





# *Stay in Charge of Your Life*

<p><i>Health Care</i></p> 	<p><i>Personal Care</i></p> 
<p><i>Legal Affairs</i></p> 	<p><i>Financial Affairs</i></p> 

## The Nidus Guide to Personal Planning

## Introduction

Nidus is a non-profit, charitable organization. Our purpose is to promote personal planning as a way for adults in British Columbia to protect and maintain their self-determination in the event that their mental capability comes into question. Nidus is a Latin term for nest: a symbol of support, safety and self-development.

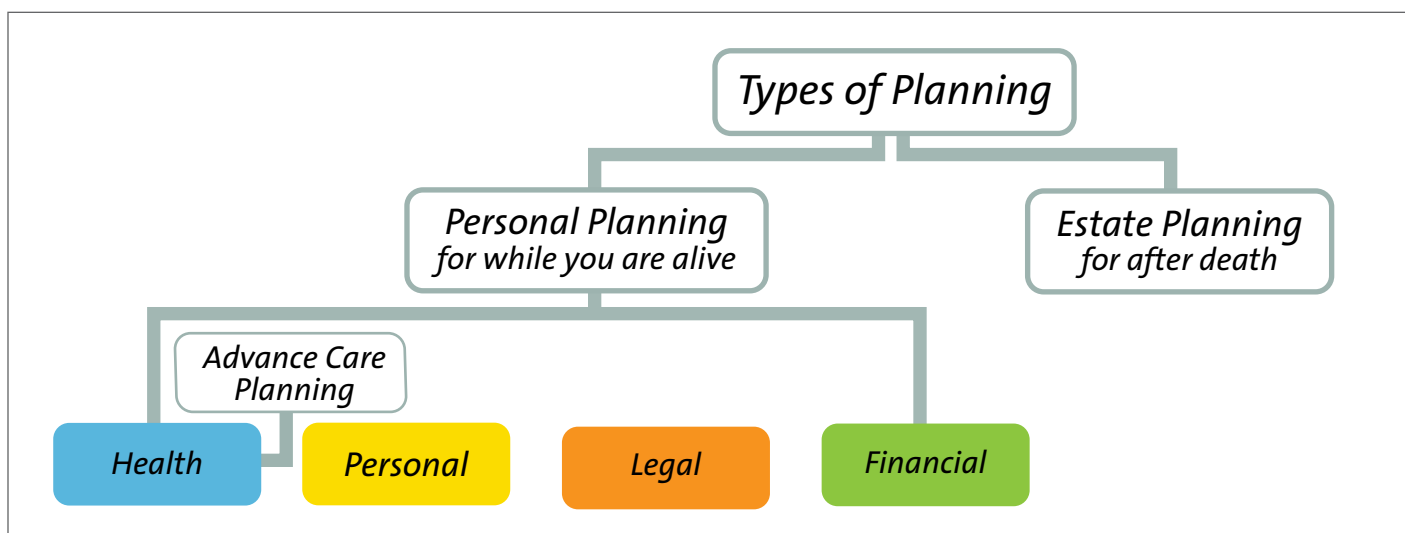
This Guide is intended to provide an introduction to, and overview of, personal planning in British Columbia.

## What is personal planning?

Personal planning involves making arrangements, in case you need help managing your affairs during your lifetime due to an illness, injury or disability. Personal planning differs from estate planning, which is about making arrangements for after your death.

Personal planning covers all areas of your life: health care, personal care, legal affairs and financial affairs.

You may encounter the term 'Advance Care Planning.' It is used by the Ministry of Health and the Health Authorities. It emphasizes planning and discussion about the health care aspect of personal planning.



## Why personal planning?

The main purpose of personal planning is to make legal arrangements in the event that your mental capability/competency is called into question. This may happen due to any number of situations, such as: a stroke, dementia, a serious fall or a car accident. Your mental capability is also sometimes called into question if you have a disability or if you communicate in a non-traditional way.

In B.C., if you are an adult (19 years or older), no one has automatic legal authority to act on your behalf if you are considered incapable, not even your spouse. Adults who do not have their own legal arrangements in place — or who have gaps in their plan — are vulnerable to adult guardianship.

In B.C., guardianship of adults is called Committeeship (kaw-me-tay-ship). Under Committeeship, you lose your civil rights. Legally, you become a non-person.

Personal planning lets you avoid adult guardianship. It is a way to give legal authority to people you know and trust—this way, you will get help without losing your rights. Personal planning lets you:

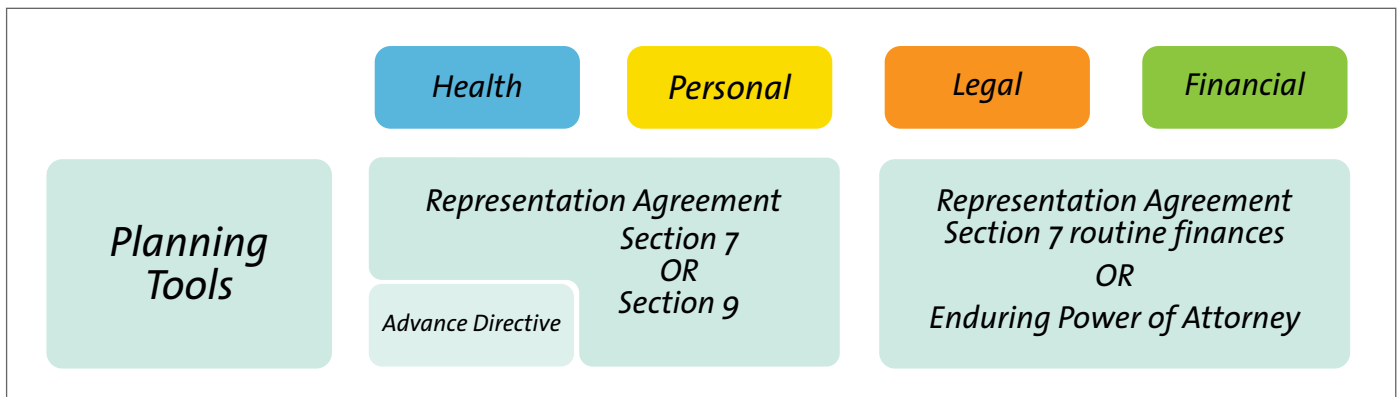
- ▶ Stay in control;
- ▶ Keep the state/government out of your personal and private affairs;
- ▶ Ease the burden on your spouse, family and friends—they will have legal authority to carry out your wishes.

## What are the legal documents for personal planning?

The legal documents available for personal planning are:

- ▶ Representation Agreement Section 7
- ▶ Representation Agreement Section 9
- ▶ Enduring Power of Attorney
- ▶ Advance Directive

Each document is different. They cover different aspects of the four life areas. The capability requirements as well as the signing and witnessing procedures for each document are also different. Some adults may make only one document, while others will make more than one.



### Representation Agreements

A Representation Agreement is for appointing a person or people you trust to act as your representative(s). You can appoint one or more alternate representative(s). You also have the option to appoint someone as a monitor. You must be 19 years or older (an adult) to make a Representation Agreement.

Representation Agreements are governed by the Representation Agreement Act. There are two types of Representation Agreements; they cover different areas of authority and they have different capability requirements.

### Representation Agreement with Section 7 Standard Powers – Planning for Standard Health Care, Personal Care, Legal Affairs and Routine Finances

A Representation Agreement Section 7 is particularly helpful for adults who need assistance with decision making today; it covers other situations as well.

- ▶ A Representation Agreement Section 7 may include one or more of the following standard powers:
  - ▶ minor and major health care
  - ▶ personal care
  - ▶ legal affairs
  - ▶ routine finances
- ▶ There is no specific test of capability to make this type of legal document. This means that an adult may be considered *incapable* of making an Enduring Power of Attorney or a Representation Agreement Section 9, yet be capable of making a Representation Agreement Section 7. The law says an adult may make this type of Agreement even if they cannot manage their own affairs.
- ▶ This document is used by:
  - ▶ Adults who need help today with managing one or more life areas.
  - ▶ Adults who do not need help today, but want to plan for the future and have decided to use the Section 7 Agreement to cover their legal and financial affairs (instead of an Enduring Power of Attorney).
  - ▶ Adults who need immediate help due to *physical* incapability (e.g. hospitalized or bedridden at home).
  - ▶ Adults who want to apply to the Choice in Supports for Independent Living (CSIL) Program.
- ▶ You do not have to consult a legal professional to make a Representation Agreement Section 7.

## Representation Agreement with Section 9 Broader Powers — Planning for Broader Health and Personal Care & Care of Your Minor Children

A Representation Agreement Section 9 is for adults who do not need help today with health and personal care decision making, but who want to plan for the future.

- ▶ A Section 9 Agreement covers the same health and personal care powers as Section 7. It also covers non-standard/broader health and personal care powers, such as: refusing life support, and consenting to treatment or placement you may later object to because your perception and judgement are affected by illness or disease (for example, bipolar disorder or dementia). This type of Agreement can also include the authority to make arrangements for the temporary care and education of your minor children or other dependants.
- ▶ To be considered capable of making this document, you must understand the powers covered under Section 9 and the effect of giving these powers to a representative.
- ▶ This type of Agreement applies to many life situations:
  - ▶ It can give binding authority to carry out your personal and/or religious beliefs that involve refusing medical treatment deemed necessary to sustain your life.
  - ▶ It can provide the broadest coverage for health and personal care, which may be helpful for illnesses that affect perception and judgement, such as dementia.
  - ▶ It is important for parents with minor children — especially for a single parent with sole custody.
  - ▶ It can be a ‘Ulysses-type’ Agreement for adults with an episodic mental illness.
- ▶ You do not have to consult a legal professional to make a Representation Agreement Section 9.

## Enduring Power of Attorney — Planning for Financial and Legal Affairs

An Enduring Power of Attorney is for appointing a person or people you trust to be your attorney(s). You may also appoint an alternate attorney. (Attorney does not mean lawyer.) This document is for adults who do not need help with financial or legal affairs today, but want to plan for the future. It is governed by the *Power of Attorney Act: Part 2*.

- ▶ An Enduring Power of Attorney covers broader powers, in addition to the same financial and legal powers as the Representation Agreement Section 7. These broader powers include dealing with real estate, permitting others to borrow or use your money for their benefit and customizing authority for investing.
- ▶ An Enduring Power of Attorney can authorize someone to act for you while you are capable, as well as when you are mentally incapable. This is helpful because capability is not ‘all or nothing.’ It also allows your attorney to assist you with your affairs if you are *physically* incapable (e.g. you are bedridden).
- ▶ To be considered capable of making this document, you must understand a list of six items outlined in the law. The items include: knowing what property you own and how much it is worth, and knowing your legal responsibilities to your dependants.
- ▶ Most people will go to a lawyer or notary public to make an Enduring Power of Attorney—this is necessary if your attorney might need to use the document to buy or sell real estate on your behalf.

## Advance Directive – Planning for Health Care

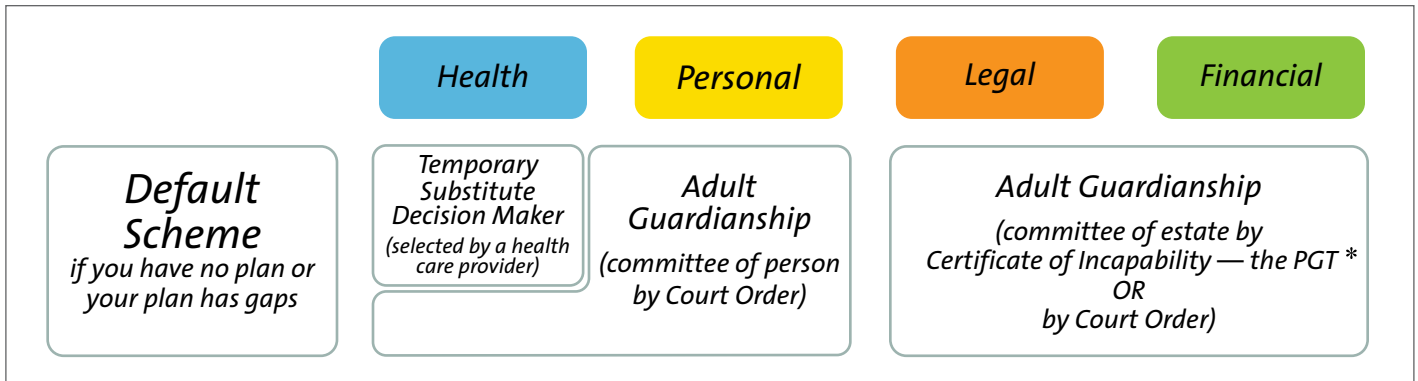
This is a new legal document as of September 1, 2011, under the Health Care Consent and Care Facility Admission Act. It is for giving instructions about health care you do or do not want. It can only apply to health care.

- ▶ An Advance Directive does not appoint a person.
- ▶ An Advance Directive can be used along with a Representation Agreement Section 9. The representative will refer to the Advance Directive for instructions when acting on your behalf for health care.
- ▶ An Advance Directive can be made to ‘stand alone.’ This means that if you are incapable, a health care provider can take consent from your written instructions alone. Your representative or a temporary substitute decision maker (your spouse, family member or friend according to the default scheme) would not be involved in the decision.
- ▶ The law says a health care provider *may* follow your instructions giving consent to treatment. They *must* follow your instructions refusing consent to treatment.
- ▶ You do not have to consult a legal professional to make an Advance Directive.

## What happens if I do not plan?

If you do not make your own legal arrangements or you have gaps in your plan, other laws will decide for you. This is referred to as the 'default scheme.' There are different default schemes depending on the life areas involved. Personal planning lets you make a legal document that can be personalized and flexible in ways the default scheme cannot be.

If your mental capability to make decisions is in question and you do not have your own legal arrangements in place, the following default schemes may be used.



\* Public Guardian and Trustee

### Default for Health Care – Temporary Substitute Decision Maker

- ▶ A health care provider will select someone to be your Temporary Substitute Decision Maker (TSDM) if the provider determines you are incapable and you have no higher authority in place. A higher authority is someone appointed by a judge to be your committee of person (see next heading) or the representative you named in your Representation Agreement or a stand alone Advance Directive (if applicable).
- ▶ The health care provider must select a person from a list in the Health Care Consent and Care Facility Act. The law also sets out qualifications for a TSDM.
- ▶ A TSDM's authority is *temporary*. They only have authority for the period when the health care provider determines you are incapable and consent is needed for the treatment being offered. The health care provider might select a particular TSDM for one decision and select a different TSDM at another time.

### Default for Health Care and Personal Care – Adult Guardianship – Committee of Person

- ▶ Adult guardianship (Committeeship) is governed by the Patients Property Act.
- ▶ A family member, friend or other party — including the Public Guardian and Trustee (a government official) — may apply to the B.C. Supreme Court to be given authority to take over your decision making rights for health care and personal care. The first step is for a judge to declare you mentally incompetent, and the second step is for the judge to decide who may act as your committee of person (guardian).

### Default for Financial and Legal Affairs – Adult Guardianship – Committee of Estate

- ▶ Adult guardianship (Committeeship) is governed by the Patients Property Act.
- ▶ Your financial and legal decision making rights can be taken over in two different ways:
  1. The Public Guardian and Trustee (PGT) can take over your affairs if a designated health care provider assesses you as incapable of managing your financial and legal affairs and submits a Certificate of Incapability to the PGT. There is no hearing or appeal process for this procedure.
  2. A family member, friend, Credit Union, Trust Company or the PGT may apply to the B.C. Supreme Court to be given authority to take over your decision making rights for financial and legal affairs. The first step is for a judge to declare you mentally incompetent, and the second step is for the judge to decide who may act as your committee of estate (guardian).

## Which document fits me? How do I get started?

There are a number of steps to personal planning. The first is to gather information and discuss it with those who may be involved. The Nidus website contains lots of information and resources, as noted on page 8.

When you are considering which legal document(s) fits your situation, you will review the life areas involved. Then you will follow these steps:

### Step One

Do you need help today with one or more life areas?

- ▶ Are you assisting an adult *now* to manage their affairs or make decisions? Is the adult's mental capability currently in question? If the adult cannot meet the capability requirements to make a Representation Agreement Section 9 and/or Enduring Power of Attorney, then the adult will proceed on the 'need help today' path.
- ▶ If you do not need help today, but want to plan for the future, you will proceed on the 'future' path.

### Step Two

Are any life areas already covered? Identify any gaps in authority.

- ▶ Do you have an existing Representation Agreement or Enduring Power of Attorney in place? If yes, is the document still appropriate for the current situation? Does it cover everything needed? Does it need to be revoked (cancelled)?
- ▶ Does the Public Guardian and Trustee or someone else have authority as your committee? Are they committee of person and/or committee of estate?

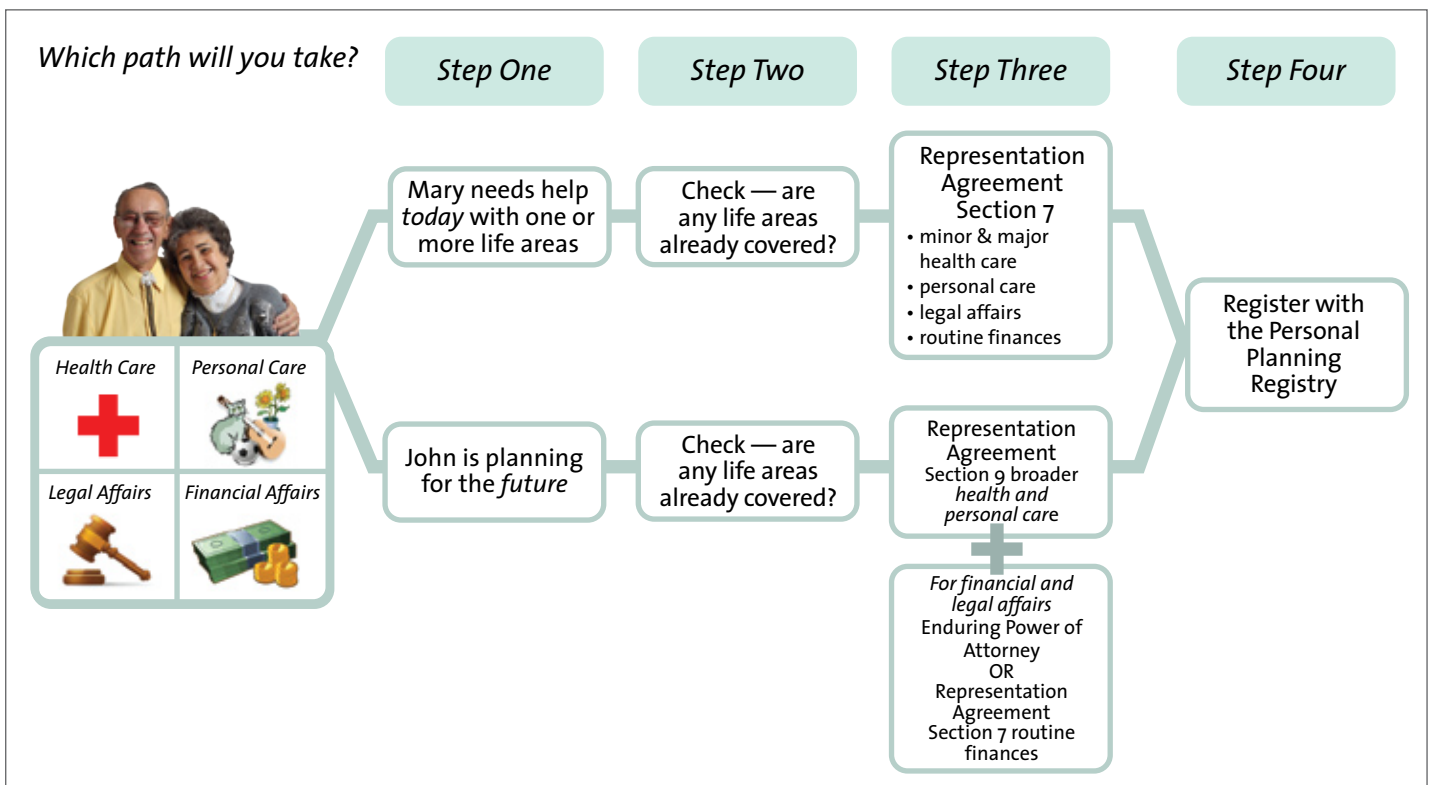
### Step Three

Make your legal document to fill in the gaps.

- ▶ If you are helping an adult who is on the 'path for today,' they will make a Representation Agreement Section 7 to cover their life areas or fill in any gaps. They will include one or more of the four areas of authority.
- ▶ If you are an adult on the 'future path,' you will make two legal documents to cover all life areas. For health and personal care, you will make a Representation Agreement Section 9 broader powers. For legal and financial affairs, you will choose between an Enduring Power of Attorney or a Representation Agreement Section 7 with routine finances and legal affairs.

### Step Four

Register your completed document(s). See page 7 for details.





## Mary needs help today

**Step One** Mary has dementia. She requires considerable support from John with daily living activities. Mary needs help today.

**Step Two** What is in place already? Mary made an Enduring Power of Attorney a few years ago. It only names John. What are the gaps? Mary has nothing in place for health care and personal care. Mary also has nothing in place for financial and legal affairs if something happens to John.

**Step Three** Mary is going to make a Representation Agreement Section 7. She will name John as her representative for health care and personal care and her daughter as the alternate. In case something happens to John, she will name her daughter as the representative for financial and legal affairs and her son as the monitor.

**Step Four** Mary registers her existing and new documents with the Personal Planning Registry.



## John wants to plan for the future

**Step One** John is planning for the future.

**Step Two** What is in place already? John has an Enduring Power of Attorney, which names Mary. What are the gaps? John has nothing in place for health care and personal care. John's arrangements for financial and legal affairs will fail as Mary cannot act as his attorney, due to her dementia.

**Step Three** John will make a Representation Agreement Section 9 for broader health and personal care matters. He will name his daughter as his representative and his son as the alternate. To cover his financial and legal affairs, John will revoke his existing Enduring Power of Attorney and make a new one, or make a Representation Agreement Section 7 for legal affairs and routine finances.

**Step Four** John registers his revocation and new documents with the Personal Planning Registry.

## Where do I get the legal forms?

### Representation Agreement forms

Nidus has produced basic Representation Agreement forms, available on our website.

#### Nidus Representation Agreement Section 7 Basic Forms

- ▶ RA7 for all four standard powers — appoints 3 people: a representative, an alternate and a monitor.
- ▶ RA7 for health care and personal care only — appoints 2 people: a representative and an alternate.

*Mary could use this form to name John and her daughter.*

- ▶ RA7 for financial and legal affairs only — appoints 2 people: a representative and a monitor.

*Mary could use this form to name her daughter and her son.*

#### Nidus Representation Agreement Section 9 Basic Form

- ▶ RA9 for broader health and personal care — appoints 2 people: a representative and an alternate.

*John could use this form to name his daughter and son.*

#### Nidus Representation Agreement Custom Forms

If you want a Representation Agreement form with a different set-up than the basic forms or if you want more help, Nidus provides custom RA7 and RA9 forms. The fee for a custom form is \$75.00, which includes registration of the Agreement with the Personal Planning Registry.

*If Mary prefers everything in one document instead of two separate RA7 basic forms, Nidus can make a custom RA7 form. Also, if John prefers to appoint both his daughter and son as representatives, he can obtain a custom RA9 form from Nidus.*

### Enduring Power of Attorney form

Most people will go to a lawyer or notary public to make an Enduring Power of Attorney.

- ▶ Contact the Lawyer Referral Service at 604.687.3221 or 1.800.663.1919.
- ▶ To locate a notary public near you, contact the Society of Notaries Public of B.C. at 604.681.4516 or 1.800.663.0343, or search at [www.notaries.bc.ca](http://www.notaries.bc.ca).

### Advance Directive form

The Ministry of Health has produced an Advance Directive form, available at the Nidus website.

## Where do I register my completed document(s)?

The Nidus Personal Planning Registry helps you keep track of your personal planning information and documents, and makes them available when needed. You will keep the original of your document and store a copy in the Registry.

The Personal Planning Registry is for:

- ▶ Representation Agreements
- ▶ Enduring Powers of Attorney
- ▶ Advance Directives
- ▶ Notices of Revocation (when you revoke any of the above legal documents)
- ▶ Notices of Resignation (when a representative/alternate/attorney resigns)
- ▶ Advance Care Plans, Living Wills, and other informal documents

The fee to register your first document is \$25.00. Each additional document is \$10.00.

For more details and the registration forms, go to [www.nidus.ca/registry](http://www.nidus.ca/registry).

## Nidus Resources – [www.nidus.ca](http://www.nidus.ca)

On our website, you will find many helpful resources in the following categories:

Information Fact Sheets	Self Help Forms & Tools	Your News Stories & Research	Our News Newsletters	Registry How to Register
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### Recommended reading for each legal document

#### Representation Agreement Section 7

- ▶ RA7 Fact Sheet — under Information — [Representation Agreement](#)
- ▶ RA7 Preparation Guide — under Self-Help — [Making RA7](#)

#### Representation Agreement Section 9

- ▶ RA9 Fact Sheet — under Information — [Representation Agreement](#)
- ▶ RA9 Preparation Guide — under Self-Help — [Making RA9](#)

#### Enduring Power of Attorney

- ▶ EPA Fact Sheet — under Information — [Enduring Power of Attorney](#)
- ▶ EPA Preparation Guide — under Self-Help — [Making EPA](#)

#### Advance Directive

- ▶ AD Fact Sheet — under Information — [Advance Directive](#)
- ▶ AD Preparation Guide — under Self-Help — [Making AD](#)

### Stay connected and involved

Be sure to sign up to receive the Nidus Newsletter by email, to keep up-to-date on new resources, Registry services, changes to the law and practical tips. [Subscribe to Our News](#) on the right menu bar of the Nidus website.

Follow us on Twitter: [@\\_nidus\\_](#)

Like us on Facebook: [www.facebook.com/niduspersonalplanning](http://www.facebook.com/niduspersonalplanning)

#### **Amendments to B.C.'s personal planning legislation came into effect on September 1, 2011.**

If you made a Representation Agreement or Enduring Power of Attorney before September 1st, the law does not require you to make a new document. However, some of the changes affect your existing document. Nidus has produced fact sheets about some of the changes. These are available at the Nidus website.

Go to [www.nidus.ca](http://www.nidus.ca) and click on 'What's New' in the right sidebar.

This Guide is based on the legislation as of September 1, 2011.