

Understanding the Legal Dimensions of Financial Literacy: Power of Attorney & Representation Agreement

BRITISH COLUMBIA EDITION



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What is a Power of Attorney (POA)?

- POA is a legal document that lets you give authority to another person to make financial and legal decisions for you.
- You are called the *donor*. The person you authorize to make financial and legal decisions for you is called the *attorney*. The *attorney* should be someone you trust and does not need to be a lawyer.

Can You Make a POA?

Yes, if you are 19 or older and mentally capable. You should also understand the importance of having a suitable and trustworthy attorney and what the attorney can do once you appoint him or her.

Why Would You Want a POA?

Some reasons include:

- You are traveling for an extended period of time and need someone to pay your bills while you are gone.
- To have someone to make financial or legal decisions for you, if you become mentally “incapable” because of illness, disease or an accident.

Note: You do not lose your right to make your own financial and legal decisions when you give someone else the right to make decisions for you under a POA.

THREE KINDS OF POWER OF ATTORNEY

Three Kinds of POA

Your POA can be:

1. **General:** your attorney is able to make financial and legal decisions for you.
2. **Specific or Limited:** your attorney can only make the financial and legal decisions you set out in the POA, such as taking money out of your chequing account to pay your bills. You can also limit the length of time the POA is valid.

Note: A General, Specific or Limited POA ends when you become mentally incapable unless the POA contains an *enduring clause*.

3. **Enduring:** is a POA that specifically permits the attorney to continue to act for you if you later become incapable of managing your own affairs.

What Does Mentally “Incapable” Mean?

- You cannot understand the decisions you make and their consequences.
- You are considered mentally “capable” **UNLESS**:
 - A court makes an order that you are not capable of managing your financial affairs, **or**
 - A director of a mental health facility or psychiatric unit signs a certificate stating that you are incapable of managing your financial affairs.

POWER OF ATTORNEY

How is an Enduring POA Useful?

- It avoids the expense and delay of court proceedings to name a legal guardian for you if you become mentally incapable.
- It allows **YOU** to choose the person you know and trust to make your financial and legal decisions if you become mentally incapable in the future.

Can My POA Sell My Real Estate?

- Yes. A general or enduring power of attorney allows the attorney to sell your real estate unless you say otherwise.
- If your POA covers real estate it must be prepared according to the rules outlined in the *Land Title Act*.

What is a POA for Banks?

- Banks and credit unions have their own POA forms that can only be used for accounts at specific branches of a bank.
 - For example, if you only need someone to pay your bills out of a specific bank account, a bank POA is a good way of restricting the attorney’s access to that account, and barring the attorney from having access to other accounts, investments, real estate, etc. that you own.
- A General POA that you make by yourself or with a lawyer can also be used at any bank or credit union.

HOW DO I MAKE A POWER OF ATTORNEY?

What is a POA for Banks? (continued)

- A bank must accept your POA. If they refuse, your attorney should ask to speak with a manager or call a lawyer.
- *Caution:* if you use a form provided by a bank or credit union it may not have an enduring clause.

How Do I Make a POA?

You can make your own POA.

- For an example of a POA that does not cover real estate, see the Schedules to the BC *Power of Attorney Act* at: www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96370_01
- Your POA must be witnessed (signed) by a capable adult who is 19 or older and not your spouse or the person you are naming as your attorney.
- If you want your attorney to deal with your real estate, sell your car, or renew your car insurance, you must sign the POA in front of a lawyer or notary.

Note: In BC the laws about making POAs and Representation Agreements are being amended beginning September 1, 2011. Among other things, two witnesses will be required unless the witness is a BC lawyer or a BC Notary Public.

POWER OF ATTORNEY

Your POA Will End Automatically If:

- You die.
- Your attorney is unwilling or unable to continue acting (e.g., your attorney dies).
- You are declared to be incapable (see above – *What Does Mentally Incapable Mean?*).
- You or your attorney goes bankrupt.
- You have a Specific or Limited POA and your attorney has finished the required task.
- A general or specific POA that covers real estate will end automatically after 3 years unless it is an Enduring POA or you write an *earlier* end date in the POA.

What Decisions are NOT Covered by a POA?

Your attorney **CANNOT:**

- Make medical, health care or personal care decisions for you (you need to make a *representation agreement*).
- Make a will for you, change designations or revoke beneficiaries under life insurance policies, RRSPs or RRIFs.

WHAT IS A REPRESENTATION AGREEMENT?

What is a Representation Agreement?

- A document that gives someone (called a **representative**) the legal authority to make health, medical, and personal care decisions for you if you cannot make the decision on your own. It can also cover some financial decisions.
- Your representative's first responsibility is to assist you to make your own decisions if this is what you want.
- If your representative is making decisions for you, they have a duty to consult with you if possible. If not, your representative must make decisions based on your known values and beliefs.

Two Types of Representation Agreements

1. **Standard Agreement (Section 7)**: Your representative can make decisions about the routine management of your financial affairs, your legal affairs, personal care and major and minor health care issues.
2. **Enhanced Agreement (Section 9)**: Your representative can make all the decisions covered in a standard agreement (section 7) **AND** he or she can also:
 - Refuse life supporting care or treatment for you.
 - Physically restrain or move you even if you object.
 - Give consent to specified kinds of health care.

REPRESENTATION AGREEMENT (CONTINUED)

2. **Enhanced Agreement (continued):**

- Place you into any kind of care facility.
- Make temporary care, education and financial arrangements for your minor children and other people who are supported by you.

What Decisions are NOT Covered by a Section 7 Representation Agreement?

Your representative cannot:

- Do anything that involves real estate.
 - You need to make a specific or enduring POA that includes real estate.
- Refuse life supporting care or treatment.
- Commence divorce proceedings.

Who Can Make a Representation Agreement?

- You can make a standard agreement (section 7) if:
 - You are 19 or older.
- You can make an enhanced agreement (section 9) only if:
 1. You are 19 or older.
 2. You consult with a BC lawyer.

HOW DO I MAKE A REPRESENTATION AGREEMENT?

How Do I Make a Representation Agreement?

- You can make a standard agreement (section 7) by yourself. There are no forms that you must follow for a representation agreement. For help see [The Nidus Personal Planning Resource Centre and Registry](http://www.nidus.ca/?page_id=214) at: www.nidus.ca/?page_id=214
- However, the representative that you appoint must complete a certificate in the prescribed form or your representation agreement will be invalid. See the [Representation Agreement Regulation](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_199_2001#section7) at: www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_199_2001#section7
- If you want to make an enhanced agreement (section 9) you must see a lawyer in BC.

When Should I Make a Representation Agreement or POA?

- Before a problem or crisis happens.

Who Should I Choose as my Representative or Attorney?

Anyone who is 19 or older who:

- You trust.
- Understands your wishes and values.
- Understands the responsibilities of being a representative or attorney.

WHO SHOULD I CHOOSE AS MY REPRESENTATIVE OR ATTORNEY?

When Making Your Decision You Should Consider:

- You should think about having a backup representative/attorney in case something happens to the first one.
- You can choose more than one representative/attorney, but you must write in your POA whether you want them to make decisions together or individually.
- Your representative/attorney is required to act in your best interests.
- You can also choose to appoint a monitor to supervise your representative and make sure your agreement is being followed.
- If your agreement is for routine financial affairs, you must have a monitor unless the representative is your spouse, the Public Guardian and Trustee, a trust company or a credit union, or you appoint two representatives who must act together, or the agreement is witnessed by a lawyer in BC.

When Will My Representation Agreement/POA Start?

- As soon as it is signed and witnessed, **or**
- At the time you specify (e.g., when your doctor says you are not capable)

POA & REPRESENTATION AGREEMENT (CONTINUED)

How Do I Cancel a Representation Agreement/POA?

You can cancel your representation agreement/POA (if you are mentally capable) at any time if you:

- Give your representative/attorney(s) a written note that says you want to cancel your representative or attorney's power.
- Send a copy of the note to everyone that your representative/attorney dealt with on your behalf.
- If your POA covers land, you must send a copy of the notice to the Land Titles Office.
- **Note:** A new representation agreement or POA does not automatically cancel the old one unless you specifically write in your new representation agreement and POA that you are canceling all previous ones.

Your Representation Agreement Will End Automatically If:

- You or your representative die.
- Your representative is unwilling or unable to continue.
- A legal guardian is named by the court to take care of you and your affairs, unless the court orders otherwise.
- You or your representative goes bankrupt.
- Your representative is convicted of a crime that involves dishonesty.
- Your representative is your spouse and the relationship ends.

POA & REPRESENTATION AGREEMENT (CONTINUED)

How Much Does a Representation Agreement/POA Cost?

- Your representative or attorney is entitled to payment for out-of-pocket expenses (such as transportation to the bank to pay your bills).
- Representation agreements and POAs can authorize the amount or rate of money your representative or attorney is to be paid.
- You must consult a lawyer to make an enhanced representation agreement (section 9).
- You do not need to consult a lawyer to make a standard representation agreement (section 7), or a POA, however, it may be useful to talk to a lawyer or a notary before you make any type of representation agreement or POA.
- Be sure to ask more than one lawyer or notary for an estimate of the cost before choosing one.

How Do Others Know I Have a Representation Agreement/POA?

- You can register your representation agreement/POA at the **NIDUS Registry**.
- Hospitals, banks and government agencies can search the **NIDUS Registry** to find your information in case of an emergency.
- There is a fee to store your representation agreement/POA on the **NIDUS Registry**.

- You must register your POA with the Land Title Office if your attorney will be dealing with your real estate.

What If My Attorney or Representative is Mismanaging or Stealing My Money?

- If you are mentally capable, you can cancel your power of attorney or representation agreement and demand a full accounting.
- You can demand a full accounting of your financial affairs at any time.
- If theft is involved, call your local police.
- If you are mentally incapable and someone else has evidence suggesting mismanagement or theft, they can call the **Public Guardian and Trustee of BC** at: **604-775-1007**.

For More Information About a Representation Agreement/POA Contact:

The Public Guardian and Trustee of British Columbia at 604-775-1007 or www.trustee.bc.ca.

The Nidus Personal Planning Resource Centre & Registry at 604-408-7414 or www.nidus.ca.

This is one of the series of Financial Literacy for Older Adults pocket tools. For more information about NICE tools or related training events, please visit

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