



## A Power of Attorney (POA)

- This is a written legal document that appoints one or more people to make financial decisions on your behalf.
- There are 4 types of power of attorney in British Columbia. Not all of them can be used for advance planning.

Regular

**Enduring**

**Springing**

Limited

- Only two types can be used for advance planning: Enduring and Springing.
- The word "attorney" does not necessarily mean "lawyer." It is the term used for the person who is appointed in a power of attorney document to take care of someone else's affairs.
- Your attorney could happen to be a lawyer.
- Your attorney should act in your best interests, taking into account your current wishes, known beliefs and values, and any directions you give to the attorney.

## More Than One Attorney

You can appoint more than one attorney, but if they have the same authority, they must act unanimously. Or, you can set out how they will act if there is a disagreement on a course of action.

## Choose Your Attorney Carefully

- Choose someone you trust and who understands YOUR values.
- A spouse is not always the best choice – they might be in a situation of crisis if you are incapable.
- You can pick more than one person, but this could lead to problems if there is disagreement among the people you choose.
- Choose a person who is familiar with the duties of an attorney or will educate themselves about them.

## The Sooner the Better

- As long as you are mentally capable, you can continue to make your own decisions about your finances, even if you have an attorney.

- You must be capable to appoint someone as your attorney.
- Talk to your attorney about what you want.
- *Clear discussions and written instructions help prevent abuse.*
- Beware if someone – friend or family – is pressuring you to prepare a Power of Attorney and appoint them as the attorney.

## Regular POA

- A regular power of attorney is active immediately.
- It is not a financial planning document.
- *It is no longer active once you become incapable.*

## Enduring POA

- It is the most common type of power of attorney in BC.
- It differs from a regular power of attorney because
  - *it is active immediately and continues even if you are no longer capable.*

## Springing POA

- You decide how and when you want your power of attorney to “spring”.
- The problem with these types of documents is proving that you are mentally capable or incapable. There must be a mechanism to prove you are mentally incapable. Capability could be determined by agreement of your spouse and a doctor.
- Another problem with these types of powers of attorney is that if you are physically incapacitated but still mentally capable, the attorney cannot act because this springs into effect on mental incapacity, not physical.

## Limited POA

- There are two very specific ways it can be limited.
  - It can be limited in duration, and /or limited in terms of what it can be used for, and what kinds of decisions it allows the attorney to make.

## Where Do You Keep Your POA?

- Give your attorney a copy of the power of attorney so they can use it if needed.
- Otherwise, you should keep the document in a secure location, such as a home safe, safety deposit box or stored at your attorney's office.



## How Your POA Ends

- It ends automatically when you die or if you become mentally incapable, unless it is an Enduring Power of Attorney.
- You can end a power of attorney by giving your attorney a written notice saying that their power has ended in this case, you should also destroy all originals and duplicates of the document to prevent misuse by the attorney.

Give written notice that the power of attorney has ended to any financial institutions or other third parties where your attorney may have acted for you.

- If your power of attorney is dealing in land, it ends when you file a document called a Notice of Revocation with the Land Title office.

## POA's and Financial Institutions

- Your bank may suggest that you use their power of attorney.
- Signing a new power of attorney could render your previous power of attorney invalid.
- **Get legal advice.**

- **Bank personnel may not be qualified to give you legal advice even if they seem knowledgeable.**
- A bank power of attorney has been drafted to protect the bank's interests, not yours.
- **The most common form of financial abuse is abuse by a power of attorney**
- A fiduciary relationship exists when you create a power of attorney because there is a relationship of trust.
- If your power of attorney does not act properly, you may be able to sue for breach of fiduciary duty.
- Get legal advice AS SOON AS POSSIBLE if you think you may be a victim of financial abuse.

## Resources

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- **Access Pro Bono** volunteer lawyers provide free legal advice to qualifying persons who cannot obtain legal aid or afford a lawyer. Lower Mainland: 604-878-7400, Toll-free: 1-877-762-6664
- **Alzheimer Society of BC** provides information and support to families, individuals, and caregivers to alleviate the personal and social consequences of Alzheimer's disease and other dementias. <http://www.alzheimerbc.org/>
- **BC Transplant Organ Registry** register this is the best way to record your decisions to be an organ donor, and ensures that health care providers have access to your confidential donor information. <https://register.transplant.bc.ca/>
- **Clicklaw** offers one-stop access to legal information, education and help for British Columbians from trusted organizations. <http://www.clicklaw.bc.ca/>
- **Law Students' Legal Advice Program Clinics**, law students from the University of British Columbia offer free legal help with some legal matters. 604-822-5791 <http://www.lslap.bc.ca/>
- **Lawyer Referral Service** offers referrals to lawyers who can provide up to a half-hour consultation for \$25. Lower Mainland: 604-687-3221, Toll-free: 1-800-663-1919 <https://cbabc.org/For-the-Public/Lawyer-Referral-Service>
- **Legal Services Society Call Centre** answers legal questions and directs people to information or services that can help solve their legal problems. They do not give legal advice. Lower Mainland: 604-408-2172, Toll-free: 1-866-577-2525
- **Ministry of Attorney General** provides information about planning for incapacity, including an enduring power of attorney form. <http://www.ag.gov.bc.ca/incapacity-planning>
- **Nidus Personal Planning Resource Centre and Registry**, provides detailed information about enduring powers of attorney and representation agreements. <http://www.nidus.ca/> Email Nidus at [info@nidus.ca](mailto:info@nidus.ca)

