Access to Information and Enduring Powers of Attorney

This fact sheet is for attorneys, appointed in an Enduring Power of Attorney (EPA), and discusses your rights and duties with respect to accessing information about the adult.

Why is access to information important?
You will need authority to access information about the adult in order to help them. If you do not have this authority, privacy legislation prevents professionals and other third parties from discussing information about the adult with you or providing access to records.

What authority do I have as an attorney?
As an attorney, you have the same right to access information about the adult as the adult has for themselves, if it relates to your authority. Check the EPA to see if there are any restrictions on your authority.

Introducing yourself and the Enduring Power of Attorney
The Enduring Power of Attorney document is proof of your authority and you will need to have it available when acting in your role as an attorney.

1. Do not lose the original or let any third party keep it. While you need to keep the original safe, remember it has to be accessible when you need it.
2. Make sure your paperwork is complete before taking it or sending it to a third party e.g. financial institution, government agency, service provider.
3. Remember that you will have had to sign the Enduring Power of Attorney in front of a witness(es) for your authority to be in effect. Do other attorneys or the alternate(s) need to sign in case they have to act?

Providing the EPA in person

- If you are providing the EPA in person, you may also need to produce photo identification to prove you are the person appointed as attorney.
- A photocopy may be sufficient for some parties such as government agencies.
- When dealing with a financial institution, you will need the original the first time. Do not go to the teller—meet with a financial services specialist. They can make a copy of the original and sign it as a true copy. They must give the original back to you.

Providing the EPA by mail/fax

- You may need to provide a copy of the EPA by regular mail, fax or email.
- Some institutions, may require you to send a certified copy by regular mail. To do this, you can take the original to a lawyer or notary public and ask them to certify a true copy of the original. They will charge a fee for this. You can mail the certified/true copy to the institution to put on file.
Can anyone appointed in the Enduring Power of Attorney request information?

No. Only the attorney has authority to access the adult’s information. The EPA might name an alternate attorney(s), but the alternate does not have the authority to access information from a third party unless or until they are acting in place of an attorney.

What information am I legally entitled to access as an attorney?

The Power of Attorney Act, in Section 32, says that an attorney appointed in an EPA may request the same information and records that the adult is entitled to, if they relate to:

a) the attorney’s area(s) of authority; or  
b) the adult’s incapability.

An attorney’s area of authority is determined by the Power of Attorney Act and by the wording in the EPA document. A general EPA covers all financial and legal affairs. An EPA may be limited or restricted to dealing with specific matters, such as managing a specific bank account. Check your document to be sure you know the scope of your authority.

Although an EPA only covers financial and legal affairs—not health care or personal care matters—as an attorney you may still access health or personal care information if doing so is necessary for you to exercise your financial or legal affairs authority. For example, if the adult is in a car accident when taking a day trip, they may need help with the accident claim, which falls under authority for legal affairs. If necessary, you can use your authority for legal affairs to access the adult’s relevant medical records to gather information for the insurance claim. You can access health care information in this instance, but the EPA does not give you authority to make health care decisions.

An attorney is also entitled to information related to the adult’s incapability. This means that you may access some health and personal care information, such as a doctor’s assessment of the adult’s mental abilities used for diagnosis and/or for treatment.

Armand

A few years ago, Armand made an Enduring Power of Attorney appointing his son Philippe as his attorney and his daughter Danielle as the alternate attorney. He also made a separate Representation Agreement for health care and personal care appointing his son as representative and daughter as the alternate representative.

When Armand had a stroke, he was not able to do his banking for a period of time. Philippe knew his father had set up direct bill payment and direct deposit but he wanted to review the bank statements to be sure everything was taken care of so he could reassure Armand. Fortunately Armand had taken Philippe with him to the bank last year to get the EPA on file.

Armand’s EPA also said it is in effect when he is capable and if he becomes incapable. This meant no delay for Philippe to check on the bank statements.

Philippe also wanted to check on Armand’s health insurance to see if his father was eligible for benefits to cover his rehabilitation and possibly renovations to his home. Philippe was going out of town for a few days and he asked Danielle, the alternate representative, to access copies of the medical records. Danielle could use the Representation Agreement to access medical tests and reports; she also spoke with the doctor about Armand’s current condition and the doctor’s opinion about his possible future condition.
What if the Enduring Power of Attorney has a ‘trigger event’?

Most EPAs come into effect immediately upon signing and witnessing and are in effect when the adult is capable and continue to be in effect if the adult becomes incapable.

However, an EPA may include a statement that it comes into effect at a later time. This is referred to as a trigger event or a springing clause. There are different kinds of events that can bring an EPA into effect.

An EPA might say it comes into effect when the adult becomes incapable. In this case the EPA must also describe how the adult’s incapability will be assessed and who will confirm the result.

The law says that whoever is responsible for assessing the adult’s incapability—a health care provider or other person—has the right to all the information they need to complete their assessment.

If asked, anyone who has such information must disclose it to the person or people making the assessment. The requirement to disclose information overrides any other law about disclosure and any claim of confidentiality (such as doctor-patient) or privilege, except solicitor-client privilege.

What information is an adult entitled to?

Adults are entitled to see almost any information that concerns them. There are rare exceptions, such as when the release of a document would somehow compromise national security or an investigation by law enforcement, but in most cases adults may access all information and records that relate to themselves.

What if I am refused access to information or records?

If you are having difficulty obtaining information from a third party, ask the third party to explain the reason. Show them your EPA document and be prepared to explain why the particular information you are requesting is covered by your authority as an attorney. For example, in order to access the adult’s bank records you may need to show the bank where the EPA grants authority for financial affairs, and point out your name and signature on the document and show them some identification of your own to prove that you are an attorney.

If the institution still does not recognize your authority and refuses the request for information, the next step is to put the request in writing, stating what information you require and providing a copy of the entire Enduring Power of Attorney and your contact information. Ask them to respond in writing so you have a record.

If the institution still rejects your request, you may need to contact the relevant office that governs privacy and access to information for that institution. Unless you know for sure that you are dealing with a federal institution, the best place to start is with the Office of the Information and Privacy Commissioner for BC http://www.oipc.bca/for-the-public.aspx.

As a last resort, an attorney may apply to the courts for an order directing a party to release information to the attorney.

Rules of Confidentiality – when may I share the adult’s information with someone else?

The law states that as an attorney you must not disclose information or records obtained in the exercise of your authority except to the extent necessary:

a) to perform your duties;
b) for the purposes of an investigation by the Public Guardian and Trustee; or
c) to make an application to or comply with an order of the court.

This means that an attorney may, for instance, provide an accountant with relevant information about the adult’s finances; however, you may not disclose information about the adult when doing so is not necessary for the performance
of your duties. For example, Philippe is Armand’s attorney, with general financial and legal powers. Philippe may provide Armand’s income tax information to his accountant so that he may prepare his tax return. Philippe may not, however, discuss the details of Armand’s finances in conversation with Armand’s neighbor, as this disclosure is not necessary to perform Philippe’s duties and may be a violation of Armand’s privacy.

If the EPA names more than one attorney and/or an alternate(s), you will need to share information with them as part of performing your duties to ensure the adult’s affairs do not suffer if someone has to replace you as attorney.

It could be particularly important for the alternate(s) to know what is going on in case they have to act on short notice. The alternate must have signed the EPA in front of a witness(es) in order for their authority to replace an attorney to be in effect.

If the adult also has a Representation Agreement for health and personal care, an attorney will need to share information with the representative(s) and vice versa, in the course of performing their duties. A representative(s) also has a duty to keep the adult’s information private.

Can I authorize someone else to have access to the adult’s information?

An attorney may be able to authorize someone else to access information about the adult’s affairs. For example, the Canada Revenue Agency allows someone with legal authority to act on the adult’s behalf to grant access to their tax information to another individual or business.

Philippe may contact the CRA to grant access to Armand’s information to his father’s accountant, and also to Danielle, so she has enough information to be ready to act on short notice if necessary.

It is important to distinguish between the authority to access information and the authority to make decisions. Unless your EPA has specific wording to say otherwise, by default an attorney cannot grant or delegate their authority for decision making to anyone else (except in the area of investments, and only according to specific requirements). This means you may be able to give someone else the power to access information about the adult’s financial or legal affairs, but you cannot give them the power to make decisions about those affairs.

Some third parties may not allow you to authorize anyone else to access information. If this is the case, the best approach is to be in good communication with everyone in the adult’s life, including any other attorney or the alternate, and to share the information with each other in order to fulfill your duties.

Additional Resources

Nidus has many resources on our website. Click on the links below or find them at www.nidus.ca - Information - Enduring Power of Attorney - Resources.

Role of an Attorney in an EPA
Resigning as an Attorney or Alternate
Lifespan of an Enduring Power of Attorney
Access to Information as a Representative

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Register your Enduring Power of Attorney with the Personal Planning Registry registry@nidus.ca

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