

Enduring Power of Attorney

Planning for Financial and Legal Affairs



“We thought we had everything covered with our Will and joint ownership — but we did not!”

Why is this information important?

No one—not a parent or a spouse—has automatic authority to act on an adult’s behalf. Adults have two choices: 1) Make a legal document to give someone authority; or 2) Authority is imposed.

For example: 1) The adult may make an Enduring Power of Attorney (or Representation Agreement with routine finances from section 7) that states who will make financial decisions on their behalf; or 2) The adult is determined incompetent to manage their finances and someone (or the state) assumes authority over the adult’s financial affairs.

What are some basics to know?

In BC:

- The age of adulthood is 19 years.
- Any type of power of attorney can only cover financial and legal matters.
- Only a [Representation Agreement](#) can authorize health (medical) and personal care matters.

Nidus uses the term **personal planning** to describe making arrangements for while you are alive and might face questions about your capacity to understand or might want help dealing with complex systems. Nidus uses the term **estate planning** to refer to making arrangements for after death.

What types of power of attorney are in BC law?

Under the [BC Power of Attorney Act](#) (PoA Act), there are two types of power of attorney:

1. The authority given in a Non-enduring Power of Attorney (PoA) **ends** if the person who makes it later becomes mentally incapable. This type of power of attorney is common for businesses—for example, to allow a CEO to act on behalf of the company.
2. The authority given in an Enduring Power of Attorney (EPA) **continues** or ‘endures’ **EVEN** if, after you make it, you become incapable. An EPA (or EPoA) is for personal life situations.

Both types must be made when the maker is mentally/cognitively capable to understand. Either type can be limited to specific tasks or time frame. Either type can be ‘general.’

What wording makes an EPA?

Special wording makes a type of power of attorney ‘Enduring.’ [Section 14](#) of the PoA Act suggests:

My attorney may exercise the authority granted by this Enduring Power of Attorney while I am capable of making decisions about my financial affairs, and this authority continues despite my incapability to make those types of decisions.

BC’s PoA Act was amended (changed) as of September 1, 2011. If an EPA was made before that date, look for this or similar wording:

In accordance with the Power of Attorney Act I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

Do you qualify to make an EPA?

To make an EPA under BC law:

1. You must be **at least 19 years old**; AND
2. You must be **capable to understand** the nature of an EPA (what an EPA is for) and the effect or consequences of making it. (This is the traditional approach, which is based on cognitive ability.)

When the BC PoA Act was amended, the age requirement for an EPA was added and the capability requirements were broken down into six items and are listed in [section 12](#) of the Act.

To make an EPA, **you must understand** ALL of the following **six items** (here in plainer language):

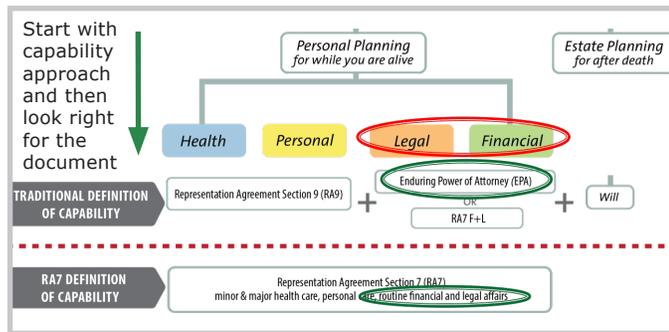
- What you own and the approximate value;
- The obligations you owe to your dependants, such as a spouse and minor children;
- That the person you appoint will be able to deal with any financial and legal affairs on your behalf that you could do, except make a Will for you. Their authority is also subject to any conditions or restrictions you set out in the EPA;
- That, unless the person you appoint manages your affairs responsibly, the value of what you own may go down (decrease);
- That the person you appoint might misuse their authority; and
- That you may, if capable to understand, revoke (cancel) the EPA.

Legal professionals often take notes to back up their opinion that you understand all six items.

The law says that the way an adult communicates is not a factor in determining incapability. An adult may communicate understanding in various ways.

NOTE: Some adults do not qualify to make an EPA. This might be an adult who has advanced dementia or suffered a serious stroke, or an adult with a disability from birth or childhood that affects their cognitive capability to understand (or to demonstrate they understand).

These adults may make a Representation Agreement under section 7 (RA7) to include authority for 'routine finances.' The Representation Agreement Act (a BC law) has a different approach to capability than the EPA, for Agreements with authorities from section 7.



FORMS

Where do I get a form for the EPA?

The Nidus Resource Centre provides lots of information and free forms for making a Representation Agreement at its website nidus.ca

The Nidus Resource Centre does not provide forms for making an EPA. We recommend:

1. Get informed and talk with those you want to appoint. Read this and linked fact sheets. This information is also available at nidus.ca
2. Contact legal professionals; they may provide a list of what to bring. See also [Preparing for Meeting a Legal Professional for EPA](#).

Options: phone the Lawyer Referral Service at 604.687.3221 or 1.800.663.1919. Or, contact the Society of Notaries Public of BC at 604.681.4516 or 1.800.663.0343.

3. Meet with a lawyer or notary public. They will draft the EPA form for you. They generally do not sign forms from other sources.

If the lawyer or notary public does not find the adult capable of understanding to make an EPA, click to read about the [RA7](#).

Are you talking about the form or the role?

People often say they are the 'power of attorney.' This is wrong. You would not say 'I am the Will.'

Use the correct term for the **document**. Is it:

- A Non-enduring Power of Attorney? or
- An Enduring Power of Attorney? or
- A Representation Agreement under section 7 that includes authority for routine finances?

EXAMPLES

John and Mary are spouses and are joint owners of the home they live in. John and Mary each make an EPA. John appoints Mary in his EPA. Mary appoints John in her EPA. They also each name an alternate. It can be helpful if they each name the same alternate.

Unfortunately many spouses only name each other in the EPA. This can be a problem if one spouse dies and the other is mentally incapable and does not qualify to make a new EPA and name someone else.

John and Mary also each make a Representation Agreement (RA9) with forms from nidus.ca/forms

Vincent makes an EPA. His spouse died and he does not have any children. Vincent and his spouse owned recreational property jointly. Now Vincent is sole owner of the real estate property. Vincent appoints Des, the son of his common-law spouse Bill, as the attorney in his EPA. Vincent appoints his niece as the alternate.

Vincent also makes a RA9 with Des as his representative and his niece as the alternate.

FREQUENTLY ASKED QUESTIONS

Is an EPA the only legal planning document in BC for financial & legal matters?

The EPA is the most familiar legal planning document for financial and legal affairs. But as you have read, some adults cannot make it because they do not qualify - their capability to understand is in question. In this case, their supporters want to read about the [RA7ALL](#).

However, some adults qualify to make the EPA but do not need all the coverage of an EPA and prefer some of the features of the [RA7F+L instead](#).

If you own any real estate, Nidus recommends you make the EPA because if you do not, and the real estate has to be dealt with while you are alive, authority will be imposed. Someone will have to go to court or the state will take over your financial and legal affairs.

What are the roles to appoint in an EPA?

An EPA has two roles:

1. Attorney, and
2. Alternate attorney.

The term 'attorney' does not refer to a lawyer.

- The BC PoA Act says you can appoint an **individual** (see restrictions below).
 - People usually appoint a spouse, family
 - Those you appoint do not have to live in BC, but if not, there can be practical challenges.
 - If you appoint someone who lives in the USA, they need to file a form called FBAR with Internal Revenue Services (USA) when they start acting on your behalf.
 - You may appoint someone who is 18 years old; they cannot act until they are 19 years of age.
 - You can appoint more than one attorney and/or more than one alternate.
 - Sometimes people appoint a professional like an accountant. You are appointing the individual, not the firm.
- The only **institutions** you can appoint are:
 - The Public Guardian and Trustee, or
 - A financial institution that can do trust business under the Financial Institutions Act.

The law has **restrictions**. You can NOT appoint (at the time the EPA is made):

1. An individual who is compensated to provide health or personal care services to you (for example, a paid caregiver); or
2. An individual who is an employee of a facility where you live and where the facility provides health or personal care services to you.

The above restrictions do NOT apply if the individual is your spouse or is your parent or child (by birth or adoption).

What term is used for person making an EPA?

In the past, legal professionals used the term 'donor' to refer to the person who makes/owns the EPA. Today, the modern term is 'adult' or 'maker'.

What does an EPA authorize?

Remember, under BC law the EPA can NOT authorize making decisions about health care or personal care matters.

Click to read [Authorities and the EPA](#). This fact sheet discusses: general authorities; restrictions or conditions; additional authorities and excluded authorities.

An EPA made under the BC PoA Act may NOT apply to things you own in a different province/territory or country—especially if you own real estate. Check with a lawyer or notary public.

What are the duties of an attorney in the EPA?

Duties of an attorney(s) also apply to the alternate(s). They must act according to the legal duties outlined in [section 19](#) of the BC PoA Act. See also the fact sheet [Role of an Attorney](#).

Does my attorney get paid?

Your attorney can be paid a fee or receive a personal benefit when using the EPA only if you specify this in writing. As of Sept. 1/11 you must specify this in the EPA document and the fee must be stated in terms of an amount or as a rate.

If you appoint a professional or an institution as your attorney they will require a fee. They will likely refer you to a legal professional of their choosing who will add the necessary wording.

Any attorney has an automatic **right to be reimbursed** for reasonable out-of-pocket expenses when carrying out their duties. You do not have to mention this in the EPA.

What about witnessing requirements?

You, the adult, must sign the EPA and your signature must be witnessed. As of Sept. 1/11, you need two witnesses. However, only one witness is required if that witness is a BC lawyer or a notary public who is a member of the Society of Notaries Public of BC.

As of Sept. 1/11, each attorney you appoint must also sign the EPA and their signature must be witnessed in order for their authority to be in effect. You and your attorney do not have to sign at the same time or with the same witness(es).

What about Land Title requirements?

If your EPA might be used for real estate matters, it must meet requirements of the [Land Title Act](#). The lawyer or notary who drafts your EPA can make sure these are addressed in case the EPA is needed for real estate matters:

- Your name (the adult) on the EPA should match your name as it appears on the 'title' of any real estate you own.
- The EPA needs to include a statement called 'Officer Certification' when the EPA is made.
- The attorney(s) will need to sign a form to say they are 19 years or older and named in your EPA. The form is like an affidavit and must be witnessed as such.
- An EPA can be filed with land titles for any length of time and does not need wording about this. A Non-enduring PoA expires with land titles after 3 years so often you will see wording to exclude the effect of section 56(1) of the Land Title Act.

What about changes?

Do not make any changes to the original of your EPA. Click to read [Making Changes to EPA](#).

When does an EPA take effect? When does an EPA end?

There are many issues about when an EPA takes effect and when it ends. These issues are important to consider when making an EPA and when using it. Click to read [Lifespan of EPA](#)

Can I revoke (cancel) my EPA?

Yes, if you qualify to make an EPA, you qualify to revoke (cancel) an EPA.

Making a new EPA does NOT automatically revoke a previous one. Someone else can NOT revoke an EPA on your behalf. Read [Revoking an EPA](#).

Can an attorney resign from an EPA?

Yes, an attorney or alternate can resign.

Click to read the legal requirements on [Resigning as an Attorney or Alternate in EPA](#).

Why is joint ownership not a substitute for EPA?

Owning real estate or a motor vehicle jointly with your spouse is common but only has benefits when an owner dies.

Joint ownership can pose problems before death - including if one owner is incapacitated. Read more on [Joint Ownership](#).

What is a Bank Power of Attorney?

A Bank Power of Attorney means the form or document is drafted by/for the financial institution, for internal use. A 'Bank Power of Attorney' can be a Non-ending PoA or an EPA. Most likely it will be an EPA-type.

A financial institution that operates in BC (including a branch of a federal bank) must comply with the requirements and procedures set out in the law of BC. This applies to mortgage documents as well as Bank Power of Attorney forms.

You do not have to make a Bank Power of Attorney. It is limited by scope—it only applies to accounts specific to the financial institution. Times have changed—the Bank/Credit Union forms were not designed for today's needs. The 'Bank' form cannot be used externally— like with Canada Revenue or Service Canada (federal pension).

What about documents made outside BC?

Sometimes people move to BC and bring their legal planning document with them. A legal planning document for financial affairs you made outside BC and that is intended to be in effect while you are incapable to act for yourself can be accepted as an EPA as if made under BC law.

However, to be accepted, the document made outside BC must be accompanied by a Certificate of Extrajurisdictional Solicitor signed by a solicitor (usually this is a lawyer) of the province/territory or qualified country where the document was made [[section 38](#), PoA Act]. Click to read more details [Document Made Outside BC-deemed EPA](#).

Where can I register the EPA?

The Nidus Registry, operated by the Nidus Resource Centre, is a voluntary registry in BC for types of power of attorney and Representation Agreements.

Do NOT send any paperwork to Nidus. The Nidus Registry is online for you to do it yourself.

You can securely store information and a copy of your document and arrange access for others who may need to know. The Nidus Registry is online for 24/7 access. Learn more at <https://nidusregistry.ca/faqs/>

NOTE: What about abuse? In our experience, lack of education and mixed messaging can be factors.

An attorney appointed in your EPA needs information about their role and duties.

Many parents tell their children 'you are going to inherit it all anyway.' This is not a good message when you can't predict the future cost of your own care needs.

Some professionals who give advice on financial planning suggest that when listing their financial worth, clients include an estimate of what they expect to inherit or be gifted by parents or others. This can give your potential beneficiaries the wrong message or set up unrealistic expectations.

If you are capable and have concerns, revoke your EPA and make a new one with different people.

If you know someone who is incapable of understanding and you have evidence of abuse using the EPA, contact the Public Guardian and Trustee at 604-660-4444.

Where do I find other Nidus resources?

The Nidus Resource Centre has lots of free information, stories and videos on its website at nidus.ca

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