

B.C.'s Adult Guardianship Laws: Supporting Self-Determination for Adults in British Columbia

PLANNING FOR YOUR FUTURE

Over the past few years, the laws dealing with incapacity planning have undergone some changes. In British Columbia, you now have more than one way to plan for a time when you might need help making decisions.

What are my choices?

There are two different legal documents that allow you to name the person or persons who you want to help you with decisions if you can no longer make them on your own.

- Enduring Power of Attorney – lets the person(s) you choose as your “Attorney” make decisions about your financial and legal affairs.
- Representation Agreement – lets you authorize a “Representative” to make decisions about your financial and legal affairs as well as your health and personal care.

Enduring Powers of Attorney and Representation Agreements are fairly easy to make and to use. But because they are very powerful legal documents, it is a good idea to talk to a lawyer before you make one.

Enduring Power of Attorney

People in British Columbia have been able to make Enduring Powers of Attorneys since 1979. They are called “enduring” because

they do not end when you become incapable. Ordinary Powers of Attorney that are used in many business dealings become invalid if you become incapable.

It is important to be careful about choosing the person you want to be your Attorney under an Enduring Power of Attorney.

If, at some future time, you lose your mental capacity, your Enduring Power of Attorney cannot be cancelled except by Court Order.

You should be aware that the word “Attorney” in relation to a Power of Attorney does not mean “lawyer”. Any capable adult (age 19 or over) can be named as an Attorney under a Power of Attorney. Often people name their spouse as their Attorney but any trusted adult, as long as they are willing, can be named as an Attorney.

A Power of Attorney gives the person you name as your Attorney the right to make decisions about your financial and legal affairs. Your Attorney can do things like receive income and pay bills on your behalf, buy and sell property or assets that you own, and bring a legal action in your name.

A Power of Attorney does not give your Attorney the right to make health care decisions for you or to make decisions about where you will live.

Representation Agreements

Representation Agreements come in two kinds. A Representation Agreement with “General Powers” lets your Representative make almost every kind of decision you could make if you were making decisions for yourself. This could include decisions such as selling your house or refusing health care treatment. A Representation Agreement with “Limited Powers” restricts the type of decisions your representative is allowed to make. Representatives with limited powers make routine decisions such as paying bills and consenting to non-extraordinary health care.

To make a Representation Agreement with general powers you must be fully capable of understanding the nature of the authority you are giving to your Representative. You do not need to be fully capable to make a Representation Agreement with limited powers.

Some people choose to make more than one Representation Agreement. This is usually because they want to separate their instructions to their financial representative from their instructions to their health representative. Some people also appoint more than one person to be their Representative. If you do this, you should say how decisions are to be made if there is a disagreement between your Representatives.

What if I already have a Representation Agreement or an Enduring Power of Attorney?

If you have already made a Representation Agreement or an Enduring Power of Attorney, you may wish to register it with the Nidus Registry, administered by the Representation Agreement Resource Centre.

It is important that you regularly review any incapacity planning documents you have made to make sure they continue to reflect your wishes.

How can I get more information?

More information is available from:

- Public Guardian and Trustee website - www.trustee.bc.ca
- Representation Agreement Resource Centre – www.rarc.ca
Telephone: (604) 408-7414
Fax: (604) 801-5506
Email: info@rarc.ca
- People’s Law School – www.publiclegaled.bc.ca
Telephone: (604) 331-5400
Fax: (604) 331-5401
Email: staff@publiclegaled.bc.ca
- Canadian Bar Association, BC Branch, Lawyer Referral Service - www.bccba.org

A simple and inexpensive way to find a lawyer. Operators will refer you to a lawyer who handles your type of legal problem and can meet with you for an initial interview of up to 30 minutes for a \$25 fee. A service operated by the CBABC Branch and funded by the Law Foundation of British Columbia.

Telephone: (604) 687-3221 in the Lower Mainland or call toll-free 1-800-663-1919