
<b>Income</b>		
Pensions	Old Age Security (OAS)	\$850
	Canada Pension Plan (CPP)	\$650
<i>Total income from pensions</i>		<i>\$1,500</i>
Other	Rental income	\$200
	RRSP interest income	\$300
<i>Total income from other</i>		<i>\$500</i>
<b>Total income</b>		<b>\$2,000</b>

## Filing system

Set up a filing system for all the records you will keep as the attorney.

You can set up a file folder for the monthly bank records. If there are reports for investments, put these into file folders. You will also need to prepare, file and keep a copy of annual income tax returns. You might set up one file folder for each year's worth of income tax documentation.

For the other important documents, the adult may already have a filing system. If not, you could use a filing system with file folders, a binder with expanding sheet protector dividers, or even manila envelopes.

One option that can work well is an expanding poly file folder with multiple pockets to keep important documents all in one place, protected from the elements.

You can buy a 26 pocket poly file folder that will accommodate 26 important types of documents in the five categories of the PFILE filing system: **P**ersonal, **F**inancial, **I**nsurance, **L**egal, and **E**state & Advance Planning.

	PFILE System
<b>I</b>	<b>Personal</b>
1	Birth Certificate / Adoption Papers
2	Education / Military Service
3	Employment History / Resume or CV
4	Prenuptial Agreement / Marriage Licence / Divorce / Separation Agreement
5	Family History
6	Religious Documents
7	Medical History / List of Doctors / Prescriptions / Health Records
<b>II</b>	<b>Financial</b>
8	List of Bank Accounts / Bank Statements / Safety Deposit Box
9	Credit Cards / Debit Cards

10	Income Tax Returns / Property Tax Statements
11	Certificates of Deposits / Savings Bonds / Mutual Funds / Stocks
12	RRSPs / RRIFs / LIFs-RLIFs / LIOs / Annuities & TCA 90
13	Old Age Security (OAS) / Canada Pension Plan (CPP) / Other Income
<b>III</b>	<b>Insurance</b>
14	Fire (Property) Insurance
15	Auto Insurance
16	Life Insurance
17	Disability / Medical / Dental Insurance
<b>IV</b>	<b>Legal</b>
18	Deed to House / Strata / Cottage or Lease
19	Mortgages / Loan Agreements
20	Passport / Citizenship Papers
21	Vehicle Title / Registration
22	Corporation / Partnership Documents
<b>V</b>	<b>Estate &amp; Advance Planning</b>
23	Power of Attorney
24	Representation Agreement / Advance Directives
25	Wills / Wills Registry Information / Codicils / Letter of Instructions to Executor
26	Trust Documents

## Financial management software

There are software programs that can help with managing personal funds. Perhaps the best known is Quicken <sup>[5]</sup> from Intuit. A free online service for personal finances is Mint <sup>[6]</sup>, also from Intuit. These services help you set budgets, track spending and pay bills.

With financial management software, it is also much easier to provide any reports requested by the adult or others.



You are taking on a commendable but potentially onerous and thankless job as the attorney for someone else. Make your job as easy as possible when you start. When your friend or relative first approaches you to be their attorney, insist (before agreeing to take on the role) they get organized and use the tools described above. Then when it is time for you to take over their affairs, there will be much less to do at first!

 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

- [1] <http://bit.ly/attorneychecklist>
- [2] <http://canlii.ca/t/8p5w>
- [3] <http://bit.ly/attorneyinventory>
- [4] <http://bit.ly/attorneybudget>
- [5] <https://www.quicken.com>
- [6] <https://www.mint.com/>

## Where to Get Help

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

### Local & provincial agencies

#### Better Business Bureau

A non-profit organization that assists people in finding businesses they can trust. You can file a complaint about a business or report a scam.

Lower Mainland: 1-888-803-1222  
Vancouver Island: 1-877-826-4222  
[www.bbb.org](http://www.bbb.org) <sup>[1]</sup>

#### Consumer Protection BC

A non-profit organization that helps protect consumers in BC. They provide assistance and investigate complaints relating to certain types of consumer problems and contracts.

Toll-free: 1-888-564-9963  
[info@consumerprotectionbc.ca](mailto:info@consumerprotectionbc.ca) <sup>[2]</sup>  
[www.consumerprotectionbc.ca](http://www.consumerprotectionbc.ca) <sup>[3]</sup>

#### Nidus Personal Planning Resource Centre

A non-profit organization providing people in BC with information on personal planning, and assistance to make and use representation agreements. They offer extensive resources for attorneys <sup>[4]</sup> acting under an enduring power of attorney. They also host a registry for personal planning documents.

[info@nidus.ca](mailto:info@nidus.ca) <sup>[5]</sup>  
[www.nidus.ca](http://www.nidus.ca) <sup>[6]</sup>

## **Provincial Health Authorities**

If abuse of an older adult is suspected, an agency designated under the law in BC can investigate. The provincial health authorities are designated agencies. These agencies can offer support to the older adult or take steps to protect them.

Designated Agencies Contact Information <sup>[7]</sup>

## **Public Guardian and Trustee**

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>[8]</sup>

## **Seniors Abuse and Information Line (SAIL)**

A safe, confidential place for older adults and those who care about them to talk to someone about situations where they feel they are being abused or mistreated, or to receive information about elder abuse prevention.

Lower Mainland: 604-437-1940

Toll-free: 1-866-437-1940

[www.seniorsfirstbc.ca/programs/sail](http://www.seniorsfirstbc.ca/programs/sail) <sup>[9]</sup>

## **Seniors Advocate BC**

The Office of the Seniors Advocate BC monitors and analyzes seniors' services and issues in the province, and makes recommendations to government and service providers to address systemic issues.

Victoria: 250-952-3181

Toll-free: 1-877-952-3181

[info@seniorsadvocatebc.ca](mailto:info@seniorsadvocatebc.ca) <sup>[10]</sup>

[www.seniorsadvocatebc.ca](http://www.seniorsadvocatebc.ca) <sup>[11]</sup>

## **SeniorsBC**

This provincial government website provides information about BC government programs and services for older adults.

[www2.gov.bc.ca/gov/content/family-social-supports/seniors](http://www2.gov.bc.ca/gov/content/family-social-supports/seniors) <sup>[12]</sup>

## **Service BC (Enquiry BC)**

Call toll-free to reach provincial government offices and services throughout British Columbia from 8 am – 5 pm, Monday to Friday. Service BC offices are the business offices of the provincial government in about 60 communities across the province.

Lower Mainland: 604-660-2421

Victoria: 250-387-6121

Toll-free: 1-800-663-7867

TTY/TDD for hearing impaired: 1-800-661-8773

enquirybc@gov.bc.ca<sup>[13]</sup>

www2.gov.bc.ca<sup>[14]</sup>

## **For legal 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

www.accessprobono.ca<sup>[15]</sup>

### **Lawyer Referral Service**

The Canadian Bar Association, BC Branch offers referrals to lawyers who can provide a half-hour consultation for \$25. (Try to organize your information in advance so as to make efficient use of the time available.)

Lower Mainland: 604-687-3221

Toll-free: 1-800-663-1919

lawyerreferral@cbabc.org<sup>[16]</sup>

www.cbabc.org<sup>[17]</sup>

### **Seniors First BC**

A non-profit organization providing free legal services for people age 55 and over. Older adults experiencing issues with debt, tenancy matters, or pensions or benefits can be assisted by a legal advocate. An Elder Law Clinic offers lawyers experienced in matters involving capacity, residential care, and elder abuse or neglect.

Lower Mainland: 604-437-1940

Toll free: 1-866-437-1940

seniorsfirstbc.ca<sup>[18]</sup>

## **For accounting and financial help**

### **Accountants**

Find a local chartered professional accountant on the website of the Chartered Professional Accountants of BC.

www.bccpa.ca<sup>[19]</sup>

### **Quicken**


Quicken is a software program from Intuit that can help with managing personal funds. The company also offers a free online service for personal finances, called Mint. These services help you set budgets, track spending and pay bills.

www.quicken.com<sup>[20]</sup>

## Self Counsel Press Guides

Self Counsel Press publishes do-it-yourself guides on legal and financial topics for BC, including *Financial Care for Your Aging Parent*, *Personal Budgeting Kit* and *Protect Your Elderly Parents: Become Your Parents' Guardian or Trustee*. These guides include templates and forms to help with budgeting, inventories and staying organized.

[www.self-counsel.com](http://www.self-counsel.com) <sup>[21]</sup>

 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.

## References

- [1] <https://www.bbb.org/en/ca/bbb-directory/bc>
- [2] <mailto://info@consumerprotectionbc.ca>
- [3] <http://www.consumerprotectionbc.ca>
- [4] [http://www.nidus.ca/?page\\_id=68](http://www.nidus.ca/?page_id=68)
- [5] <mailto://info@nidus.ca>
- [6] <http://www.nidus.ca>
- [7] [http://www.trustee.bc.ca/Documents/designated-agency-responders/Designated\\_Agencies\\_Contacts.pdf](http://www.trustee.bc.ca/Documents/designated-agency-responders/Designated_Agencies_Contacts.pdf)
- [8] <http://www.trustee.bc.ca>
- [9] <http://www.seniorsfirstbc.ca/programs/sail>
- [10] <mailto://info@seniorsadvocatebc.ca>
- [11] <http://www.seniorsadvocatebc.ca>
- [12] <http://www2.gov.bc.ca/gov/content/family-social-supports/seniors>
- [13] <mailto://enquirybc@gov.bc.ca>
- [14] <http://www2.gov.bc.ca>
- [15] <http://www.accessprobono.ca>
- [16] <mailto://lawyerreferral@cbabc.org>
- [17] <http://www.cbabc.org>
- [18] <http://seniorsfirstbc.ca>
- [19] <http://www.bccpa.ca>
- [20] <http://www.quicken.com>
- [21] <http://www.self-counsel.com>

# Glossary

---

*This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Kevin Smith in January 2018.*

## 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.

## Conflict of interest

A situation in which a person has competing interests or loyalties.

## 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.

## Fiduciary duties

Duties the law places on a **fiduciary**. For example, the fiduciary must act honestly, in good faith and in the best interest of the beneficiary.

## 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.

## 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.

## 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.

## RRIF

A Registered Retirement Income Fund is an account registered with the federal government that gives a person a steady income in retirement.

## RRSP



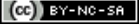
A Registered Retirement Savings Plan is a savings account registered with the federal government that allows a person to save money for retirement and lower their income tax.

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 making the power of attorney is mentally incapable.

 *Managing Someone Else's Money* © People's Law School is, except for the images, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Licence.