

EXPLANATION OF THE REPRESENTATION AGREEMENT SECTION 9 (RA9) FORM

What is the purpose of the Representation Agreement Section 9?

The intent of the Representation Agreement Section 9 (RA9) is to provide British Columbians with a way to make the most comprehensive and strongest legal planning document possible to cover health and personal care matters. In this sense an RA9 is a complement to the Enduring Power of Attorney, which is the most comprehensive document to cover financial and legal affairs.

The RA9 lets adults, who are capable now of making their own decisions, prepare for the future—for incapacity, end-of-life, and other future situations.

The term 'Section 9' refers to a part or section of the Representation Agreement Act (RA Act) that outlines the authorities you can give to your representative. Section 10 outlines the capability requirements you must meet in order to make a Representation Agreement under Section 9.

Where do I get an RA9 form?

Nidus provides a Basic RA9 form on the website with instructions on how to complete it yourself. No legal professional is required for making an RA9.

Nidus has been providing forms for Representation Agreements and they have been honoured since the RA Act came into effect in February 2000. Nidus collaborates with legal experts to ensure the forms meet the requirements of the legislation and also address practical issues.

On September 1, 2011, the BC Ministry of Attorney General published Representation Agreement forms with the intent of making the documents more accessible. Unfortunately they do not meet that intent. Nidus provides a chart to compare the Nidus RA9 versus the government RA9 form. Both are legally valid.

Legal professionals also draft RA9 forms. It is important that the form is simple and straightforward for you, your representative and health care providers to follow. You will notice that the Nidus and government RA9 forms are three pages long. Nidus has a tip sheet for legal professionals on best practices for drafting an RA9.

Why do I need to know what the RA9 includes?

There has been no education or training with professionals or institutions about Representation Agreements and there is a lot of misinformation and confusion. Even judges are new to the principles and intent of the grass-roots law reform that produced the RA Act.

If someone were to challenge your RA9, they might say you did not know what you were signing. This is why it is important to let others know your intent is/was to make a comprehensive plan. Discuss this with those you name and other friends and family who want to support your wishes.

What is covered in the Nidus Basic RA9 form?

The Basic RA9 form in the Nidus package is for naming 1 representative and 1 alternate.

On the Nidus RA9 form you will see a heading called 'Authority of Representative' at #4. Most of the wording and references come from the legislation. The reason for the 'legalese' is to avoid different interpretations that happens when people use their own terminology and language. This is why it is not recommended to try writing your own RA9 form.

Following is more detail on what is included under the authorities in the Nidus Basic RA9.

A representative has authority to assist you to make decisions or make decisions on your behalf and do anything they consider necessary with respect to health care and personal care matters.

- A representative's authority is in effect when the RA9 is signed and witnessed. You can still act. However, it means that you do not have to be assessed or labelled as mentally incapable before your representative can help you with decisions or tasks (or whatever is necessary) related to health care and personal care matters.
- You may want your representative to help with communication and tasks that you don't want to do for physical or other reasons. For example, you may wish your representative to speak to a health care provider or pick up medications at the pharmacy.
- This is different from what is required by the default schemes. See www.nidus.ca > Information > Health Care Consent—about TSDMs and Committeeship.

A representative has the authority to give, refuse, or withdraw (stop) consent for:

- Minor health care—including medications, routine tests, routine dental care, anything not covered by major health care, and participation in a medical research program approved by an ethics committee listed in the Health Care Consent and Care Facility Admission Act Regulation;
- Major health care—including major surgery, major diagnostic tests, kidney dialysis, anything involving a general anesthetic, chemotherapy, radiation therapy, electroconvulsive therapy, laser therapy;
- Health care you wanted when you were well but may refuse when ill because your judgement and reasoning are altered. (This can happen with mental illness, dementia, infections that cause delirium, and other conditions.) The intent is to allow the representative to give voluntary consent on your behalf, if you are refusing treatment you would have wanted, so as to avoid involuntary consent (committal) under the Mental Health Act;
- Health care that is necessary to keep you alive (for example, refusing or withdrawing life support);
- Personal care—including shelter (living arrangements including facility placement), diet, exercise, participation in activities, arranging supports and services, hiring and managing staff, grooming (for example, hairstyle, clothing, shaving, make-up, and other adornments), looking after pets, employment, contact or association with other people, licenses or permits or approvals or other authorizations for you to do things, personal safety issues;
- Moving or managing you and authorizing someone else to do so if necessary to provide personal care or health care to you, and despite your objection.

A representative also has authority to give, refuse, or withdraw consent for health care outlined in the Health Care Consent and Care Facility Admission Act (HCC&CFA Act) Regulation.

- Referring to these authorities in your RA9 does not mean you want them to be used. It means that if they are offered as a treatment and you are incapable of consent, your representative will have a say on your behalf. The list may change over time.
- The current list in the HCC&CFA Act Regulation is:
 - Electroconvulsive therapy (ECT – 'shock' treatment), which is used to treat depression when other treatments have not worked, including with seniors;
 - Abortion;

- Experimental health care where the anticipated risk is greater than the expected benefit (perhaps for a treatment not yet tested on a particular age group or stage of a disease);
- Psychosurgery, which is defined as a procedure where: 1) normal brain tissue is removed, destroyed or changed; or 2) electrodes are inserted in the brain for electrical stimulation to alter behaviour or treat psychiatric illness;
- Removal of tissue (includes organs) for implantation in another person (perhaps a family member) or for medical education research;
- Participation in a health care or medical research program that has not been approved by an ethics committee listed in the HCC&CFA Act Regulation;
- Any treatment, procedure, or therapy that uses negative stimuli to produce a change in behavior (i.e. a treatment that exposes you to something you fear so you may learn to live with it).

The Nidus Basic RA9 includes specific authority with respect to record keeping.

- Your representative must keep general records but is not required to keep the detailed records for care decisions outlined in the Representation Agreement Act Regulation.

The Nidus Basic RA9 includes some other features.

- It makes clear that the RA9 is effective immediately (when signing and witnessing are completed) so it will be ‘ready-to-go’ if needed in a crisis. You can still act. [See #9 on the RA9 form]
- It includes a statement referring to Section 9.1 (a) of the RA Act that the representative’s authority continues to be in effect even if you become incapable after you made the RA9. This wording may be helpful if the document is used in other jurisdictions (provinces or countries) but it depends on their legislation.
- Your representative has the right to access information and records related to their authority for health and personal care and related to your mental incapability, as stated in Section 18 of the RA Act.

What is not covered in the Nidus Basic RA9 form?

The Nidus Basic RA9 form includes all authorities provided in the RA Act under Section 9 expect for:

- Making arrangements for the temporary care and education of minor children or others you support.
- Interfering with your religious practices.
- Wording to say that your representative’s authority is not ended if they are your spouse and your spousal relationship breaks down.

If you want any of these authorities, you can request a Custom RA9 form.

WHO CAN MAKE AN RA9?

You must be 19 years or older to make an RA9. (This is the age of adulthood in British Columbia.)

You must also understand the purpose of an RA9—what your document covers and the effect of authorizing someone to be your representative.

Some people do not meet the capability requirement to make an RA9. Nidus has information on the legal document for them. Go to www.nidus.ca > click on the first or third heading that best fits the situation.

What about wishes?

A representative must follow your instructions, wishes, values and beliefs.

- As you read above, the RA9 covers a wide range of things. This is to allow your representative to have the authority they might need in order to carry out your wishes.

You can express your wishes verbally or in writing.

- It is hard to be clear in writing and legal experts in this field caution about written wishes. Others who do not know you and were not part of the discussion (e.g. health professional or judge) may interpret your wishes differently than you intended.
- If you want to write your wishes down, do it on a separate piece of paper (people sometimes call this a living will or advance care plan). This way you can make changes easily. Give your written wishes to your representative and alternate but also have a discussion with them so they know what you mean.

Be careful about terms like 'never' or 'always' as these may tie the hands of your representative.

- The representative may not be able to honour your instruction or wish due to unforeseen factors. If your representative's hands are tied, other laws will decide for you. For example, it might be tempting to say 'I never want to go into a care facility' but some kind of facility placement may become necessary. Some factors affecting this decision could be a lack of funds for alternate care, your particular health condition or a change in health of your representative, refusal of private care staff to provide services in your home, an assessment by health authority staff that you are a danger to yourself or others unless in facility care.
- Better to give guidance as to what features would be important and preferred if such an event could not be avoided. For example, a facility in my neighbourhood rather than closer to family in a different city, a facility with outdoor space, a facility that has an activity program.

Be careful about trying to itemize every possible medical treatment.

- You may add burden to your representative and increase their anxiety.
- You can't predict the future and they can't promise based on unknown possibilities.

Discussions need to be ongoing to incorporate changing circumstances. Nidus has some discussion tools, see Resources on page 5.

There are some instructions or wishes that might be important to include in the RA9 form. These can be included in a Custom RA9 form. Some examples:

- A faith-based instruction or wish that does not depend on other circumstances such as the belief held by someone of the Jehovah Witness faith to refuse blood transfusions.
- An instruction not to involve a specific person or group of people (such as family members) in decisions about your health or personal care matters.

RESOURCES

More Information and FAQ related to this material

Go to www.nidus.ca > click on the middle photo/heading 'Planning for the Future' at the homepage.

- Information on RA9; Chart of differences between Nidus RA9 form and government RA9 form.
- Information on Advance Directive.
- Information on planning for financial and legal affairs, including Enduring Power of Attorney.

Obtain Nidus RA9 forms

Go to www.nidus.ca > Self-Help > RA Forms & Info > click 'Forms' under the **middle** photo/heading.

- See button for Basic RA9 form or scroll down the page to view the Custom RA9 order form if you want something different.

Free presentations

Go to www.nidus.ca > click on Self-Help > Presentations

Personal help

Go to www.nidus.ca > Right Sidebar, click on BOOK NOW

- Book an in-person or phone appointment with Nidus staff to discuss your situation

Keeping informed and up-to-date

Go to www.nidus.ca > Right Sidebar > Subscribe to Nidus News; Read *AskJoanne* posts

Discussing wishes

Go to www.nidus.ca > click on Self-Help > Tools

- Values and Beliefs Discussion Guide
- My Wishes—Topics & Tips

More information on Representation Agreements

Go to www.nidus.ca > click on Information > Representation Agreement > Resources

- Role and Responsibilities of a Representative
- Revoking a Representation Agreement
- Resigning from a Representation Agreement
- Making Changes to a Representation Agreement
- Lifespan of a Representation Agreement

Information on Health Care Consent, Refusing Health Care

Go to www.nidus.ca > click on Information > Health Care Consent > Fact Sheet and Resources

BC legislation

Go to www.bclaws.ca > Laws of British Columbia > Statutes and Regulations