

**Sept. 1st
2011**

Enduring Power of Attorney

AMENDMENTS

Amendments (changes) to British Columbia's Power of Attorney Act, affecting Enduring Powers of Attorney, came into effect on September 1, 2011. The amendments are covered in Parts 2 and 3 (sections 10 to 42) of the Power of Attorney Act. The original reference to Enduring Power of Attorney (EPA) was covered in section 8 of the Act, which was repealed (removed).

This fact sheet highlights key changes and how these may or may not affect an EPA made BEFORE September 1, 2011.

If you are making an EPA for the first time or are making a new one, please see the Nidus [fact sheet on Enduring Power of Attorney](#) and the [EPA Guide](#), which are based on the new legislation.

Do I have to make a new EPA because of the amendments?

No. A valid EPA made BEFORE September 1, 2011 remains valid. However, **some of the changes affect ALL EPAs**. For example, there are new duties those you appointed as your attorney(s) must follow. Other changes clarify procedures, such as how to revoke (cancel) your EPA. **Some amendments only affect new EPAs**, such as the restriction on who you can appoint. The law makes clear this change does not affect existing EPAs.

How do I know if I have an EPA?

A Power of Attorney (PoA) automatically ends if you become mentally incapable. Therefore many people are anxious to know if they have an Enduring Power of Attorney or not.

Any EPA made on or after September 1, 2011 should be titled 'Enduring Power of Attorney' given how the legislation is now organized. An EPA made before that date will likely be titled 'Power of Attorney.' Nidus has a fact sheet that explains the wording to check for. Click [Power of Attorney or Enduring Power of Attorney?](#) or see how to find resources on page 2.

A PoA and an EPA only cover financial and legal affairs, regardless of when the document was made. An EPA can NOT appoint someone to make health care or personal care decisions. Even if your EPA includes wording about this, it does not apply.

A Representation Agreement is the only legal document to authorize someone to make health

care and personal care decisions on your behalf. Read the Nidus fact sheet on [Representation Agreements](#).

Changes and an EPA made BEFORE September 1, 2011

Restrictions on who can be appointed in an Enduring Power of Attorney

The amendments restrict who can be appointed as an attorney or alternate attorney in an EPA made on or after September 1, 2011. These changes do NOT affect an EPA made BEFORE that date.

As of September 1, 2011, you can NOT appoint someone as an attorney (or alternate), if they are:

- Compensated to provide health care or personal care services to you (for example, a paid caregiver), unless the attorney or alternate is your spouse, parent or child.
- An employee of a facility where you live, if the facility provides health or personal care services to you. Your spouse, parent or child is exempt from this restriction.

The amendments state that these new restrictions do not apply to a valid EPA made before Sept. 1, 2011. For example:

Kama made an Enduring Power of Attorney in October 2010. Her friend Sunni is appointed as the attorney. Kama has been paying Sunni on a monthly basis since March 2009 to buy groceries, help with meals and house cleaning. Kama does not want to move but her health problems make it difficult to do personal activities. She does not qualify for home support services. The law says it is okay for Sunni to be named in Kama's Enduring Power of Attorney because it was made before September 1, 2011.

Please note that the Community Care and Assisted Living Act restricts an owner, operator, employee, contractor or volunteer of a licensed facility (including a hospice and community living agency) from acting as an attorney for a 'person in care.' The exceptions are if the attorney is your spouse, parent or child.

Remuneration for an attorney

Your attorney is entitled to reasonable out-of-pocket expenses they spend to carry out their duties. This has not changed.

What has changed are the requirements about the wording you must include in an EPA if you want to pay your attorney a fee. The new requirements do not apply to an EPA made BEFORE September 1, 2011. This means your attorney may receive a fee if this is stated in the EPA document or in an accompanying document you made and signed before Sept. 1, 2011.

Duties of an attorney

The amendments spell out the duties of attorneys – what they can and cannot do. For example, there are duties regarding how an attorney must make decisions on your behalf. They must keep specific records for the time period they act for you. The amendments also spell out the attorney's right to access information.

These **duties apply to all EPAs** as of September 1, 2011, no matter when the EPA was/is made. Please see the Nidus fact sheet on [Role of an Attorney](#).

Witnesses to adult's signature

An EPA made before September 1, 2011 only required one witness. In order to be effective for Land Title purposes (dealing with real estate), the witness had to be a lawyer, notary public or someone authorized to take oaths/affidavits.

Different witnessing procedures are required for an EPA made on or after September 1, 2011. See the [Nidus EPA Guide](#) for details.

Attorney's signature on an EPA

The amendments state that an attorney who is appointed in an EPA made on or after September 1, 2011 must sign the EPA document in front of witness(es) before they can use it. This was not required for EPAs made BEFORE the amendments.

EPA and Land Title (real estate)

Although this is not stated in the previous or new law, there is a long-standing policy that if the EPA has to be used for land title (real estate) purposes, the attorney(s) must sign a declaration form—confirming they are 19 years or older and named in the EPA. The declaration form must be witnessed by a lawyer or notary public or person authorized to take oaths/affidavits. The declaration form and the EPA must be filed with the Land Title Registry in order to be used for land title purposes.

Some legal professionals add wording in the EPA to say that it will not expire after three years. This is not necessary and is very confusing to the public. An EPA does not automatically expire after three years whether it is filed with the Land Title Registry or not. Expiry only applies to a PoA that is filed with Land Title, unless it includes wording that excludes section 56 of the Land Title Act.

Procedures for Resignation

The amendments spell out requirements if an attorney, who has started acting, wants to resign. These procedures apply to all EPAs, regardless of when it was made. See the Nidus fact sheet on [Resigning as an Attorney](#).

Procedures for Revocation

The amendments spell out the legal requirements for how you can revoke (cancel) your EPA. These new procedures apply to all EPAs.

It has always been the case that making a new EPA does NOT automatically revoke an existing one. In the past, legal professionals would include a statement about revocation in the new EPA but this is no longer sufficient. Specific procedures for legally revoking an EPA are now outlined in the law. See the Nidus fact sheet on [Revoking an EPA](#).

Circumstances when an EPA automatically ends

The amendments say that an EPA automatically ends if your attorney becomes bankrupt or is convicted of an offence of which you, the adult, was the victim. The authority of your attorney ends if the attorney is your spouse and your marriage or marriage-like (common law) relationship breaks down. See the Nidus fact sheet on the [Lifespan of an EPA](#).

More resources from Nidus

Go to www.nidus.ca

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

Click **Information** (top blue menu bar) > Representation Agreement > [RA Overview](#) > [More RA Resources](#)

Click **Get Help** (top blue menu bar) > [Videos](#)

Click **Registry** (top blue menu bar) > [Registry Instructions](#)

Be sure to search for an existing Registry Account before setting up a new one. The Registry is online. Do NOT mail any paperwork to Nidus.

Step one—create a Registry Account;
Step two—make a registration. (For example, register a completed Enduring Power of Attorney, Notice of Revocation, etc.)

Nidus Personal Planning Resource Centre and Registry
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Nidus is a non-profit charitable organization, established in 1995.