

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.

Are a Power of Attorney and Enduring Power of Attorney the same thing? NO.

In BC, the Power of Attorney Act outlines **two different types** of power of attorney:

1. Under Part 1 of the Act is for making a Power of Attorney (PoA).
 - Only covers financial and legal matters.
 - Automatically ends if the maker becomes mentally incapable.
 - Maker **must understand** what the PoA covers and the effect of making it.
 - Most commonly used in/by businesses.
 - Can be 'general' or 'limited/restricted.'
 - Can include additional authorities - like paying your appointee a fee-for-service.
2. Parts 2&3 of the Act are for making an Enduring Power of Attorney (EPA).
 - Only covers financial and legal matters.
 - Can be in effect when maker is capable and **authority continues** if maker becomes mentally incapable. (This wording is recommended.)
 - Maker must be **19 years or older**.
 - Maker **must understand 6 items** to be considered capable to make an EPA. For example, must understand what own and approximate value; must understand legal obligations to spouse and minor children... Full list in [EPA Fact Sheet](#) by Nidus.
 - Can be 'general' or 'limited/restricted.'
 - Can include additional authorities - like paying your appointee a fee-for-service.

Who is appointed?

- The role of someone appointed in a PoA or EPA is called 'attorney.' (This does not mean lawyer.) You can appoint more than one attorney but you will also need legal wording about how they will interact with each other.
- It is a good idea to appoint an alternate attorney so there is a back-up. You will need to say when the alternate may replace the attorney.
- For an EPA, the maker generally appoints their spouse, a family member or a friend.

What extra things are required to allow for dealing with real estate in BC?

- The BC Land Title Act requires the PoA or EPA to be signed by certain parties. For example:
 - > The PoA or EPA must be signed by a lawyer, notary public or someone authorized for taking oaths. (This requirement is taken care of, if the EPA is witnessed by a BC lawyer or notary public who is a member of the Society of Notaries Public of BC.), and
 - > The PoA or EPA includes a statement called 'Officer Certification,' which confirms the qualifications of those who signed.
- The Land Title Registry of BC has additional requirements:
 - > A declaration 'I'm 19' form must accompany the PoA or EPA and be signed by the attorney named in the document and be witnessed by a lawyer or notary public.
 - > In the case of a PoA registered with the Land Title Registry, the registration automatically expires after 3 years unless the PoA has a statement such as 'this Power of Attorney excludes Section 56 of the Land Title Act.' In the case of an EPA, there is no need for such a statement as registration does not expire.
 - > **It is a myth** that a PoA or EPA must be signed with a black pen. This was a request years ago when photocopiers were first invented and other pen colours did not give the same dark contrast with the white paper. That is not a problem today for copiers or scanners.

Would someone make both a PoA and an EPA?

Yes, some lay people might make both a PoA and an EPA. A PoA may be faster to complete as signing requirements are simpler than for an EPA. Also, 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.

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 now, John decided to also make a PoA. that is in effect for the time period he is away and only for renewing the car insurance, which is coming due.

What is a Bank Power of Attorney?

A 'Bank' Power of Attorney is not sufficient. Times have changed. A Bank PoA or Bank EPA is limited and restricted for use only with that specific financial institution. It cannot be used for dealing with other financial matters such as government benefits, Canada Revenue, Canada Post.

Some financial institutions stopped making Bank-forms. Even if your financial institution pushes their forms, it is recommended not to use them.

What if someone is not capable to 'understand'?

The Representation Agreement Act has a different definition of capability for Agreements under section 7 and is designed for adults whose capability to understand is in question. One of the authorities under section 7 is 'routine finances.'

Where to find more resources from Nidus?

Go to www.nidus.ca

- Click **Information** (top menu bar) > see list of various topics.

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

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 (under Part 1) and an EPA (Parts 2&3). (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.