

General and Specific Authorities in an Enduring Power of Attorney

Introduction

In British Columbia, as of September 1, 2011, the Enduring Power of Attorney is governed by Parts 2 and 3 of the Power of Attorney Act.

An Enduring Power of Attorney (EPA) can only cover authorities for financial and legal affairs. A Representation Agreement is the legal document in BC to cover health and personal care matters.

The following is not a complete list of authorities and it is not legal advice. The information and wording is not provided for the purpose of drafting an EPA. It is intended to provide examples for education and discussion.

General Authorities

General authorities or what Nidus calls a 'Basic EPA' are automatically covered by wording such as:

*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: Financial affairs is defined in Part 2 of the Power of Attorney Act to include the adult's business and property and the conduct of the adult's legal affairs.*

An adult can make a 'limited' EPA by restricting the authorities given. This would require different wording. See the heading on page 3 called Stating Specific Authorities.

An adult can also include more authorities or change the general authorities by adding specific statements to the EPA. See page 3 for details.

NO LIST OF GENERAL AUTHORITIES

There is no list in the law to define general authorities—a good thing. The idea is that general authorities cover any financial and legal matters that do not require a specific statement in the EPA or that are excluded (not allowed).

At the same time, people often want a sense of the types of authorities that are included. This allows for discussion with those appointed and keeps those appointed on track. The list provided is organized by categories for convenience.

EXAMPLES OF SOME GENERAL AUTHORITIES

Property includes money, vehicles, real estate, personal effects - art, jewellery, clothes, furniture.

Income, bill payments, and banking

- Paying the adult's bills.
- Receiving the adult's pension, income and other money.
- Depositing the adult's pension, income and other money in the adult's accounts.
- Opening accounts in the adult's name at financial institutions.
- Withdrawing money from, transferring money between or closing the adult's accounts.
- Receiving and confirming statements of account, passbooks or notices from a financial institution for the purpose of reconciling the adult's accounts.
- Signing, endorsing, stopping payment on, negotiating, cashing or otherwise dealing with cheques, bank drafts and other negotiable instruments on the adult's behalf.
- Leasing a safety deposit box for the adult, entering the adult's safety deposit box, removing its contents and surrendering the box.

Loans and financing

- Renewing or refinancing, on the adult's behalf, with the same or another lender, a loan, including a mortgage.
- Making payment on the adult's behalf on a loan, including a mortgage.
- Guaranteeing a loan, posting security or indemnifying a third party.

Applying for benefits, goods and services

- Taking steps under the Land Tax Deferral Act for deferral of property taxes on the adult's home.
- Taking steps to obtain benefits or entitlements for the adult, including financial benefits or entitlements.
- Purchasing, renewing or cancelling household, motor vehicle or other insurance on the adult's behalf.
- Purchasing goods and services for the adult.

Personal property

- Selling any of the adult's personal or household effects, including a motor vehicle.
- Obtaining accommodation for the adult other than by the purchase of real property. This refers to paperwork and payment for Co-Op Housing or rental property. It does not apply to consent for living arrangements such as supportive living, group home, home share, assisted living, facility care—these are covered under a Representation Agreement and the authority for personal care.
- Safekeeping the adult's documents and property.

Investments, Savings Plans

- Establishing an RRSP; making contributions to the adult's RRSP and RPP.
- Converting 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 made by the adult in respect of that RRSP.
- Changing a beneficiary designation if the Court authorizes it.
- Creating a new instrument (other than a Will), but the adult's estate must be the beneficiary.
- Making any investment that a trustee is authorized to make under the Trustee Act.
- Disposing of the adult's investments.
- Exercising any voting rights, share options or other rights or options relating to shares held by the adult.

Donations, gifts or loans from adult's property

An attorney may make a gift or loan, or charitable gift, from the adult's property if:

- The adult will have sufficient property remaining to meet the personal care and health care needs of the adult and their dependants, and to satisfy their other legal obligations, if any, and
- When capable, the adult made gifts or loans, or charitable gifts, of that 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.

Income tax

- Completing and submitting the adult's income tax returns, and dealing with assessments,

reassessments, additional assessments and all related matters, and

- Subject to the Income Tax Act and the Income Tax Act (Canada), signing, on the adult's behalf, all documents, including consents, concerning anything referred to in the first bullet.

Other matters

- Redirecting the adult's mail.
- Acting, on the adult's behalf, as director or officer of a company the adult owns or serves on.
- Receiving a copy of the adult's Will unless the adult gave instructions in the Will that the attorney must not have a copy.
- Managing property in another jurisdiction (province or country), if the legislation in that jurisdiction recognizes an EPA made in BC. [And depending on any restrictions on the attorney's authority or any specified authorities.] If the adult has valuable assets (such as real estate) in another jurisdiction it is likely wise for them to make the equivalent of an EPA in that jurisdiction.

Real estate (land title) in BC

- Authority for dealing with real estate or other matters in BC that involves the Land Title Registry. For example:
 - Buying or selling real estate property.
 - Taking out a new mortgage or discharge 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 the Land Title Registry require that the EPA be signed by someone who qualifies as an officer under the Evidence Act for taking affidavits according to Part 5 of the Land Title Act. See the box on page 3 for the EPA Guide and details explained on page 15.

Legal matters

- Obtaining legal services, information, and/or advice on behalf of the adult.
- Instructing a lawyer to act on the adult's behalf to begin, continue, compromise, defend or settle any legal proceedings.
- Representing the adult in Small Claims Court and as litigation guardian in BC Supreme Court.
- Settling a claim for compensation on the adult's behalf.

Stating Specific Authorities

Some authorities are not covered by the general or basic wording. These require different wording and/or specific statements.

Adding authorities

Certain authorities can be added to give the attorney more power. These must be 'express' or specifically stated in the EPA. The following is not the legal wording.

- Allowing 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.]
- Allowing 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.]
- Allowing the attorney to make new donations, gifts or loans of the adult's property to others in addition to what is allowed under general authorities. [This would be important if the adult has minor children or other dependants. This authority might also be important if the attorney is the adult's spouse.]
- Paying the attorney a fee. [Under general authorities, an attorney is allowed to be reimbursed for reasonable out-of-pocket expenses they have paid while carrying out their duties.]
- Allowing the attorney to delegate their decision making authority to someone else of their choosing. [This is in addition to the wording for general authorities, which includes delegating authority for investments under the Trustee Act to a qualified investment specialist.]
- Allowing the spouse's authority as the attorney to continue even if their marriage or marriage-like relationship to the adult breaks down.
- Purchasing a new life insurance policy for the adult.
- Having discretion for making investments—not bound by the Trustee Act.
- Setting up a Trust on the adult's behalf.
- Waiving 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.]

Changing the general authorities

- Adding more procedures for revoking the EPA.
- Stating that the attorney cannot delegate management of investments to a qualified investment specialist.
- Stating that any property the adult owns jointly with the attorney must be separated (divided up) when the attorney starts acting under the EPA.

Restricting authorities to make a limited EPA

An EPA can state restrictions or limits 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 by time period or property.

Excluded Authorities

Authorities an attorney does NOT have

- Using the adult's credit card.
- Setting up a joint account or other joint ownership with the adult.
- Setting up a bank account in the attorney's name 'in trust' for the adult.

What an EPA cannot authorize

- Making or changing the adult's Will.
- Doing anything that is against the law.
- Instructing not to do something that is required by law (for example filing income tax).

This information sheet was developed to accompany the ***Nidus Guide to Making and Registering an Enduring Power of Attorney (EPA)***.

If an adult meets the capability requirements to make an EPA—that is, they understand the nature and effect of the document at the time of making it—they are on the Future Path for personal planning.

Go to www.nidus.ca > click on the middle heading/photo—**Planning on the Future Path**. You will find information about planning for health and personal care (Representation Agreements) and planning for financial and legal affairs, including the EPA.

If there is a question about the adult's mental capability, go to www.nidus.ca > click on the first or third heading/photo, whichever applies.

An Enduring Power of Attorney made before September 1, 2011

Prior to September 1, 2011, the EPA was referred to in Section 8 of the Power of Attorney Act. Amendments affecting the EPA were passed in 2007 and came into effect on September 1, 2011. Section 8 of the Power of Attorney Act was repealed (removed) and Sections 10 to 42 were added and are only about the EPA.

Enduring Clause

An EPA made before September 1, 2011, requires the following sentence (or similar) for the Power of Attorney (POA) to be 'enduring.'

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.

Without the above wording (or similar) the authority of the attorney(s) appointed in the POA document ends if the individual (called donor) becomes mentally incapable.

General Authority Clause

The wording for general authorities in an EPA made before September 1, 2011 is commonly written as:

I appoint the following person [Full Name of Attorney] 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.

Other effects of amendments

A valid EPA made before September 1, 2011 is still valid and the general authorities included would be like those for an EPA made on or after September 1, 2011. The additional authorities listed on page 3 (for an EPA made on or after September 1, 2011) would likely also need to be stated in an EPA made before September 1, 2011, such as allowing an attorney to take a fee.

Some amendments that came into effect on September 1, 2011 cannot be applied to an EPA made before that date such as the new signing and witnessing requirements and restrictions on who may be appointed. An EPA made before September 1, 2011 only required one witness, regardless of whether it was a lawyer or notary public and the attorney was not required to sign the EPA. The 'Officer Certification' requirements for land title purposes are the same for an EPA made before, on, or after September 1, 2011.

For more information, go to www.nidus.ca

Click on **Information** > **More EPA Resources**

- Power of Attorney or Enduring Power of Attorney? Which one do I make?
- Amendments and Enduring Powers of Attorney made before September 1, 2011
- Access to Information using the Enduring Power of Attorney
- Lifespan of an Enduring Power of Attorney
- Resigning as an Attorney or Alternate
- Revoking an Enduring Power of Attorney
- Planning for the Future: RA7 vs EPA for Financial and Legal Affairs