

Authorities and the Enduring Power of Attorney

Introduction

This information is based on [Parts 2 & 3](#) of the [Power of Attorney Act](#) of BC as amended September 1, 2011. It provides detail on **authorities or powers** that may be given in an **Enduring Power of Attorney (EPA)**.

This resource is a companion to the [EPA fact sheet](#).

In BC, any type of power of attorney only covers financial and legal matters. A [Representation Agreement](#) is the legal planning document in BC for health and personal care matters.

Who is this information for?

This resource is to help those 'making' an EPA decide what authorities to include and if this means adding specific wording or listing restrictions.

The information and examples provided are for education and discussion, not for the purposes of drafting your EPA.

Authorities are also discussed in [Role of Attorney](#) to help those appointed in an EPA to check what they are legally authorized to do.

This information is not intended for a 'Bank Power of Attorney' as such a document is limited in scope and most authorities discussed here will not apply. This information is also not intended for a Non-enduring Power of Attorney (PoA).

Related issues to consider

When making your EPA you need to consider what authorities to include—the focus of this resource. You also need to decide when the authorities come into effect. Click to read [Lifespan of EPA](#).

Using correct legal terms

Enduring Power of Attorney (EPA or EPoA) is the name of the **document**.

There are **two roles** that can be appointed in an EPA: attorney and alternate attorney. Attorney does not mean lawyer—it is the name of the role.

How is this information organized?

This resource is organized under four headings:

1. General authorities (automatically included)
2. Restrictions or conditions (you can add)
3. Additional authorities (you can give)
4. Excluded authorities (not allowed)

There is no list in the BC Power of Attorney Act (PoA Act) to define 'general' authorities for an EPA—a good thing. Instead, the legislation states if and how an authority may be modified, what authorities are excluded (not allowed), and what authorities are allowed only if made 'express' (specifically listed).

EPA GENERAL AUTHORITIES

An EPA can have wording to give the attorney 'general' authorities. This avoids long EPA documents that list each power or authority that is automatically included.

Wording in EPA made before Sept. 1/11

The general authority wording for an EPA made BEFORE September 1, 2011 was:

I appoint the following person [Full Name] to be my attorney in accordance with the Power of Attorney Act and to do on my behalf anything that I can lawfully do by an attorney.

Wording in EPA made on or after Sept. 1/11

The general authority wording for an EPA made ON or AFTER September 1, 2011 is:

My attorney is authorized to make decisions on my behalf in relation to my financial affairs and do anything on my behalf that I may lawfully do by an agent in relation to my financial affairs in accordance with section 13 of the Power of Attorney Act.

NOTE: The definition of financial affairs in the above includes the adult's business and property and the conduct of the adult's legal affairs. Therefore, these do not need to be spelled out, they are automatically included.

In legal terms property is defined quite broadly and includes money (cash, investments); real estate; vehicles; and personal effects such as mobile devices, clothing, furniture, jewellery. These items are included under the 'general authority' wording.

Although the legislation does not spell out 'general authorities' people often want a sense of what is included. This allows for discussion and more realistic expectations.

The following list of 'general authorities' is organized by category for convenience. The list is for guidance and not necessarily complete. Items listed are about the adult.

Income, bill payments, and banking

- Pay bills.
- Receive income and other money.
- Deposit pension, income and other money in the adult's bank accounts.
- Open accounts in the adult's name at financial institutions.
- Set up direct bill payment and direct deposit.
- Withdraw money from, transfer money between or close accounts.
- Receive and confirm statements of account, passbooks or notices from a financial institution for the purpose of reconciling accounts.
- Sign, endorse, stop payment on, negotiate, cash or otherwise deal with cheques, bank drafts and other negotiable instruments.
- Lease, access, remove contents or surrender a safe deposit box.

Loans and financing

- Renew or refinance, with the same or another lender, a loan, including a mortgage.
- Make payment on a loan, including a mortgage.
- Guarantee a loan, post security or indemnify a third party.

Benefits, goods and services

- If appropriate, take steps for deferral of property taxes.
- Take steps to obtain benefits or entitlements including financial benefits or entitlements such as the homeowner grant.
- Purchase, renew or cancel household, motor vehicle or other insurance. (Except not take out a new life insurance policy.)
- Purchase goods and services.

Income tax

- Complete and submit income tax returns, and deal with assessments, reassessments, additional assessments and all related matters.
- Subject to the Income Tax Act (federal law), sign all documents, including consents, concerning anything referred to in the first bullet.
- Apply for entitlements or benefits to which the adult is entitled such as the Disability Tax Credit.

Personal property & accommodation

- Sell personal or household effects, including a motor vehicle.
- Obtain accommodation for the adult other than by the purchase of real property. This refers to paperwork and payment for Co-Op Housing, renting, facility fees, etc.

The EPA does not authorize giving or refusing consent to living arrangements—this would be a personal care authority and only addressed by a Representation Agreement, depending on the type of accommodation.

Investments, Savings Plans

- Establish and manage an RRSP or RDSP; make contributions to the RRSP and RPP or RDSP.
- Convert the RRSP to a RRIF or annuity and creating a beneficiary designation in respect of the RRIF or annuity that is consistent with the beneficiary designation when the adult set up the RRSP.
- Change a beneficiary designation if the Supreme Court of BC authorizes it.
- Create a new instrument (other than a Will), with the adult's estate as the beneficiary.
- Make, managing and disposing of investments according to the Trustee Act of BC.
- Exercise any voting rights, share options or other rights or options relating to shares held by the adult.
- Delegate decision-making about investments to a qualified investment specialist.

Donations, gifts or loans

An attorney may make a gift or loan, or charitable gift, from the adult's property if all of the following are met:

- The adult will have sufficient property remaining to meet their personal care and health care needs and to satisfy their other legal obligations, if any, and
- When capable, the adult made gifts or loans, or charitable gifts, of the same nature, and
- The total value of all gifts, loans and charitable gifts in a year must not be more than the lesser of:
 - 10% of the adult's taxable income for the previous year, and
 - \$5 000.

Other matters

- Safeguard the adult's documents and property.
- Redirect the adult's mail.

- Act, as director or officer, of a company the adult owns or serves on.
- Access information and documents that the adult is entitled to and that relate to the attorney's authority.
- Release information about the adult as necessary for performing duties.
- Receive a copy of the adult's Will unless the adult gave instructions in the Will or to a legal professional who prepared the Will that the attorney must not have a copy.
- Manage property in another jurisdiction (province/territory or country), if the legislation in that jurisdiction recognizes an EPA made in BC. [If the adult has valuable assets (such as real estate) in another jurisdiction it is likely wise for the adult to make the equivalent of an EPA in that jurisdiction for use with those assets.]
- Possibly establish a Trust on the adult's behalf. Different parties may use different definitions for Trusts and this may determine if the attorney has authority to set it up. CRA defines the Registered Disability Savings Plan as a type of Trust and this would fall under a 'general authority.' However, a Trust that relies on the death of the adult (such as a Discretionary Trust in a Will) may not be considered a general authority in the EPA as it may contradict or interfere with the outcome of a Will. (An EPA is used while the adult is alive; a Will is for after death).

Real estate (land title) in BC

- Deal with real estate or other matters in BC that involves Land Titles. For example:
 - Buying or selling real estate property.
 - Taking out a new mortgage or discharging an existing mortgage where the adult was the lender.
 - Builders' liens.
 - Mineral and agricultural rights.
 - Laneway housing.
 - Leasing the adult's real estate property for a term of 3 years or more.

* Any matters involving Land Titles have special requirements that the EPA and attorney must meet. See [EPA fact sheet](#) and [Role of Attorney](#)

Legal matters

- Obtain legal services, information, and/or legal advice.
- Instruct a lawyer to act to begin, continue, compromise, defend or settle any legal proceedings affecting the adult.
- Represent the adult in a Civil Resolution Tribunal and in Small Claims Court.

- Act as litigation guardian for the adult in the Supreme Court of BC.
- Apply for and settle a claim for compensation.
- Approve accounting and records produced by an executor or administrator where the adult is a beneficiary of an estate.

RESTRICTIONS AND/OR CONDITIONS

An EPA can include restrictions or conditions on the attorney's authority. The wording needs to be very specific and precise. It is a good idea to check on required wording with the relevant third party. For example, check with the Land Title office if the EPA is going to be limited to dealing with a particular real estate transaction. The legal professional who is drafting the EPA will likely know how to do this or may recommend using a Non-enduring Power of Attorney for this purpose.

Restrict authority by time or task

- The EPA may restrict the authority of the attorney by time or task. This is often referred to as a limited EPA.
- An EPA may be limited for use during a particular period marked by a start date and an end date.

Restrict by using conditions

An EPA may include conditions on how and/or when the attorney can use their authority.

Restrict by modifying general requirements

- Add more procedures than required for how an EPA may be revoked (cancelled). The adult who makes the EPA might do this if they have an episodic mental illness or are otherwise concerned that they might be too easily persuaded to revoke the EPA at a time when they really need it.
- State that the attorney cannot delegate decisions about investments. (Under general authorities the attorney is automatically allowed to delegate decisions about investments, to a qualified investment specialist.)
- State that any property the adult owns jointly with the attorney or that has come from joint ownership must be separated (divided up) when the attorney starts acting under the EPA. (Under general authorities/duties previous joint ownership between the adult and the attorney is allowed to remain joint.)

Restrictions or conditions on the authority of the attorney appointed in an EPA has consequences and implications as does adding authorities.

ADDITIONAL AUTHORITIES

Some general authorities can be modified to increase the attorney's authority. In other cases, an attorney only has authority if the power or authority is added or made "express" (specifically listed). Just because you include an authority in your EPA does not mean your attorney will use it—it will depend on the circumstances. The idea is to give your attorney authority they might need because you may not be considered capable to do it later.

Modify general authorities to increase authority

- Allow the attorney discretion to make donations, gifts or loans from the adult's property to others in addition to what is allowed under general authorities. [This might be important if the adult has minor children or other dependants, like a spouse.]
- Allow the attorney (or qualified investment specialist) discretion for making investments—not be bound by the Trustee Act.
- Allow the authority of the attorney to continue to be in effect even if the attorney is the adult's spouse and their marriage or marriage-like relationship breaks down.

Give the attorney more authorities by adding specific statements

- Allow the attorney to receive money or other benefit from the adult's property. [It doesn't matter about the size of the amount—even birthday money that other siblings would get as part of the adult's regular practice, cannot be accepted by an attorney unless stated.]
- Allow the attorney (usually if they are the spouse) to transfer the adult's real estate property to themselves. [This is under the Property Law Act.]
- Pay the attorney a fee—by setting out an amount or a rate. [The attorney has automatic right to be reimbursed for out-of-pocket expenses but can only receive a fee if you add this to your EPA when you make it.]
- Allow the attorney to delegate decision-making for some or all of their authorities, not just for investments. [This expands the general authority, which automatically allows the attorney to delegate decision-making for investments, to a qualified investment specialist.]

- Purchase a new life insurance policy.
- Set up a Trust [certain types of Trusts may be automatically included under general authorities but it may be important to make a specific statement in the EPA if you want your attorney to have authority to set up a Trust on your behalf.]
- Waive solicitor (lawyer) client privilege. [An attorney has a right to access information and documents that the adult is entitled to and that relate to the attorney's areas of authority or the adult's incapability. However, this does not include matters protected by solicitor-client privilege.]

EXCLUDED AUTHORITIES

Authorities an attorney does NOT have

- Use of the adult's credit card. [The adult, while capable to understand, can get a separate credit card for the attorney under the adult's account and any purchases by the attorney show up on the adult's credit card statement. However, the attorney can keep receipts and be reimbursed for out-of-pocket expenses out of the adult's funds.]
- Set up a new joint bank account or other new joint ownership with the adult.
- Set up a bank account in the attorney's name 'in trust' for the adult.

What an EPA cannot authorize

- Override the requirement for the attorney to keep records when the attorney appointed in the EPA is acting as attorney.
- Make or change a Will on the adult's behalf.
- Do anything that is against the law (like engage in money-laundering).
- Instruct the attorney not to do something that is required by law. (For example, not to file taxes.)

INFORMATION AND RESOURCES

Where to find more resources?

The Nidus Resource Centre has lots of free information, stories and videos at nidus.ca

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