

# Guide to Making & Registering Your Enduring Power of Attorney (EPA)

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## Who is this package for?

This package is for adults who are on the **future path**. (The age of adulthood in BC is 19 years.)

In BC, there are two paths for personal planning:

1. The **FUTURE** path is for adults who are mentally capable of understanding the nature and effect of the document they are making;
2. The **NEED HELP TODAY** path is for adults whose mental capability is currently in question. See the heading below for directions to the appropriate package and forms.

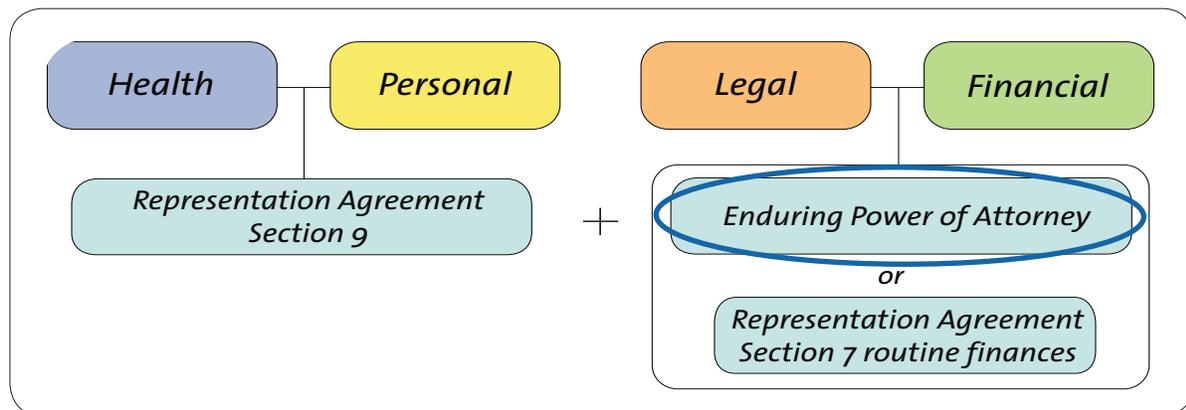
### FUTURE PATH

This booklet is about planning for financial and legal affairs—by making an Enduring Power of Attorney (EPA). Most people will make an EPA to cover their financial and legal affairs. Nidus does not provide EPA forms. If you need the coverage of an EPA, we recommend you meet with a legal professional who will make the form for you. This booklet helps you prepare for that meeting.

If you don't need the coverage of an EPA, you may want to make a Representation Agreement Section 7 with routine financial and legal affairs (RA7 F+L). It does not cover as much as the EPA.

Nidus has expertise in Representation Agreements and provides forms for you to use by self-help.

On the future path, the key legal document for health and personal care is a Representation Agreement Section 9. Go to [www.nidus.ca](http://www.nidus.ca) > [Planning on the Future Path](#) (middle heading on the homepage) for information and forms on the RA9 and RA7 F+L or click [RA Forms](#) (right sidebar on the website).



## Where do I find the package for the **NEED HELP TODAY** path?

If you are helping someone to manage their affairs because their mental capability is in question, you need a different package and forms. Go to [www.nidus.ca](http://www.nidus.ca) > click on the heading that applies.

### Helping a Relative with a Disability—[first heading](#)

- Adults of any age with a developmental disability (in the community living sector).
- Adults with Fetal Alcohol Spectrum Disorder (FASD).
- Young adults with an acquired brain injury due to illness or injury (e.g. ski or car accident).

### Caring for an Older Adult who needs help today—[third heading](#)

- Older adults who used to make their own decisions but whose mental capability has been affected by injury or illness—for example, advanced dementia, serious stroke or fall, other condition.
  - The adult may need temporary assistance as they recover or may need ongoing assistance with decision making and to manage their affairs.

# FAQ ON NIDUS AND EPA

## Who is Nidus?

This information package is provided by the Nidus Personal Planning Resource Centre and Registry, a non-profit charitable organization. Nidus is a Latin term for nest: a symbol of support and safety.

Nidus is currently the only community-based organization in Canada devoted to providing education and assistance to the public with personal planning. Personal planning is about being prepared for incapacity, end-of-life and other support needs. Learn more at [www.nidus.ca](http://www.nidus.ca)

Members of Nidus were involved in a grass-roots law reform of adult guardianship legislation and the creation and implementation of new legislation for personal planning. Nidus has a Practice Advisory Group made up of legal and community experts who assist us with promoting best practices and providing up-to-date information about this emerging area of law.

### AS OF SEPT. 1, 2011

This guide is about making an Enduring Power of Attorney based on amendments to British Columbia's Power of Attorney Act, which came into effect on September 1, 2011.

If you made a valid EPA prior to this date, it will continue to be valid. You do not have to make a new one only because the law was amended (changed).

EPA documents made before Sept. 1/11 were usually 'one-page' documents. This is no longer the case mainly due to the new signing and witnessing requirements. Also of note, the old practice used the term 'donor' to refer to the person making the EPA; the new term is 'adult.'

Many legal professionals still list the EPA under estate planning (making arrangements for after death). Although it is part of the planning continuum Nidus, and others involved in the grass-roots law reform of adult guardianship legislation, believes it is more appropriate for the EPA to be under the heading of personal planning (along with Representation Agreements) as such planning is about making arrangements for while you are alive.

We need to emphasize this focus in order to encourage people to have conversations about their quality-of-life up to the end-of-life. These are not strictly legal or financial planning issues. Your financial resources and income tax return will determine access to health and personal care services and available subsidies, which will in turn affect your quality-of-life. This calls for a new approach, informed by a variety of perspectives and values-based discussions.

## What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) is the most comprehensive planning document for financial and legal affairs in British Columbia and is governed by Parts 2 and 3 of the Power of Attorney Act.

An EPA is about appointing a person—called your attorney (the term does not mean lawyer)—and giving them authority to act on your behalf for financial and legal affairs.

An EPA can NOT authorize someone to make health care or personal care decisions. The Representation Agreement Act came into effect in February 2000 to provide British Columbians with a legal way

to plan for health care and personal care in case of incapacity, end-of-life and other support needs. A Representation Agreement Section 9 is the complement to the EPA, if you meet the capability requirements. See page 16 for information on Representation Agreements.

Most people will make an EPA to cover their financial and legal affairs in case they need help during their lifetime. Some people may make a Representation Agreement Section 7 with authority for routine financial and legal affairs (RA7 F+L) instead of making an EPA. They might do this because they do not need the greater coverage that an EPA gives. For more information see the list of resources on page 16.

## Why make an Enduring Power of Attorney?

An EPA is for while you are alive and you need assistance with your financial and legal affairs. You may need someone to act for you while you are on vacation or in the hospital recovering from surgery. Or you might need help due to a brain injury from a car accident or a serious stroke or advanced dementia. If you make an EPA now, while you are mentally capable, your attorney can help you in the future—on a temporary basis, for an episodic situation (for example due to a mood disorder), or for an ongoing need.

It is very important that someone can manage your financial affairs in the event you cannot. Your financial resources will pay for your health care and personal care (quality-of-life) needs. You may be eligible for subsidies in the care system based on your income tax return; your attorney can use the EPA to access it.

Anyone who is self-employed, including a notary public or accountant, will need an EPA so somebody can manage your business, as well as your personal finances, if you are seriously ill or incapacitated.

## What if I don't make an Enduring Power of Attorney?

If you need the coverage of an EPA and you do not make one while you are mentally capable then you are vulnerable to adult guardianship should you have a serious illness or accident that affects your mental capability. Under adult guardianship you lose your rights—this is sometimes called civil death.

A spouse or family member may have to apply to the Supreme Court of BC to be appointed guardian of your financial and legal affairs (as your Committee of Estate). At the time of writing, the cost of going to Court can be \$5,000 to \$7,000. It takes about three to four months for the Court hearing.

In some cases, there is no one to apply to Court and the Public Guardian and Trustee (a government official) may have to take over your financial and legal affairs as your statutory property guardian.

## What if I have a Power of Attorney? Is it an EPA?

You will not find the word 'enduring' in the main wording of your legal document. An EPA made before September 1, 2011 will usually have Power of Attorney in the title and special wording in the body of the document that makes it an EPA. Documents made on or after that date should be titled Enduring Power of Attorney. Nidus has a fact sheet explaining the difference between a Power of Attorney and an Enduring Power of Attorney. It also tells you what wording to look for. See the list of resources on page 16.

## What if I have a Bank Power of Attorney?

ALERT—A Bank Power of Attorney is an old practice and not relevant for personal planning purposes. It is a type of 'limited EPA' and can only cover dealings with the specific bank or credit union and may even be limited to specific types of banking matters. It does not give authority to deal with the Canada Revenue Agency or your pension income or with different financial institutions or an investment firm. It can cause confusion and worse, you may end up under adult guardianship because it does not cover enough.

Today's advice and practice is not to make a Bank Power of Attorney. If you already made one, you want to consider revoking it but make sure this action does not revoke any other EPA that you want to keep.

## What if I made a Power of Attorney outside of BC?

The Power of Attorney Act in BC provides a way to recognize a legal planning document for financial and legal affairs that was made in a province/territory outside BC or in another country. In order for the document you made outside BC to be deemed an EPA in BC, you must get a lawyer in the other province or qualifying country to complete a Certificate of Extrajurisdictional Solicitor (for EPA). Nidus has information and a copy of the Certificate at [www.nidus.ca](http://www.nidus.ca) > click My Documents > Using Documents (scroll down).

## Can I cancel my Enduring Power of Attorney?

Yes, you can revoke (cancel) an EPA. Sometimes people or circumstances in your life will change and you need to revoke (cancel) your EPA and make a new one. You must be capable of making an EPA in order to be capable of revoking an existing one.

Making a new EPA does not automatically revoke the previous one. Including a 'revocation statement' in your new EPA may not be sufficient to cancel the previous one. Nidus has information on the procedures and a form you can use for making a legal revocation. See the list of resources on page 16.

## When does an Enduring Power of Attorney end?

An EPA ends when you (the adult) dies—then your Will takes over. There are other ways that it may end or your attorney's authority is suspended. See page 16 for the Nidus fact sheet on Lifespan of an EPA.

## What are the requirements for making an EPA?

You must be an adult to make an EPA for British Columbia. The age of adulthood in BC is 19 years.

To make an EPA, you must be considered mentally capable according to the requirements outlined in Part 2 of the Power of Attorney Act. The law says that until it is shown otherwise, you are presumed capable of understanding the nature and consequences of making an EPA. The Act also says that the way you communicate your understanding is not a factor in determining you are incapable of making an EPA.

To be capable, you must understand the nature and consequences of ALL of the following six factors:

- The property you have and its approximate value;
- The obligations you owe to your dependants;
- That your attorney will be able to do on your behalf anything in respect of property that you could do if capable, except make a Will, subject to the conditions and restrictions set out in the EPA;
- That, unless the attorney manages your business and property prudently, their value may decline;
- That the attorney might misuse their authority; and
- That you may, if capable, revoke the EPA, and
- Any other requirements set out in the law (there are no more specific items at the time of writing).

If an adult does not meet the EPA capability requirements, they may make a Representation Agreement Section 7 to cover routine financial and legal affairs (as well as minor and major health care and personal care matters). The RA7 has a different view of capability than the EPA. See page 16 for more information.

## Who can I appoint?

It is a good idea to appoint more than one person so you have a back-up in case something happens to one of them. Many people appoint at least two people—an attorney and an alternate attorney.

Most people will appoint their spouse, family member and/or friend. The law says that you cannot appoint someone if they are compensated for providing health or personal care services to you (such as your physician or paid support worker), unless they are your spouse, parent or child.

You also cannot appoint an employee of a facility where you live and receive health or personal care services (for example a care facility, hospice or assisted living), unless they are your spouse, parent or child.

You can appoint a Credit Union or Trust Company, although some institutions may no longer provide this service; they may refer you to an institution that specializes in such services, such as [Concentra Trust](#). You can approach a professional such as a lawyer, notary public or certified accountant. Some people might appoint the Public Guardian and Trustee. Professionals and institutions charge fees and will need special wording in the EPA. Talk to them first before making your document.

**ALERT**—If your attorney lives in the United States and has to act for you, they must file a special form with the US tax agency each year. If they forget to file, they have to pay a penalty. Things can be more complex if you also own US assets. This may require advice from a lawyer experienced in Canada-US tax law.

## What are the duties of an attorney?

The duties of an attorney are set out in Section 19 of the Power of Attorney Act. These apply to an individual that you appoint as well as a professional or institution. A professional or institution may even be held to a higher standard due to the expertise that is expected of their role.

An attorney must:

- Act honestly and in good faith. (Attorneys can be charged criminally for using the adult's property for a different purpose than the one they are entrusted with.);
- Exercise the care, diligence and skill of a reasonably prudent person;
- Act within the authority given in the enduring power of attorney and under any enactment (an Act, Regulation or municipal by-law); and
- Keep prescribed records and produce the prescribed records for inspection and copying at the request of the adult. (The record keeping requirements are outlined in the Power of Attorney Regulation or see Nidus' fact sheet on Role of Attorney.)

The law says that when managing the adult's financial affairs an attorney must act in the adult's 'best interest' (do what they think is best for the adult). They also need to take the adult's current wishes, values and beliefs into consideration and any directions outlined in the EPA.

An attorney must also do ALL of the following:

- To the extent reasonable, give priority to meeting the adult's health and personal care needs when managing the adult's financial affairs;
- Invest the adult's property according to the Trustee Act only, unless the EPA states otherwise;
- Foster the adult's independence and involve the adult as much as possible in the decision making;
- Not dispose of property that the attorney knows is subject to a specific gift in the adult's Will, unless this is necessary to comply with the attorney's duties;
- To the extent reasonable, keep the adult's personal effects at the adult's disposal.

The attorney must keep their own property separate from the adult's, unless it was previously owned jointly with the adult or the EPA states differently.

Nidus has a fact sheet on the Role of an Attorney—see the list of resources on page 16. It is a good idea to give your attorney(s) and alternate(s) a copy of this guide and especially the Resources page.

## Who can witness an Enduring Power of Attorney?

There is specific criteria for witnesses to your signature on the EPA. Two witnesses are required unless you go to a qualified legal professional.

You only need one witness to the EPA if they are a practicing lawyer and a member in good standing with the Law Society of BC or a notary public who is a member in good standing of the Society of Notaries of BC. See 'How do I find a legal professional' on page 9. Someone authorized by the government as a commissioner for taking affidavits cannot be a single witness.

If your EPA might need to be used for real estate purposes it must include a statement, called an **Officer Certification** in order to be accepted by the Land Title Registry. The statement must be signed by a lawyer, notary public, or an authorized commissioner for taking affidavits.

TIP —To be efficient and avoid problems, go to a BC notary public or lawyer who is qualified to be a single witness to your signature on the EPA (see above) as they also qualify for Officer Certification with Land Titles.

Each attorney/alternate attorney appointed in your EPA must sign the EPA and have their signature witnessed, before their authority is in effect. They do not have to do this at the same time you make the EPA. The legal professional will give you details. Nidus may produce information on this topic in the future.

## Where do I get the forms to make an EPA?

Nidus does not provide forms for making an EPA. We recommend that you go to a notary public or a lawyer and they will make the form for you. If your EPA might need to be used for real estate matters (Land Title), it must be signed properly and a legal professional will be able to do/arrange this.

The provincial government published an EPA form on September 1, 2011 and it is available on the government website (you can search for incapacity planning BC). The form does not include all the options available but it covers basic authorities.

Unfortunately, the government did not consult with experienced legal professionals or community organizations such as Nidus before drafting its form. Therefore the government form does not take into account some practical needs. For example, it does not allow an alternate attorney to move up if your attorney is temporarily unavailable (due to illness, vacation or other situation). This is not practical for caregiving situations. In the case of dementia, the EPA may be needed over a longer time frame and the caregiver/attorney might require a respite break. The alternate needs to be able to take over for a time.

The public has also found it difficult to get the government EPA form signed by a legal professional. Many legal professionals will not sign an EPA document they did not draft. As you can see by the following pages, there are a number of items to discuss. The Law Society also sets out expectations of lawyers as witnesses.

The value of the government EPA form is in demonstrating that a legally valid document does not have to be overly long or complicated. In fact, using standard, short phrases with references to and language in the legislation may be safer and more reliable. Third parties, who are asked to rely on the document, may not have time or training to review lengthy documents and interpret elaborate wording.

## KEEP IT SIMPLE

The EPA document needs to be clear and straightforward. Be sure you understand what your EPA means and you can explain it to those you appointed so they will know their role and duties.

A third party such as a financial institution or government agency will also need to understand it in order to rely on it. The front-line staff need to be able to determine:

1. Who the EPA belongs to;
2. Who is appointed and in what roles;
3. What authority is covered (can check references to the legislation); and
4. When the EPA is in effect.

If you make the EPA too complicated, those you appoint may not know how to use it effectively and a third party may put it on hold until they can arrange for a legal expert to review it.

## What about abuse?

Nidus has zero tolerance for abuse. This is one reason for this guide and numerous other resources on our website. We believe having access to accurate and up-to-date information and current practices allows you to make informed decisions and exercise your self-determination.

Making an EPA is an important decision—the right to decide carries responsibilities. Some thoughts:

- The world is in the midst of major changes, with new technologies, globalization and economic uncertainty. Many people are feeling anxious and under pressure about financial security and the future. Talk about this openly with those you might consider asking to be your attorney.
- Give your attorney/alternate information about their role and duties. Nidus often gets questions from attorneys asking if they are allowed to borrow the money or lend it to a sibling in trouble. It depends on what the law requires and what you state in the EPA.
- It is YOUR money! In the past, people did not live as long and they also did not accumulate as much wealth. It was a sign of good planning and pride to be able to leave money for your children in your estate. Nowadays, many parents, while alive, give money/shelter to their children and grandchildren. It is a new way of gifting. It may be unrealistic for them to also expect gifts on your death/estate.
- Don't say things like 'you'll get it anyway' - it sends a confusing message, particularly given that the population is living longer and more of your money may be needed to support your care. (Good thing if you can cover your care needs so your children don't have to spend their own money!)
- Sometimes people knowingly choose an attorney that they think may not be able to carry out their duties. If you do this, it often has negative consequences for many others as well as you.
  - If you know a potential attorney is struggling with an addiction, don't appoint them in your EPA and be cautious of them living with you. Nidus hears how the individual with the addiction is anguished because they know their actions are wrong but they are driven by their addiction...others will have to struggle to support your relationships, try to stop the abuse and/or try to change the living situation to meet your care needs. It adds burden.
- We know people often complain that they have no one to appoint. As a Vancouver Foundation survey revealed, we need to find ways to engage and re-connect in our communities. Nidus has supported friends and neighbours to step up to help. We encourage they work as a team!

# HOW TO PREPARE FOR MEETING WITH A LEGAL PROFESSIONAL?

## How do I find a legal professional?

Contact the following organizations to locate a notary public or lawyer in your community. Ask the legal professional about their experience with the EPA, their fees, and the procedures. Check if there is a 'spousal rate'. There may be a package rate if you also get a Will made.

- **Society of Notaries Public of BC** – Phone 604.681.4516 or 1.800.663.0343  
Search online and find disciplinary reports at [www.notaries.bc.ca](http://www.notaries.bc.ca)
- **Lawyer Referral Service** – Phone 604.687.3221 or 1.800.663.1919  
Lawyer look-up and access disciplinary reports at [www.lawsociety.bc.ca/apps/lkup/mbrsearch.cfm](http://www.lawsociety.bc.ca/apps/lkup/mbrsearch.cfm)

If you are going to appoint a notary public or lawyer to act as the attorney in your EPA, they cannot draft or witness the document for you.

**Seniors on low income**—can contact the **Access Pro Bono service**. This non-profit organization provides free legal services to adults age 55+ who meet the low income requirements. They also serve terminally ill patients. For details call 604-424-9600 in Vancouver. For other areas, call 1-877-762-6664.

## What do I take to the appointment?

The staff of the law or notary firm can outline the procedures and tell you what information and supporting documents to bring to the appointment. They may send you a preparation form. Here are examples of some items you might need to gather:

- All listings of your name from other legal or government documents, especially as listed on the title of any real estate property your own (the legal professional can do a search for you). You may decide to make separate EPA documents for different names that you use.
- Your current identification, occupation, current contact information, residency/citizenship status.
- Full name of those you want to appoint and their contact information. (They will need to show ID if they have to use the EPA so the listing of their name on the EPA is important.)
- Copies of any previous EPAs, Bank Power of Attorney, current Will and related documents.
- Paperwork related to real estate you own or co-own—the land title certificate, recent property assessment; paperwork related to rental properties and any corporations you own or serve on.
- Sketch out a family tree to show your kin relationships and showing your spousal relationships, divorces, any children by birth or adoption.
- Information on spousal or child support.
- Bank statements, investment portfolio, loans and line of credit, mortgage documents; income tax information; municipal tax details. Check with your financial advisor if you may have any US assets as this could require your attorney to deal with US tax rules.
- Life insurance policies, pension plans, annuities, RRSPs or RRIFs, RESPs, TFSA's, etc.
- List of other significant property you own—motor vehicles, jewellery, artwork, personal effects.

# WHAT TO COVER IN THE EPA?

## What basic wording might an EPA have?

The example shown below allows an attorney to deal with an adult's financial and legal affairs—e.g. banking, investments, Canada Revenue, re-directing the mail, obtaining legal services, hiring a lawyer. It includes real estate matters (providing the EPA is signed according to the Land Title Act requirements).

The second paragraph in the example says that the EPA can be in effect while the adult is capable AND if the adult becomes incapable. The third paragraph refers to the attorney's right to access information.

The example does not include wording for any additional authorities that must be stated in the EPA, such as allowing the attorney to make new loans or gifts to others or to themselves. The wording is not legal advice.

### *(Basic) Authority of attorney\**

*I authorize my attorney to make decisions on my behalf in relation to my financial affairs and do anything on my behalf that I may lawfully do by an agent in relation to my financial affairs in accordance with section 13 of the Power of Attorney Act.*

*In accordance with section 14 of the Power of Attorney Act, I declare that my attorney may exercise the authority granted in this Enduring Power of Attorney while I am capable of making decisions about my financial affairs and this authority shall continue despite my incapability to make these types of decisions in the future.*

*As provided in Section 32 (1) and (2) of the Power of Attorney Act, my attorney has the same right to all information and records that I do, and that relate to the attorney's areas of authority or my incapability.*

### *\* NOTE:*

*Financial affairs is defined in Part 2 of the Power of Attorney Act to include the adult's business and property and the conduct of the adult's legal affairs.*

## What authorities do YOU want to include?

The following checklist highlights basic authorities that can be varied or changed as well as other authorities you can add. Even if you do not need certain coverage/authorities now, you might in the future. Nidus has a list of the [general and specific authorities](#). See page 16 to locate a copy.

These items are for discussion purposes only and any marks beside them cannot be considered as direction or instruction to a legal professional or anyone else in the preparation of an EPA document. The wording used to describe the items is not intended to be sufficient or satisfactory as legal wording.

References to sections of the Power of Attorney Act related to the EPA are given in brackets [Section X]. You can view the Power of Attorney Act and Regulation at [www.bclaws.ca](http://www.bclaws.ca)

Do you want to make a general EPA or limit your attorney's authority to specific powers? [Section 13]

The Basic EPA example does not put limits or restrictions on the authority of the attorney. It is referred to as a 'general' EPA.

An EPA can be 'limited' to dealing with specific matters, such as managing a specific bank account or real estate only. The wording for limited authority must be very precise and the legal professional will have to check with the relevant third party.

Most people make an EPA because they want to give their attorney as much authority for financial and legal affairs as possible, for any situation that may arise. If you include restrictions or limits in your EPA this may result in gaps, which may require your attorney or someone else to apply to the BC Supreme Court to become your guardian. See the resource list about Adult Guardianship.

*Note: You cannot direct your attorney to do anything that is prohibited by law, or that directs them not to do something that is required by law (for example, not paying your taxes). An attorney also cannot make or change a Will for you. (Sections 21 and 15). See page 16 about the Nidus fact sheet on the Role of an Attorney.*

## When will the EPA come into effect? [Section 14]

When you make your EPA, it must state whether it will be in effect: 1) while you are capable, OR 2) only while you are incapable. In either case, the EPA must also state that the authority continues despite your incapability.

The Basic EPA example says the attorney's authority is in effect while you are capable and continues when incapable. This means it will be in effect when executed (signed and witnessed). This way the attorney may act for your financial affairs if you are physically unavailable (for example, you are on vacation or you are bedridden) AND if you become mentally incapable.

Most EPAs come into effect upon 'execution' (signing and witnessing). You will continue managing your own affairs even when the EPA is in effect. The document is 'ready-to-go' and will 'stay in the drawer' until needed.

If you want your EPA to come into effect on a specific date in the future, you must state this date in your EPA document. If you want your EPA to come into effect when a specific future event occurs, such as when you become incapable, your EPA must include a description of the event and also state who will confirm that it has occurred, and how they will confirm it.

If you say that the EPA comes into effect ONLY when you are mentally incapable, it may cause delay. Your affairs may be on hold until someone evaluates the conditions spelled out in your EPA for determining whether you are incapable and decides if your attorney is allowed to act. Sometimes there is disagreement about your capability or the conditions.

The idea that an EPA would not come into effect until you are mentally incapable is based on old ideas about capability—that it is 'all or nothing.' Conditions such as dementia (Alzheimer Disease) are teaching us that the reality is very different. You may need a bit of help with your finances from time to time, but you are not incapable. If your EPA says you have to be incapable, you might not get help until your finances are in a jeopardy—and you may lose your dignity in the process.

If the reason for not giving your attorney authority to act while you are capable is because you do not trust them to act only when needed, do not appoint them at all. See page 16 to find the Nidus fact sheet on Lifespan of an EPA.

*Note: There may be future circumstances when you want to make a Power of Attorney in addition to your Enduring Power of Attorney. A Power of Attorney ends if you become mentally incapable but it can be useful to deal with a short term financial or legal matter that is time-specific or task-specific and you are not physically available to deal with it—such as closing a real estate deal. An Enduring Power of Attorney has more complex signing requirements for your attorney than a Power of Attorney. Discuss possible scenarios with the legal professional.*

## If you name more than one attorney, will they share the same authorities? [Section 18 (4) & (5)]

If you appoint more than one attorney, you can assign them different areas of authority or the same areas. Most people assign the same areas of authority to both attorneys, as it makes things simpler—for them, when using the EPA, and for third parties who have to rely on it, such as financial institutions or government agencies.

If they have the same areas of authority, they must act together (unanimously) unless you state in the EPA the circumstances when they may act separately or how a conflict would be resolved if they act together/jointly.

Remember that stating they must act together (jointly) can create difficulties if they live in different locations or have very different schedules. You may also have to state in the EPA what will happen if there is only one surviving attorney.

Most people will name one attorney and an alternate or name two attorneys and state that they may act separately in all circumstances, which means one or both may act. In either case, it will be important they communicate well with each other.

## When may the alternate act? [Section 18 (5)]

The law allows you to appoint one or more alternate attorneys, who would replace your attorney if they are unable or unwilling to act. Unlike the wording in the government EPA form, you can make sure the wording in your EPA allows for your alternate attorney to be able to act if the attorney is unavailable on a TEMPORARY as well as a permanent basis.

For example: “The alternate attorney may act if the attorney named above is unable or unwilling to act or continue to act due to death, illness, resignation or other circumstances.”

At the same time, you need to appreciate that government bureaucracies and large financial institutions may resist frequent changes. Your alternate would exercise this option if an attorney is on an extended vacation or has a lengthy illness.

It is also important to provide wording in the EPA to say how the replacement or substitution of the alternate will be confirmed. For example, “Confirmation that the attorney is temporarily or permanently unable or unwilling to act or continue to act will be provided in writing either by the adult, the attorney, or the alternate attorney.”

The EPA form designed by government requires a Statutory Declaration to be signed in front of a BC lawyer or notary public, but the law does not require this wording or expense. This approach can be a barrier, especially if your alternate lives out of BC or in a rural area of BC that has no permanent legal professional.

Do you want your spouse to continue as your attorney if your marriage breaks down? [Section 29 (2-5)]

If you appoint your spouse as your attorney, their authority as an attorney automatically ends if your relationship breaks down.

However, you can state in your EPA that if your attorney is your spouse they may continue to act as your attorney even if your marriage or marriage-like relationship breaks down. The legislation for the EPA refers to the Family Law Act for the definition of a breakdown.

**Note:** The definition of “spouse” includes someone to whom you are legally married or someone with whom you live in a marriage-like (‘common law’) relationship.

Do you pay your attorney a fee? [Section 24]

An attorney is automatically allowed to be reimbursed for reasonable out-of-pocket expenses they have while carrying out their duties. They are not automatically allowed to take a fee.

If you want to pay your attorney a fee, you must state this in your EPA and you must state the amount or a rate for calculating the fee. If you appoint a Trust Company, Credit Union, the Public Guardian and Trustee or a professional such as a lawyer or accountant, they will require specific wording in the EPA to ensure they receive a fee for acting as your attorney.

The challenge is that you do not know what might happen in the future and if someone might have to act as your attorney and for how long. Often the people appointed in your EPA are also beneficiaries under your Will and many people see the Will as a way to compensate the person who might have to act under the EPA. Discuss this with the legal professional.

Do you want your attorney to be able to make gifts, loans, or charitable donations from your property to others, at their discretion—or only according to your known practices? [Section 20(3)]

Your attorney has automatic authority to use your property for the benefit of other people (except themselves)—but with restrictions. They can make gifts, loans, or donations from your property on your behalf only if it is consistent with your financial means and your past practices, and the total amount (given away, loaned, or donated per year) must not be more than 10% of your taxable income for that year or \$5,000 (whichever is less).

You can state in your EPA that your attorney can make gifts, loans, or donations beyond the restrictions. Circumstances can change where your attorney may need this discretion. For example, to make larger charitable donations for your tax benefit.

The authority for discretion may be important if you have minor children. If you and the other parent are incapable, your attorney may need discretion to make sure funds are available for your children’s needs. (Parents of minor children also need to make a Representation Agreement Section 9 and give your representative authority to make temporary arrangements for the care and education of minor children so they can look after the health, personal care [living arrangements] and education of your children if you are incapable. See the list of resources on page 16.)

Do you want your attorney to be able to receive gifts or loans from your property? [Section 20]

The law is written so that your attorney can NOT receive gifts or loans from your property, even for something as small or routine as a birthday gift. This applies if your attorney has signed the EPA, even if you are still capable and acting on your own.

If you want your attorney to be able to receive (take) gifts or loans from your property for themselves, this must be stated in your EPA. This authority may be important if your attorney is your spouse and if you have minor children.

Do you want your attorney to be able to use the EPA to sell, transfer or charge real estate you own to themselves? [Property Law Act Sec. 27.1]

You may want your spouse to be able to transfer the title of your real estate property to themselves in order to sell or re-mortgage the property to raise money for your care. This has to be properly stated in the EPA or the Land Title Office will not allow such as transfer. Discuss examples with the legal professional.

Do you want property owned jointly with the attorney to stay joint? [Section 19 (4) & (5)]

The law says your attorney must keep their property (this includes money) separate from your property. For example, they cannot use the EPA to create a joint bank account with you.

This requirement does not apply to property you and your attorney already own together or that is/was exchanged for or obtained from jointly owned property, prior to the attorney's authority under the EPA coming into effect. You have the option of stating in the EPA that you want existing property you own jointly with the attorney to be separated.

Do you want the attorney to be able to delegate their authority to someone else? [Section 23]

Your attorney is automatically allowed to delegate part or all of their decision-making authority for investment matters to a qualified investment specialist (including a mutual fund manager) only if done according to Section 15.1 of the Trustee Act. This is covered in the Basic EPA wording. (If you do not want to allow this delegation, you need to state this in your EPA.)

Your attorney cannot delegate decision-making authority to a person of their choosing for any other matters unless it is stated in your EPA. Appointing an alternate in your EPA means you have a back-up person if your attorney is unable to act. This may avoid the need for your attorney to be able to delegate for other matters.

**Note:** *Even if you don't give your attorney the power to delegate (give away) their decision-making authority, your attorney can still retain the services of a qualified person to assist them in carrying out their duties. For example, your attorney might retain the services of a qualified bookkeeper to assist them in doing your taxes. The bookkeeper would then be carrying out decisions already made by you and your attorney. If new decisions arise, the bookkeeper must refer these to you and/or your attorney.*

How do you want your investments managed? [Section 19 (3)(b)]

Your attorney must make and manage your investments according to the Trustee Act, which says they "must exercise the care, skill, diligence and judgement that a prudent investor would exercise in making investments." Being a 'prudent investor' means things like making an overall investment plan or strategy that is balanced and involves a reasonable assessment of risks and returns; diversifying when making investments; investing in a conservative manner; and monitoring investment performance on a regular basis. Given the level of care that is required, your attorney may wish to delegate part or all of their authority to a qualified investment advisor as mentioned in the previous question (and if they seek this help, your attorney must exercise care and prudence in selecting this advisor).

The kinds of investments your attorney (or the qualified investment specialist) can make as a 'prudent investor' under the Trustee Act depend on what is in the initial investment plan/strategy, but generally, investments in things like real estate (for the purpose of development or generating rental income), commodities, futures, derivatives, hedge funds, and foreign exchange trading are considered high-risk and would probably not be considered prudent.

If you want your attorney to be able to make riskier investments, outside the Trustee Act, this must be stated in your EPA. This might be important if you hold interests in assets like a private company or private mortgage or loans to a family member. If your attorney might delegate this authority, the EPA needs to state you allow delegation as well as discretion for investments.

**Do you want to include additional procedures for revoking the EPA?** [Section 28 (1)]

The general rule is that, as long as you are capable of understanding the nature and consequences of revoking (cancelling), you can revoke your own EPA. There are specific procedures you must follow to make your revocation legal. See the resources on page 16 for the Nidus fact sheet on Revoking an EPA.

You can state restrictions or limits in your EPA related to revocations. You may want to outline additional revocation procedures if you have an episodic mental illness and want to make it more difficult to revoke your EPA. This is a way to guard against you being able to revoke the EPA during an illness episode—when you may need it the most.

**Do you want to include more ways that your EPA is suspended or ended?** [Section 30 (2) & (4)]

If you want your EPA to terminate (end) or be suspended in specific circumstances, this must be stated in your EPA, including the circumstances. For information on the usual ways that an EPA ends, see Lifespan of an EPA under Resources, page 16.

**Do you want to include directions in your EPA?** [Section 19 (2)]

Your attorney's primary duty is to act in your best interests, but in doing so the law says they must also 'take into account' any directions you set out for them in your EPA document. Traditionally, there has been little focus on relaying verbal or written wishes for how your finances should be managed. It is not generally recommended to include directions in the EPA.

It is important to talk with your attorney and alternate about your wishes and values related to money management. For example, what is your risk profile for investments? You also need to talk with them about using your money for your health and personal care needs. Just like for health care wishes, you want to be careful about putting your wishes in writing. You don't want to limit the ability of those you named from being able to help you. They will need to make decisions based on the conditions at the time, when opinions and options might have changed. See p. 16 for a Discussion Guide you can use.

**Do you want your attorney to have access to discussions protected by solicitor-client privilege for matters related to the attorney's authority?** [This option only applies to lawyers - discuss with your lawyer.]

An EPA gives your attorney the authority to act on your behalf for your legal affairs. Your attorney also has the right to access information and records related to your incapability and their areas of authority. However, your attorney's right to access information does not override solicitor-client privilege (your lawyer's duty not to reveal any information about their communications or dealings with you) unless this is stated in the EPA.

The solicitor-client privilege 'belongs' only to the client and it lasts forever (even after you become incapable, and even after you die). Because the privilege belongs to you, you can tell your lawyer you would like to waive part (or all) of it in order to allow them to discuss things freely with the attorney(s) you appoint in your EPA. This means your lawyer could talk to your attorney about the details of, for example, an ongoing case in which you were involved.

**Do you want your attorney to have access to your Will?** [Section 20 (7)]

Your attorney is allowed to have a copy of your Will. This lets them know if you have designated any specific gifts in your Will so they can avoid disposing of them during your lifetime. You might want to be proactive and give your attorney a copy (if you register a copy of your Will under 'Other Documents' in the Personal Planning Registry, you can share read-only access with your attorney/alternate and your executor).

If you do not want your attorney to have access to your Will, you can put this instruction in your Will or give this instruction to a lawyer or notary public who has custody of your Will.

# WHERE TO REGISTER THE COMPLETED EPA?

## PERSONAL PLANNING REGISTRY

The Personal Planning Registry is an online Registry for storing important information and documents and making them available to others who need to know. For example, you can register information about your EPA and upload a copy. You can permit third parties such as financial institutions and government agencies to have viewing access. You can also share read-only access with individuals—such as your attorney/alternate, your financial advisor, and other trusted individuals.

You can also set up a Personal Information Record to list the financial institutions you deal with and contact information for your financial advisor. This information can be invaluable if shared with your attorney and alternate. It will save them time and protect your money and wishes if you are incapable or cannot communicate.

The Personal Planning Registry centralizes various plans that you may make at different times in your life. The Registry lets you store them securely and all in one place. If your lawyer or notary public is an authorized Registration Agent, they can view your registrations as well as register documents for you. For more details and a link to the online Registry go to [www.nidus.ca/registry](http://www.nidus.ca/registry)

## LAND TITLE REGISTRY

The Land Title Registry is established through the Land Title and Survey Authority Act. The public may find it easier to use a professional to assist with filing or accessing information from the Land Title Registry. The original or certified true copy of the EPA needs to be submitted for filing to the Land Title Registry before your attorney can use the EPA to deal with land you own. Some adults might register the EPA immediately in case it is not accepted by the Land Title Registry and changes are required. In other cases the EPA may be filed later, by the attorney when needed.

The Land Title Act states that an EPA registered in the Land Title Registry does NOT expire (Section 56 (3)). A Power of Attorney (not an EPA) will automatically expire after three years unless it includes a statement stating it is excluded from expiring (Section 56 (1)).

## LAND TITLE REGISTRY CHECKLIST

- Provide original EPA or certified true copy.
- The adult's name on the EPA must match the name as shown on the title of the property that is registered with the Land Title Registry. AKA (Also Known As) names may be used for the adult but they must be repeated throughout the EPA including where the adult signs.
- Do not use AKA names for the attorney(s) and alternate(s). The name should match their ID.
- The adult's signature must be witnessed according to the requirements of Section 16 in the Power of Attorney Act and the same EPA must be signed according to the requirements of Section 45 of the Land Title Act and must include an 'Officer Certification' statement (see p7).
- Each attorney or alternate must sign the EPA form with qualified witness(es). Each one must also complete a declaration form (affidavit) stating 'I am the person appointed in the EPA and am 19 years or older at the time of registration with land title.' The attorney's signature must be witnessed by a lawyer, notary, and others authorized as commissioners for taking oaths/affidavits. Make sure all AKA names used for the adult are repeated on this form.

# RESOURCES

## Fact sheets and more info

Go to [www.nidus.ca](http://www.nidus.ca) > click on Information > Enduring Power of Attorney > [More EPA Resources](#)

- Power of Attorney or Enduring Power of Attorney?
- Role of an Attorney in an EPA
- Revocation of EPA
- EPA General and Specific Authorities\* **NEW**
- *Watch for new fact sheet on Problems of Joint Ownership (with others not your spouse)*
- Access to Information and EPA
- Lifespan of EPA
- Resigning as Attorney
- EPA vs RA7 F+L Chart

Go to [www.nidus.ca](http://www.nidus.ca) > click on Information > Adult Guardianship > [Fact Sheet](#)

## Free presentations

Go to [www.nidus.ca](http://www.nidus.ca) > click on Get Help > [Presentations](#)

## Personal help

Go to [www.nidus.ca](http://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](http://www.nidus.ca) > Right Sidebar > [Subscribe to Nidus News](#); Read [Ask Joanne](#) posts

## Representation Agreements for the Future Path

For adults who are capable of making an EPA. Go to [www.nidus.ca](http://www.nidus.ca) > click on middle photo/heading > [Planning on the Future Path](#)

- Forms on the Future Path - scroll to box and links to Representation Agreement Section 9. See form for the RA7 F+L for adults who do not need the coverage of an EPA.

## Representation Agreement Section 7 for the Need Help Today Path

For adults whose mental capability is in question.

- If the adult has a disability from birth or from childhood that has affected their capability to understand, go to [www.nidus.ca](http://www.nidus.ca) > click on first photo/heading > [Helping a Relative with a Disability](#)
- If the adult used to be considered capable of making their own decisions but did not make adequate plans and now needs assistance due to serious stroke, advanced dementia or other condition affecting their mental capability, go to [www.nidus.ca](http://www.nidus.ca) > click on third photo/heading > [Caring for an Older Adult who Needs Help Today](#)

## Safekeeping / Making Changes / Using Your Documents

Go to [www.nidus.ca](http://www.nidus.ca) > click on My Documents

## BC legislation

Go to [www.bclaws.ca](http://www.bclaws.ca) > Laws of British Columbia > Statutes and Regulations