

Power of Attorney



This publication 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.

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About this Publication

Acknowledgements

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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.



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Introduction

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

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. **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.

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

The information is current to February 2019.



Visit the People's Law School website at www.peopleslawschool.ca for more coverage of powers of attorney.

Preparing a Power of Attorney

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.

Tip

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**.

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.

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.

Tip 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**. For more information, visit the People's Law School website at peopleslawschool.ca.

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 below), and special rules for signing an enduring power of attorney, discussed in more detail below.
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.

Tip 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. For more information, visit the People's Law School website at peopleslawschool.ca.

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.

Tip 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**.

Tip Nidus Personal Planning Resource Centre and Registry 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.

Tip You and your attorney can learn about an attorney's responsibilities in the publication *Managing Someone Else's Money*. This can be accessed at wiki.clicklaw.bc.ca.

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**.

Tip 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.

Enduring Power of Attorney

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.

Remember, 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

Tip

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.

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* 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.

Tip

The BC Government has an enduring power of attorney form available online on their Incapacity Planning webpage. 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.

Tip

You can **choose to register** your enduring power of attorney (and other documents) with the Nidus Personal Planning Registry. 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.

Ending a Power of Attorney

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.

Tip Nidus Personal Planning Resource Centre and Registry 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.

Tip Nidus Personal Planning Resource Centre and Registry 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."

Tip 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 or a **designated responder**, and report the situation. They will investigate.

Common Questions

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.

Where to Get Help

Access Pro Bono

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

Lower Mainland: 604-878-7400
Toll-free: 1-877-762-6664
accessprobono.ca

Alzheimer Society of BC

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

Clicklaw

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

Lawyer Referral Service

A service from the Canadian Bar Association, BC Branch that offers referrals to lawyers who can provide up to a half-hour consultation for \$25.
Lower Mainland: 604-687-3221
Toll-free: 1-800-663-1919
lawyerreferral@cbabc.org
cbabc.org

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

Ministry of Health

Provides information about planning for incapacity, including an enduring power of attorney form.
gov.bc.ca/incapacityplanning

MyLawBC

An online resource that guides you through a series of questions, and based on your answers, tells you what planning documents you need (including powers of attorney).
mylawbc.com/paths/wills

Nidus Personal Planning Resource Centre and Registry

Provides detailed information about enduring powers of attorney and other planning documents.
info@nidus.ca
nidus.ca

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

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

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

Seniors First BC

Offers monthly legal clinics where low income seniors can get help with powers of attorneys and other planning documents.
604-688-1927
info@seniorsfirstbc.ca
seniorsfirstbc.ca

Glossary

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) 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 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.

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How Did We Do?

Which publication did you read? _____

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
The information presented increased my understanding of the legal topic	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am confident that the information provided is reliable	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The information helped me identify the next steps to take with my legal issue	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I would recommend this publication to others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

We welcome your feedback or suggestions _____

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

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