

DECISION-MAKING and PLANNING TOOLS IN THE YUKON

Legal Tool	Purpose	Who can make one?	When does it come into effect? End?	Other information
<p style="text-align: center;">Will</p> <p style="text-align: center;"><i>(Wills Act)</i></p>	<ul style="list-style-type: none"> • Sets out who you want your money, property and belongings to go to once you die 	<ul style="list-style-type: none"> • Must be 19 or older to make a will and capable of understanding the nature and effect of your will • Executor of the will must be 19 years or older 	<ul style="list-style-type: none"> • A will only comes into effect once you die. • An executor has no authority to make decisions for you while you are still alive. 	<ul style="list-style-type: none"> • A will can be prepared without a lawyer if it meets certain requirements. However, it is strongly recommended that a lawyer prepare your will.
<p style="text-align: center;">Bank Power of Attorney (POA)</p> <p style="text-align: center;"><i>(Common law)</i></p>	<ul style="list-style-type: none"> • Each bank has its own form that allows you to authorize someone to deal with your money at that particular bank 	<ul style="list-style-type: none"> • Must be 19 years or older to make a POA and capable of understanding nature and effect of power of attorney • Anyone 19 years and older can be authorized to make certain financial decisions for you 	<ul style="list-style-type: none"> • Comes into effect once you sign the bank power of attorney • Ends as soon as you become mentally incapable of understanding the POA 	<ul style="list-style-type: none"> • Prepared at the bank • Only covers transactions at that bank
<p style="text-align: center;">Enduring Power of Attorney (EPA)</p> <p style="text-align: center;"><i>(Enduring Power of Attorney Act)</i></p>	<ul style="list-style-type: none"> • Sets out who you want to make financial decisions for you in the event you become incapable of making your own decisions 	<ul style="list-style-type: none"> • Must be 19 years or older and capable of understanding the nature and effect of EPA • “Attorney” must be 19 years or older to make financial decisions for you 	<ul style="list-style-type: none"> • EPA can take effect immediately when you are still capable or later as you set out in the document • If your EPA is to come into effect when you become incapable and you do not specify who determines your incapability, the EPA will come into effect when 2 doctors say that you are incapable • An EPA must specify that it continues (or becomes effective) once you become mentally incapable of making your own financial decisions 	<ul style="list-style-type: none"> • Must have a certificate of legal consultation prepared by a lawyer to have a valid EPA (This is a safeguard to protect people from being coerced into signing an EPA.) • An EPA made before May 2, 2005 that appointed an attorney for personal decision-making (e.g. health care decisions) is recognized as a valid Directive under the <i>Care Consent Act</i>. The “attorney” will be recognized as a “proxy”.

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<p>Advance Directive</p> <p>(<i>Care Consent Act, Part 2</i>)</p>	<ul style="list-style-type: none"> • Allows you to appoint a “proxy” to make health care decisions for you in the event you become incapable of making your own decisions • Can also authorize your proxy to consent to personal assistance services (e.g. Home Care) and consent to live in a care facility (e.g. nursing home) • You can also set out your wishes for future care in a directive 	<ul style="list-style-type: none"> • Must be 16 years or older and capable of understanding nature and effect of the advance directive to make a directive • “Proxy” must be 19 years or older at the time they are called upon to make a decision (unless they are the spouse or parent of the person) 	<ul style="list-style-type: none"> • Directive doesn’t come into effect until a care provider determines that you are not mentally capable of making your own care decision • A directive can’t come into effect before you are incapable of making your own decision. 	<ul style="list-style-type: none"> • Don’t need a lawyer to do a directive unless you want to give your proxy special authority (e.g. ability to restrain you and provide treatment even though you may be confused and objecting at the time) • If you don’t have a directive and become incapable to make your own health care decision, a care provider will choose a family member or close friend to be your substitute decision-maker • Template form is available online at www.hss.gov.yk.ca
<p>Supported Decision-Making Agreement</p> <p>(<i>Adult Protection and Decision-Making Act, Part 1</i>)</p>	<ul style="list-style-type: none"> • This is an agreement between two or more adults to formalize a support relationship • An adult can authorize a support person (“associate”) to help them make decisions in all areas – personal, health and financial • An associate has no authority to make decisions for you – their role is to assist and support you to understand and make your own decisions 	<ul style="list-style-type: none"> • Anyone 19 years or older and capable of understanding nature and effect of the agreement can make a Supported Decision-Making Agreement • The associate cannot be your employer or employee or someone who has had a court order against them under <i>the Family Violence Prevention Act</i> or Part 4 of the <i>Adult Protection and Decision-Making Act</i> 	<ul style="list-style-type: none"> • Agreement comes into effect when completed on the required form and signed • A Supported Decision-Making Agreement ends when you become mentally incapable of understanding the nature and effect of the agreement 	<ul style="list-style-type: none"> • No requirement to have a lawyer involved in making this agreement • This is not an appropriate tool for people with declining mental capability • You must use the form provided online at www.hss.gov.yk.ca

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<p>Representation Agreement</p> <p><i>(Adult Protection and Decision-Making Act, Part 2)</i></p>	<ul style="list-style-type: none"> • This agreement authorizes a “representative” to make limited day-to-day financial or personal decisions for an adult • The areas a representative is allowed to make decisions in are outlined in regulation <ul style="list-style-type: none"> • routine financial management • some personal matters • A representative cannot make health care decisions for you 	<ul style="list-style-type: none"> • Must be 19 years or older and capable of understanding nature and effect of the agreement to sign a Rep Agreement • Two representatives must be appointed unless the agreement is only for one year • Representatives cannot be: <ul style="list-style-type: none"> • an employer or employee of the adult • anyone who gets paid for providing accommodation or other services to the adult • anyone who has had a court order against them under <i>the Family Violence Prevention Act</i> or Part 4 of the <i>Adult Protection and Decision-Making Act</i> • the spouse, child, parent, employee or agent of anyone in the categories listed above 	<ul style="list-style-type: none"> • Comes into effect when completed on the required form and signed • “Designated witness” must sign the agreement (e.g. a Health and Social Services employee or First Nations employee assigned this task) • A Rep Agreement ends if you become mentally incapable of understanding the nature and effect of the agreement 	<ul style="list-style-type: none"> • No requirement to have a lawyer involved in making this agreement • This is not an appropriate tool for people with declining mental capability • This tool is for people who manage most of their affairs but recognize that they need help making certain financial or personal decisions • You must use the form provided online at www.hss.gov.yk.ca

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<p>Adult Guardianship</p> <p><i>(Adult Protection and Decision-Making Act, Part 3)</i></p>	<ul style="list-style-type: none"> • Application can be made to the Yukon Supreme Court to become a guardian for a person who is no longer able to manage their affairs in whole areas of their life (e.g. personal, financial) • Guardianship is a last resort • An incapability assessment must accompany the application to court 	<ul style="list-style-type: none"> • Both the guardian and the subject of the guardianship order must be 19 years or older • An application can be made to the court when the person is 18 years old, but only comes into effect when the person turns 19 • The court will assess a person's suitability to be a guardian 	<ul style="list-style-type: none"> • The court specifies when the order is to come into effect, and when it must be reviewed 	<ul style="list-style-type: none"> • If there are no friends or family able or willing to become guardian for a person, the Public Guardian and Trustee (Department of Justice) may take on that role • The Public Guardian and Trustee maintains a list of professionals who have taken training on incapability assessments for guardianship • A lawyer is not required to make an application for guardianship but may be advisable given the paperwork involved