

Legal Planning Document Made Outside BC for Financial Affairs Requirements to be legally valid for use in BC — as an Enduring Power of Attorney

Sometimes when people move to BC they bring legal planning documents, made for another jurisdiction, and want to use these documents in BC. Sometimes people may not become BC residents but want a legal planning document they made outside BC, to be legally recognized in BC perhaps to deal with assets they own in BC.

Are documents made outside BC automatically recognized for use in BC? NO.

Section 38 of the BC [Power of Attorney Act](#) outlines requirements for a document made outside BC to be recognized as an Enduring Power of Attorney (EPA or EPoA) as if made under Parts 2&3 of the BC Power of Attorney Act — this is referred to as “**deemed enduring power of attorney.**”

More details about the legal requirements are set out in section 4 of the [Power of Attorney Regulation](#).

In order for a document made outside BC to be recognized in BC as an EPA, the document made outside BC must be accompanied by a completed **Certificate of Extrajurisdictional Solicitor**.

The prescribed Certificate is found in the Power of Attorney Regulation under Schedule. An exact copy of the Certificate is attached here after page 2.

If the document made outside BC, meets the requirements to be recognized in BC and is accompanied by the completed Certificate, it can only be used in BC if the person who made it and the person appointed in it who has authority to act, are at least 19 years old (the age of adulthood in BC is 19).

What kind of legal planning document is this about?

This information is about a legal document made outside BC that is:

- Validly made and still effective according to the legislation of the jurisdiction where it was made and where the person who made it was ordinarily resident, and
- Appointing one or more people to make decisions about **financial affairs** on behalf of the person who made it, and
- Able to be used if the person who made it becomes mentally incapable of managing or making decisions about their finances.

In almost all cases, the document would contain the words ‘power of attorney’ in its name.

Does it matter where the legal planning document was made? YES.

BC legislation sets out requirements to recognize a legal planning document (as described above) made outside BC only if made within the following jurisdictions:

- Canada (any province/territory outside BC),
- United States of America,
- United Kingdom of Great Britain and Northern Ireland,
- Australia, or
- New Zealand.

What does the Certificate of Extrajurisdictional Solicitor look like? Who signs it?

The Certificate for a document to be a “deemed enduring power of attorney” is provided here after page 2.

The Certificate must be completed by a solicitor who is permitted to practise in the jurisdiction outside BC where the document was made.

A lawyer is a solicitor; in some jurisdictions a notary public or other party may have authorization to sign the Certificate.

You do not have to contact the same solicitor who originally made the document, but you will want to contact a solicitor who is knowledgeable about and familiar with such documents. In some legal practices, this may come under Wills and Estates.

What do those appointed need to know, if the document made outside BC is recognized for use in BC?

If a document made outside BC meets the requirements to be a “deemed enduring power of attorney,” those appointed in it need to learn about their role as attorney under the BC Power of Attorney Act.

The Nidus Resource Centre has lots of information on BC legislation including the EPA and the *Role of an Attorney*. Go to www.nidus.ca > Information (top menu bar) > Enduring Power of Attorney

Does BC legislation apply to the “deemed enduring power of attorney”? YES, unless....

Once the document made outside BC is deemed to be an Enduring Power of Attorney in BC, and the person who made it and those appointed in it are at least 19 years old, the BC Power of Attorney Act and the Power of Attorney Regulation apply — unless the adult who made the document is NOT ordinarily resident in BC.

The BC Power of Attorney Regulation says that UNLESS an adult is ordinarily resident in BC, a “deemed enduring power of attorney” is not subject to sections 34 and 35 of the BC Power of Attorney Act. These sections outline the roles of the BC Public Guardian and Trustee to: 1) receive and respond to complaints, and 2) conduct investigations and respond as appropriate to the outcome of an investigation. This includes complaints and investigations about abuse and neglect of the adult by those appointed in the “deemed EPA.”

What if I can't get the Certificate of Extrajurisdictional Solicitor signed?

If you can't get the required Certificate completed, or if the document was made in a jurisdiction not listed for recognition, an adult may make a BC document.

- » If the adult meets the capability requirements, they can make an Enduring Power of Attorney under Parts 2&3 of the BC Power of Attorney Act. The Nidus Resource Centre provides information on the EPA including capability requirements.
Go to www.nidus.ca > Information (top menu bar) > Enduring Power of Attorney
- » If the adult's cognitive capability to 'understand' is in question, they may make a Representation Agreement under section 7 of the Representation Agreement Act. The Nidus Resource Centre provides a Basic RA7All Kit with information, tips and the legal document, which includes authority for routine finances. Go to www.nidus.ca > Information (top menu bar) > Representation Agreement

If the person who made the non-BC legal planning document for finances owns real estate or other property outside BC, you may want to keep the document even if you could not get the Certificate signed. For example, if the person now lives in BC but owns real estate in Ontario, an appointee in the Ontario Continuing Power of Attorney for Property document may need to use it to deal with the Ontario real estate.

What if there is a legal planning document made outside BC that covers health care?

Section 41 of the BC [Representation Agreement Act](#) outlines requirements for a document made outside BC to be recognized as a Representation Agreement as if made under section 9 (RA9) of the Representation Agreement Act — this is referred to as “**deemed representation agreement.**”

In BC, a Representation Agreement is the legal planning document for health care and personal care matters.

For information on *Documents Made Outside BC for Health Care* and to view the Certificate of Extrajurisdictional Solicitor that needs signing in order for the document to be deemed a RA9, go to www.nidus.ca > Information (top menu bar) > Representation Agreement

CERTIFICATE OF EXTRAJURISDICTIONAL SOLICITOR
(made under section 4 of the Power of Attorney Regulation)

(to be completed by a solicitor in the jurisdiction in which an extrajurisdictional enduring power of attorney was made)

Part 1 - Identification of solicitor

1 This certificate applies to the power of attorney made _____
[date]

by _____
[name]

authorizing _____
[name of attorney or attorneys]

to do the following _____
[summary of the powers the attorney, or each attorney, is granted]

2 I am lawfully entitled to practise law in _____
[name of jurisdiction, including province or state, if applicable, and country]

3 My contact information is as follows

[name]

_____ [telephone number] _____ [e-mail (optional)]

[address, city, province or state, postal code or zip code]

4 The regulatory body that governs the practice of law in my jurisdiction is

[name]

[telephone number]

[address, city, province or state, postal code or zip code]

Part 2 continued on next page

Continued from Part 1 on previous page

CERTIFICATE OF EXTRAJURISDICTIONAL SOLICITOR
(made under section 4 of the Power of Attorney Regulation)

(to be completed by a solicitor in the jurisdiction in which an extrajurisdictional enduring power of attorney was made)

Part 2 – Certifications made by solicitor

1 I certify that

- (a) the power of attorney described in Part 1 of this certificate grants a power of attorney that continues to have effect while, or comes into effect when, the adult who made the power of attorney is incapable of making decisions about the adult's financial affairs,
- (b) at the time of making the power of attorney, the adult who made it was to the best of my knowledge ordinarily a resident of _____
[province or state, if applicable, and country]
- and that jurisdiction is
- i. outside British Columbia but within Canada, or
 - ii. within the United States of America, the United Kingdom of Great Britain and Northern Ireland, Australia or New Zealand, and
- (c) the power of attorney was validly made according to the laws of the jurisdiction in which
- i. the adult who made the power of attorney was ordinarily resident, and
 - ii. the power of attorney was made.

[signature of solicitor]

[date]