

Power of Attorney or Enduring Power of Attorney? Which one do I make? Which one do I have?

If you are trying to figure out whether your document is an Enduring Power of Attorney (EPA), read the box on page 2. If you are helping someone who does not meet the capability requirements to make an EPA, see on page 2 under More Resources about the Representation Agreement under section 7.

Are a Power of Attorney and Enduring Power of Attorney the same thing?

No, a Power of Attorney (PoA) and an Enduring Power of Attorney (EPA) are not the same; however, they have some similarities.

- A PoA and an EPA are both legal documents governed by the Power of Attorney Act of BC. An EPA is outlined in Parts 2 & 3 of the Act.
- You can appoint one or more people in the document to be your “attorney” to handle your financial and legal affairs. (Attorney does not mean lawyer; most people appoint a spouse, family member or friend in a PoA or an EPA.)
- These documents can only cover financial and legal affairs. They can NOT cover health or personal care matters. (Only a Representation Agreement covers health and personal care.)
- Both types of documents can be very broad or general to allow your attorney to manage all aspects of your financial and legal affairs. You can also restrict or limit your attorney’s authority to specific dates or tasks. It is most helpful for an EPA to be as broad as possible.
- Certain powers or authorities must be specified (spelled out) in the PoA or EPA—for example, paying your attorney a fee.
- In order for your attorney to be able to make decisions about your real estate (e.g. your house, condominium, recreational property), your PoA or EPA must be signed in accordance with the Land Title Act—the signature of a BC lawyer or BC notary who is a member of the Society of Notaries Public meets the requirements.
 - > For a PoA registered with the Land Title office, authority to deal with Land Title matters ends after 3 years unless the PoA has wording such as ‘this Power of Attorney excludes Section 56 of the Land Title Act.’
 - > An EPA does NOT expire after 3 years and does not need extra wording.

What is the difference between a Power of Attorney and an Enduring Power of Attorney?

A key difference between a PoA and an EPA has to do with when they are in effect.

- A PoA is only in effect when you are mentally capable; it **ends if you become incapable**.
 - > To be mentally capable you must understand the nature and effect of the PoA at the time you are making it.
- An EPA can be in effect when you are mentally capable (recommended) AND most important it continues to be in effect if you become mentally incapable.
 - > To be mentally capable to make an EPA you must understand 6 items outlined in the law. For details, see the [EPA Fact Sheet](#).

Would someone make both a PoA and an EPA?

Yes, some people might make both an PoA and an EPA. You might choose to make a PoA when you are capable and need limited short-term assistance with your finances. Perhaps you are going on vacation or you are in hospital or home-bound with an illness or injury.

An attorney under a PoA is not subject to some of the same duties as required for an EPA, such as detailed record keeping. This is because the PoA is ONLY in effect when you are capable.

An EPA is for the longer term as it is in effect even if you become incapable. Many British Columbians will make an EPA as part of personal planning for financial and legal affairs. You can create an EPA to be in effect when you are capable (highly recommended) as well as when you are incapable.

John is concerned about making arrangements for the future in case he might need assistance with his financial and legal affairs due to a stroke, dementia or other illness or injury. He made an EPA that is in effect while he is capable as well as if he becomes incapable. He knows that capability is not black and white – sometimes it fluctuates.

John is going to Austria for six weeks to visit his relatives. Although his EPA is effective when he is capable, John decided to also make a PoA. He made a PoA that is in effect only for the time period he is away and only for renewing the car insurance.

However, if John is in a serious accident while away, and he needs more help, the EPA can be used.

What is a Bank Power of Attorney?

A 'Bank' Power of Attorney comes from an old practice and is not sufficient for personal planning. Financial institutions used to publish their own forms (some no longer do).

A Bank PoA has very limited use as it can only apply to a specific account and institution. But, more serious, lawyers are advising against making one as it could unintentionally cancel an EPA you make to cover ALL your financial and legal needs, in case you become incapable.

You do NOT have to use the bank forms, even if they insist. You can revoke (cancel) a Bank PoA you made. But make sure you have an EPA in place in case you become incapable.

Where to find more resources from Nidus?

Nidus has many educational materials for self-help — from videos to fact sheets to FAQs.

Go to www.nidus.ca

Click **Information** (top blue menu bar) > Enduring Power of Attorney > [EPA Fact Sheet](#) > [More EPA Resources](#)

What if someone is not capable to make an EPA? Does a Representation Agreement cover finances?

The Representation Agreement Act has a different view of capability for Agreements under section 7.

Watch the Nidus video on Planning for Financial and Legal affairs at www.nidus.ca > click **Get Help** (top blue menu bar) > [Videos](#)

Help! I can't find the word 'enduring' in my document...

How can I tell if I have a Power of Attorney or an Enduring Power of Attorney?

Check to see what date your document is signed, then check for the 'enduring power of attorney' wording. The following offers some guidance. You can also check with a lawyer or notary public.

Documents made BEFORE September 1, 2011

If you made a document before September 1, 2011, and it is titled 'Power of Attorney,' it may actually be an Enduring Power of Attorney. You will not find the word 'enduring' in the document. Instead, look for wording similar to the following:

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.

The above wording makes your document an EPA. It means that the financial and legal authority you gave to the person appointed will remain in effect if you become incapable.

You may also wish to review [Amendments and EPA made before September 1, 2011](#). Go to www.nidus.ca > click Information (top blue menu bar) > Enduring Power of Attorney > More EPA Resources.

Documents made ON or AFTER September 1, 2011

If you made an EPA on or after September 1, 2011, the title should say 'Enduring Power of Attorney.'

Amendments to the Power of Attorney Act came into effect on September 1, 2011, and now there is a more clear separation between a PoA and an EPA. A document made under Part 1 of the Act is a PoA; a document made under Parts 2 & 3 is an EPA. (Documents made before these changes are still valid.)

An EPA made on or after September 1, 2011 must include a statement that your attorney:

- Has authority to act while you are capable and this authority continues if you become incapable, **OR**
- Has authority to act only while you are incapable of making decisions about your financial affairs.

Here is an example of wording that fits the first statement (recommended):

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.

Note: Lawyers and notaries public may use different wording. It is a good idea to review the document with them to make sure you and your attorney understand what it means and how it should properly be used.