

# Making a Power of Attorney

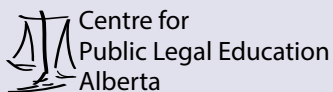
in Alberta

*This booklet is for people who are wondering if they should write a Power of Attorney. It is about putting your affairs in order and planning for the future. It explains what is involved in making a Power of Attorney and how a Power of Attorney can help you to look after your current and future financial affairs. It describes some common examples. This booklet gives general information only, not legal advice. It is not a do-it-yourself guide. For that, you need a more detailed self-help publication or legal advice. See the last few pages of this booklet for information on where to get this help.*

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You should **not** rely on this booklet for legal advice. It provides general information on **Alberta law only**.



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# 1. What is it?

## Top 5 General Information Questions about Powers of Attorney

### 1.1

#### What is a Power of Attorney?

It is a written, signed, dated and witnessed document that gives someone else the right, while you are still alive, to act on your behalf with respect to your financial affairs, including debts. This can include paying bills, depositing and investing money on your behalf, and even selling your house. There are two different kinds of Powers of Attorney (see Question 2, below).

A Power of Attorney does *not* give authority to make decisions about your health care – for that, you need a separate document, called a Personal Directive.

The Power of Attorney may be for a specific act, or for a pre-determined amount of time, or it may be general in nature. You are the “donor” and you give your authority (“Power”) to another person (“Attorney”) to deal with your financial affairs.

In Alberta, matters related to Powers of Attorney are governed by the *Powers of Attorney Act*, R.S.A. 2000, Ch.P-20 and its regulations.

*It is a written, signed, dated and witnessed document that gives someone else the right, while you are still alive, to act on your behalf with respect to your financial affairs, including debts.*

### 1.2

#### How many kinds of Powers of Attorney are there?

In Alberta, there are two kinds of Power of Attorney. Both kinds are only effective as long as the donor is alive. After your death, your Will (if you have one) takes effect.

##### A. Immediate Power of Attorney

An Immediate Power of Attorney covers your financial affairs and takes effect as soon as it is signed and stops on a specific date or if you become mentally incapacitated. You might give this Power of Attorney if you need someone to look after your financial transactions while you're away from home for an extended period of time.

##### B. Enduring Power of Attorney

An Enduring Power of Attorney covers your financial affairs and allows the person you name to act for you even if you become mentally incapable. It can either:

- take effect immediately upon signing and continue if you become incapable of managing your financial affairs; or
- take effect only if you become incapable of managing your financial affairs, or some other specified event (this is also known as a “Springing” Power of Attorney).

An Enduring Power of Attorney must state whether it is to take effect immediately and continue upon your mental incapacity, or only spring into effect upon your future mental incapacity. If it does not include such a statement, it is *not* an Enduring Power of Attorney and it cannot be used during your incapacity – it ends if you become incapable.

This can be quite confusing. Consider the following examples.

- You are going to Arizona for the winter. You sign a Power of Attorney that takes effect the day you leave and ends the day you come back. You have named your daughter as your Attorney. Your plan is to have her take care of your financial issues while you are in Arizona for the winter. You have signed an “Immediate” Power of Attorney. **Note however:** if something happens to

you during the time of your absence, and you become otherwise incapable of managing your affairs, the Power of Attorney would cease to have effect.

- You are going to Arizona for the winter. You sign a Power of Attorney that takes effect the day you leave. You have named your daughter as your Attorney. Your plan is to have her take care of your financial issues while you are in Arizona for the winter. However, you are also concerned about something happening to you while you are gone. As a result, you indicate that the Power of Attorney is to continue should you become incapacitated. You have signed an “Immediate” and “Enduring” Power of Attorney. Nothing happens, and you cancel it when you return.
- You are planning for your future. You are fine now, but you have concerns because Alzheimer’s disease runs in your family. You sign a Power of Attorney right now, while you still have mental capacity. You have named your son as your Attorney. The Power of Attorney will take effect only upon you being certified mentally incapacitated (and it says so in the document). You have signed a “Springing” and “Enduring” Power of Attorney.

### 1.3

#### **Do I have to make a Power of Attorney?**

No. You do not have to make a Power of Attorney. While there are good reasons for making one, you do not have to, and no one can make you sign one if you do not want to.

*By preparing a Power of Attorney now, you can ensure that your property is managed by someone who knows you and what you want, someone you trust to act in your best interests, when you cannot make decisions for yourself.*

### 1.4

#### **Why should I make a Power of Attorney?**

Many people believe that if something happens and they are unable to make decisions for themselves, their family can do so for them. This is not necessarily true. For financial decisions, legal authority is needed. You can give this authority by naming someone in a Power of Attorney.

You should have a Power of Attorney because an accident or illness could make you incapable of deciding things for yourself (this is called mental incapacity or infirmity). In it you authorize someone to act for you and your best interests in conducting your financial and property matters.

You may also wish to consider making a Power of Attorney for periods that you will be away for an extended period of time. This enables your financial affairs to be run smoothly in your absence.

By preparing a Power of Attorney now, you can ensure that your property is managed by someone who knows you and what you want, someone you trust to act in your best interests when you cannot make decisions for yourself. It is a simple and inexpensive way to plan ahead.

### 1.5

#### **What happens if I don’t make a Power of Attorney?**

If you do not prepare a Power of Attorney you do *not* get to choose who will look after your financial affairs.

In the case of future mental incapacity, this means that someone will have to apply under the *Adult Guardianship and Trusteeship Act* to become “trustee” of property (this is called a “Trusteeship” application). In general, the government does not step in to help – it acts *only* in situations where no other suitable person is available, able and willing. This court process can be lengthy (it can take several months) and costly, can result in disagreements among your family members and friends, and can result in authority being given to someone whom you yourself might not have chosen.

## 2. How do I make one?

### Top 10 Questions about Creating a Power of Attorney

#### 2.1

##### Who can make a Power of Attorney?

In Alberta, you must be at least 18 years old in order to make a Power of Attorney. In addition, you must, at the time of signing, understand the nature and effect of a Power of Attorney. If, at the time of signing, you were not mentally capable of understanding this, the Power will be void.

#### 2.2

##### How do I make a Power of Attorney?

In Alberta, a Power of Attorney must be in writing, and must be dated and signed by both the donor and a witness, in the presence of each other.

If the donor is physically unable to sign, the Power may be signed by another person on the donor's behalf – but that person cannot be the Attorney being named, or the spouse or adult interdependent partner of the person being named as the Attorney.

Similarly, a Power of Attorney may not be witnessed by:

- the person being named as the Attorney ;
- the spouse or adult interdependent partner of the person being named as the Attorney;
- the spouse or adult interdependent partner of the donor;
- a person who signed the Power of Attorney on behalf of the donor; or
- the spouse or adult interdependent partner of the person who signed the Power of Attorney on behalf of the donor.

In addition, if it is an Enduring Power of Attorney, the document *must* indicate that it is either to continue, or spring into effect, upon the donor's mental incapacitation.

#### 2.3

##### Do I have to use a lawyer to prepare my Power of Attorney?

The law does not require you to use a lawyer's services, but you may wish to consider this, especially if your affairs are complicated. Similarly, if you anticipate that someone may challenge your Power of Attorney by saying, for example, that you were not mentally capable when you signed it, it would be advisable to consult with a lawyer. You may also want to ask your doctor for a medical report confirming your capacity.

#### 2.4

##### What is the cost of preparing a Power of Attorney?

There is no exact answer to this question. It will vary from lawyer to lawyer, and it will also depend on the complexity of the Power of Attorney and the expertise needed to draft it. Often, lawyers will quote a single price for separate Powers of Attorney done for spouses at the same time, or a single price for a package of Powers of Attorney, Personal Directives and Wills for spouses at the same time. The price may increase if the lawyer needs to use his or her expertise in complicated tax planning measures, the creation of trusts, or very large estates.

*In Alberta, a Power of Attorney must be in writing, and must be dated and signed by both the donor and a witness, in the presence of each other.*

## 2.5

### What level of mental capacity is needed to *make* a Power of Attorney and who decides if I have that capacity?

The term “mental capacity” means different things for different types of decisions and actions. In general, however, it refers to a person’s ability to understand information that is relevant to a particular decision and to appreciate what could happen as a result of making a certain decision (or not making a decision ) about these issues.

In terms of making a Power of Attorney, having mental capacity means that you:

- know what property you have and its approximate value;
- are aware of your obligations to the people who depend on you financially;
- know what you are giving your Attorney the authority to do;
- know that your Attorney is required to account for the decisions he or she makes about your property;
- know that, as long as you are mentally capable, you can revoke (cancel) this Power of Attorney;
- understand that if your Attorney does not manage your property well, its value may decrease; and
- understand that there is always a chance that your Attorney could misuse his or her authority.

If you see a lawyer to make a Power of Attorney, the lawyer will conduct tests to ensure that you have the required capacity. If, however, you are found incapable, you have the right to request a capacity review hearing and be represented by counsel at that hearing. No one can prevent you from contacting a lawyer or asking for a review hearing.

Regardless of whether or not you see a lawyer to make your Power of Attorney, afterwards any interested party can question your capacity when you made it. This is done by applying to a court.

## 2.6

### Can anyone be a witness to my Power of Attorney? What are my witnesses’ responsibilities?

The following people *cannot* act as witnesses:

- anyone under the age of 18;
- anyone who is mentally incapacitated;
- the person being named as the Attorney;
- the spouse or adult interdependent partner of the person being named as the Attorney;
- the spouse or adult interdependent partner of the donor;
- a person who signed the Power of Attorney on behalf of the donor; and
- the spouse or adult interdependent partner of the person who signed the Power of Attorney on behalf of the donor.

Witnesses are required to act in good faith and should refuse to witness the Power of Attorney if they have reason to question the mental capacity of the person who is signing it. As long as they meet these standards they will not be held responsible even if the Power of Attorney is later challenged.

## 2.7

### Do I have to register my Power of Attorney with the Alberta government?

No. There is no requirement that these documents be registered. The government does not keep a registry. It makes sense, however, to make sure that the people in your life who need to know about these documents – especially your Attorney – have a copy or know where to get one if needed.

*As long as you are mentally capable, you can revoke [your] Power of Attorney.*

## 2.8

### What should I do with my Power of Attorney after I have completed it?

It depends on your situation.

#### A. Immediate Power of Attorney

If you have made an Immediate Power of Attorney, you should give it to your Attorney, and provide a copy to the financial institutions and any other parties that you deal with, and with whom your Attorney will be doing business. It is advisable to make a list of the people you inform or give a copy to, so that you can advise them of any future changes as well

#### B. Enduring Power of Attorney

If you have an Enduring Power of Attorney, you may choose to put it in a safe place that your Attorney knows about so that s/he can access it quickly if needed. Some people choose to leave it with a trusted third party such as their lawyer, with specific instructions about when to release it.

If you do this, however, it is important to remember that it may be many years, if ever, before your Power of Attorney is needed and the person you have left it with may have moved away or even died in the meantime.

You can also leave it with your bank, as well as other financial institutions that you deal with, and make sure they put a copy on your file. It is advisable to make a list of the people you inform or give a copy to, so that you can advise them of any future changes as well.

You should review your Power of Attorney every few years, as circumstances can change.

## 2.9

### What if my bank insists that I make my Power of Attorney on its own form?

Some banks have their own Power of Attorney forms and these banks may ask that you use their forms instead. A bank's Power of Attorney allows the person named to manage your assets deposited with that bank, but *only* that bank.

You should think carefully before you sign these forms. The bank's form will only cover your bank accounts and investments with that institution and not any of your other assets. Depending on what it says, signing it could also cause a previous Power of Attorney you have drafted to be revoked, leaving you with no one able to handle your other affairs if needed. In addition, the more Powers of Attorney you make, the more documents you need to update and/or revoke, as appropriate – this can become time-consuming and burdensome.

## 2.10

### What can I do to prevent misuse of my Power of Attorney?

Before you make a Power of Attorney you may want to talk to a friend, family member, or legal professional. You can also insist that your Attorney get legal advice about his or her responsibilities.

Be sure you choose someone you trust as your Attorney. You may wish to name more than one person. Talk to these people before you appoint them and make sure they understand what you expect from them, and when you expect them to act.

You can put limits on the power you give to your Attorney.

For an Enduring Power of Attorney, you may want to give the document to someone else you trust, and tell him or her when to give it to the Attorney.

Misusing a Power of Attorney is a crime. If your Attorney abuses his or her power, and you still have mental capacity, cancel the Power of Attorney immediately and get legal advice. You may be able to sue your Attorney to get back any money or property that has been taken.

## 3. What goes in it?

### Top 10 Questions about the Content of a Power of Attorney

#### 3.1

##### **What should I consider in making a Power of Attorney?**

When making a Power of Attorney, you should carefully consider what type best suits your needs, who your Attorney will be, and exactly what powers you wish to give that Attorney. What instructions will you give them? Will it be limited or general?

#### 3.2

##### **What should I consider in choosing an Attorney?**

The term “Attorney” refers to the person or persons you have chosen to act on your behalf. This is a very important decision and needs a lot of careful thought. Remember, your Attorney will have full access to your money and other property. Consider whether the person is willing to take on this job, if needed. There is a lot of work involved and the law expects your Attorney to meet very high standards. Consider whether the person is trustworthy, responsible and good at handling finances. Will he/she/they make sure you have all the things you need? Will your privacy be respected? Can you trust the person(s) not to misuse your money?

The law allows you to appoint anyone you choose as long as s/he is 18 years of age or over. S/he does *not* have to be a lawyer. You can even name someone who lives outside the province (although this may prove impractical, especially if you are giving the power to deal with your real estate).

You should also take the precaution of naming an alternate Attorney, someone to replace, or substitute for, an Attorney who cannot act, or continue to act, for you.

#### 3.3

##### **Can I name more than one Attorney?**

You can name one Attorney or more than one. If you appoint more than one, you can require that they act together (“jointly”) or you can have them act separately as well as together (“severally and jointly”). If you include this phrase, either of your Attorneys will be able to act alone on your behalf. If one is away or sick, for example, the other would still be able to sign cheques and give instructions on your behalf. If you do not indicate that they can act severally, they will have to do everything together.

If you designate more than one, you should include some form of disagreement resolution.

Even though you have named two, you should still take the precaution of an alternate Attorney, in case neither of them can act for you.

#### 3.4

##### **I want to name a specific family member but I'm worried that this will cause conflict. Is there anything I can do to prevent this?**

There are a number of options that may help, depending on your situation and personal preferences.

Conflict can often be avoided by telling your family in advance and explaining the reasons for your choice. Sometimes conflict is created because the rest of the family does not know what your Attorney is doing with your money. To avoid this, some people name more than one family member and require that all decisions and transactions be approved by both of them. This can reduce distrust but it can also create conflict if they disagree about matters. Other people simply choose to specify that all family members must be kept informed about decisions and provided with full information.

Another way to try to avoid family conflict is to name someone else such as a close friend, or a trust company.

### 3.5

#### **What powers can my Attorney have and are there any powers s/he cannot have?**

Unless you restrict your Attorney's powers, he or she will be able to do almost anything that you can do concerning your finances. Your Attorney can sign documents, start or defend a lawsuit, make investments and purchases for you and even sell real estate you own if you specifically give them that power. You should consult a lawyer about your power of attorney if you own real estate.

By law, however, your Attorney cannot change your Will, make a new Will for you, or give a new Power of Attorney on your behalf.

### 3.6

#### **What do I include about when and how my Power of Attorney is to take effect?**

This depends on the kind of Power of Attorney you are making.

If you are making an Immediate Power of Attorney that will not be enduring, you will want to be sure that you set out the end date or the specific task to which the Power relates (or both, depending on your needs).

If it is an Enduring/Springing Power of Attorney, you must indicate the future event (e.g.: mental incapacity) upon which the Power will come into effect. You can name one or more persons who can specify in writing that the contingency has occurred (you can even name your Attorney). If you do not name anyone, the determination will be made by two medical practitioners, who must make a written declaration that you lack capacity.

### 3.7

#### **Should I require my Attorney to report to me?**

It's up to you. Your Attorney is required to provide you with a full accounting whenever you ask for one, but if you wish, you can include a requirement that s/he must provide an accounting at set intervals. Or you could require an accounting to someone else.

### 3.8

#### **Should I include a provision stating that my Attorney is required to keep my financial information confidential?**

Your Attorney needs to disclose enough information to carry out his or her duties or to abide by the law. In terms of any additional information, your privacy must be respected *unless* you specifically authorize your Attorney to disclose information by writing this in your Power of Attorney.

### 3.9

#### **Should I include a provision entitling my Attorney to be paid?**

It is up to you. In your Power of Attorney, you can state how much your Attorney will be paid. If you do not do so, the Attorney can apply to the court for a "fair and reasonable allowance". You may wish to discuss this with your Attorney in advance. You should also consider how much effort will be required by your Attorney to handle your affairs.

### 3.10

#### **Is there anything else that I should consider including in my Power of Attorney?**

What you include really depends on the Attorney you choose (e.g. How much do you trust him/her? How well does s/he know your financial situation and tendencies?) and the nature of the property that will be administered (e.g.: Is it simple banking and bill payments, or are there complications like investments or rental properties?)

Consider the following situations.

- Assume you have property or a business in the United States: you may wish/require your Attorney to consult with a tax lawyer with respect to any dealings with that property.
- Assume you have a piece of property that you have left to a treasured friend in your Will: you may want a clause in your Power of Attorney indicating that the piece of property cannot be disposed of.



## 4. When does it get reviewed?

### Top 5 Questions about updating Powers of Attorney

#### 4.1

#### How often should I review / update my Enduring Power of Attorney?

You should review your Enduring Power of Attorney every few years, and upon important occurrences such as the divorce, (re)marriage, or death of anyone close to you. Remember that life circumstances can change quickly.

#### 4.2

#### I just got married, does that void my Enduring Power of Attorney?

No. A Power of Attorney is *not* invalidated by a marriage. As a result, at such times, it is very important to review your Power of Attorney to ensure that it still meets all of your needs. In cases of re-marriage and blended families, you may wish to be especially attentive to family relationships and family dynamics.

#### 4.3

#### I just got separated / divorced, does that void my Enduring Power of Attorney?

No. A Power of Attorney is *not* invalidated by a separation or a divorce. As a result, at such times, it is very important to review your Power of Attorney to ensure that it still meets all of your needs.

#### 4.4

#### What is the effect of the start or end of an adult interdependent relationship on my Enduring Power of Attorney?

The start or end of an adult interdependent relationship does *not* invalidate a Power of Attorney. As a result, at such times, it is very important to review your Power of Attorney to ensure that it still meets all of your needs.

#### 4.5

#### If, after I review my Enduring Power of Attorney, I decide to make a new one, does this automatically cancel the old one?

Not necessarily. More than one Power of Attorney can be in effect at the same time. Naturally, if more than one Power of Attorney provides the same powers to different people, this can cause great confusion.

To be certain that you have only one Power of Attorney in effect, ensure that each new Power of Attorney you make includes a phrase indicating that you *revoke* all Powers of Attorney previously made.

*You should review your Enduring Power of Attorney every few years, and upon important occurrences such as the divorce, (re)marriage, or death of anyone close to you.*

## 5. What happens with it?

### Top 10 Questions about the Administration of Powers of Attorney

#### 5.1

##### When and how will my Power of Attorney take effect?

For an Immediate Power of Attorney, your Attorney will be able to use the Power of Attorney as soon as it is signed and witnessed, unless you say otherwise in the document.

An Enduring Power of Attorney may also commence immediately and it will continue after your mental incapacitation. Alternatively, an Enduring Power of Attorney can commence at a set date in the future and continue after your mental incapacitation.

A Springing Power of Attorney comes into effect only once you have been determined to be incapable of managing your property (either by the person(s) you named in the Power or, if you did not name anyone, by two medical practitioners).

#### 5.2

##### After my Power of Attorney takes effect, what are my Attorney's responsibilities?

In general, your Attorney's responsibilities can be described as follows.

- To act in your best interests. Under Alberta legislation, this also includes a "duty" to protect your best interests.
- To consult with you, with those who take care of you, and with your family and friends.
- To use what you have, first, for your support and care; then, if assets are available, for the support of your dependants.
- In certain circumstances, your Attorney can make gifts or loans to relatives, and gifts to charity based on your previous practice and intentions (but your Power of Attorney must say so).
- To obtain a copy of your Will and information about your assets and liabilities (others who have this information must provide it to your Attorney).

- Keep accounts, and give an accounting when called upon to do so. This includes lists of:
  - your assets as of the date of your Attorney's first transaction;
  - assets acquired and disposed of and the date and particulars of each transaction;
  - receipts and disbursements and the date and particulars of each transaction;
  - investments bought and sold and the date and particulars of each transaction;
  - your liabilities as of the date of the Attorney's first transaction;
  - liabilities incurred and paid and the date and particulars of each transaction;
  - payments taken by the Attorney and how they were calculated.
- Keep a copy of the Power of Attorney and of any court orders relating to the Attorney's authority.
- Keep these records until s/he ceases acting for you and until the Attorney receives a release from someone authorized to give it, or until another person acquires authority to manage your property and your Attorney gives the records to that person.
- If you die, give the records to your Executor.

Your Attorney can also apply to the court for advice and direction with respect to any of these matters.

*A Springing Power of Attorney comes into effect only once you have been determined to be incapable of managing your property.*

## 5.3

### How long does a Power of Attorney last?

An Enduring Power of Attorney generally lasts until you die, you revoke it (if you still have capacity), you recover sufficiently to resume control of your own affairs, a court determines that it ceases to have effect, or your Attorney dies or quits.

With an Immediate Power of Attorney, however, you can set an end date (for example, for a set period when you will be away on an extended holiday).

If you feel that someone is using the Power of Attorney to make decisions for you when you are still capable of making them, or have recovered, you can ask for a court hearing to review your situation.

## 5.4

### Can my bank refuse to recognize my Power of Attorney?

As long as your Power of Attorney appears to be properly completed and witnessed and the bank has no reason to suspect that it is invalid, it should be recognized. The bank would have no legal right to refuse it. But it is wise to give your bank a copy of your Power of Attorney so that it will have it on file. If a bank refuses to recognize your Power of Attorney, speak to the manager and, if necessary, phone a lawyer.

## 5.5

### Is a Power of Attorney effective outside of Alberta?

It depends on the law of the particular place where you want to use the Power of Attorney. If you are going to move or be out of the province for some time, you may want to check with a local lawyer to see if you need to make new documents, or if you can just make an addition (for example, some countries just require an additional notarized document created by a lawyer).

## 5.6

### If there is more than one Power of Attorney, which one is valid?

More than one Power of Attorney can be valid at the same time (for example: different documents for different purposes). Naturally, if more than one Power of Attorney provides the same powers to different people, this can cause great confusion. To be sure that you have only one Power of Attorney in effect, check that each new Power of Attorney you make includes a phrase indicating that you revoke all Powers of Attorney previously made.

*To be sure that you have only one Power of Attorney in effect, check that each new Power of Attorney you make includes a phrase indicating that you revoke all Powers of Attorney previously made.*

## 5.7

### **What happens if the person I appoint as my Attorney cannot act for me for some reason or wants to quit?**

You can avoid this problem by naming one or more people as your alternate Attorney. The alternate can act if your Attorney dies, is unable to assume the role for some other reason, or chooses not to act on your behalf. Alternatively, if you have not named an alternate you should consider making a new Power of Attorney.

Under Alberta legislation, if an Attorney who has previously accepted the appointment wants to quit, s/he must apply to the court for leave to renounce. If s/he receives leave to renounce, your Attorney must also provide you with notice of that renunciation.

That said, if all of the possible Attorneys named in your Power of Attorney are unable or unwilling to act, your Power of Attorney will cease to have effect.

## 5.8

### **Can a Power of Attorney be challenged?**

Yes. Any interested person may apply to the court to:

- question the capacity of the donor or Attorney;
- determine the validity of a Power of Attorney, or part of it;
- change, confirm or cancel a decision made by an Attorney;
- determine the authority of an Attorney to provide advice and directions;
- make a decision if the Attorneys cannot agree;
- delay the decisions of an Attorney; or
- make any other order that it considers appropriate.

Only a court has the final say as to such issues.

## 5.9

### **What if I, or someone else, discover that my Attorney is mismanaging or stealing my money?**

You may elect to revoke your Power of Attorney, demand a full accounting and consider making a claim for any lost funds.

If someone else has evidence suggesting mismanagement or theft and believes that you are mentally incapable, they may ask the court to review the accounts and records your Attorney is required to keep. This process is called a “passing of accounts”. They may also report the matter to the Public Trustee. This Office investigates allegations involving a mentally incapable person who is believed to be at serious financial risk.

## 5.10

### **Is a photocopy of the Power of Attorney valid?**

In most instances, a photocopy will not be enough. Most financial institutions will request a notarized copy. If the original is changed, copies of the original Power of Attorney should be destroyed and replaced to avoid confusion.

*In most instances, a photocopy will not be enough. Most financial institutions will request a notarized copy.*

## 6. How does it end?

### Top 5 Questions about how Powers of Attorney stop having effect

#### 6.1

##### **When does a Power of Attorney generally end?**

Generally, a Power of Attorney ends when the job it describes is done. For example, if you gave a specific and Immediate Power of Attorney to sell your house, it would end once the house is sold. Similarly, if you gave a specific and immediate Power of Attorney to cover a 3-month period when you were out of the country, it would end on the end-date indicated in the document.

Unless your Power of Attorney is an Enduring one, it ends when you become mentally incapable. A Power of Attorney can also end when you die, when your Attorney dies (unless you have an alternate), or if a court appoints a trustee as part of a Dependent Adult Application. As long as you are not mentally incapacitated, you can also revoke a Power of Attorney at any time.

#### 6.2

##### **Can I end it by revoking my Power of Attorney?**

Unless the Power of Attorney has been made irrevocable (by its own terms or by some legal principle), as long as you have mental capacity, you may revoke the Power of Attorney by telling the Attorney that it is revoked. It is best to advise your Attorney in writing. You should also inform everyone that is involved with your income or property. To do so, you should state in writing that you are “revoking” it. There is no special form for this statement, which is referred to as a “revocation”, but it must be signed and witnessed, the same way as your Power of Attorney.

If you fail to inform everyone that is involved with your income or property, it may be deemed reasonable for third parties to rely upon the Power of Attorney being in force, and, as a result, you may still be bound by the acts of your Attorney (although your Attorney would be liable for such unauthorized acts).

The capacity required to revoke your Power of Attorney is the same as that required to make one.

#### 6.3

##### **What should I do once I've revoked my Power of Attorney?**

Give the revocation statement to your Attorney. You should also tell everyone who is involved with your income or property – such as your bank and other financial institutions – about the revocation. Send them a copy. If you own a home or other real estate, you may wish to consider having a lawyer register notice of the revocation on title to prevent any unauthorized dealings. It is also a good idea to get the original (and now revoked) Power of Attorney back from your Attorney and destroy it.

#### 6.4

##### **Do major life events automatically invalidate my Power of Attorney?**

No. When something happens (marriage, divorce, birth of a child, death of the person named as your Attorney), you should review your Power of Attorney to make sure that it continues to meet all of your needs, and, if it does not, you should make a new Power of Attorney.

#### 6.5

##### **What happens if my Power of Attorney is deemed invalid and I do not have the mental capacity to make a new one?**

In such a case, interested parties (family or a friend) will have to apply under the *Adult Guardianship and Trusteeship Act* to become “trustee” of your property (this is called a “Trusteeship” application).

*Generally, a Power of Attorney ends when the job it describes is done.*

## 7. What do the words mean?

### Glossary

<b>adult interdependent partner</b>	a person with whom you are in an adult interdependent relationship.
<b>adult interdependent relationship</b>	<p>a term unique to Alberta and governed by the Alberta <i>Adult Interdependent Relationships Act</i>. It is a “relationship of interdependence” as a relationship outside of marriage where two people: share one another’s lives; are emotionally committed to one another; and function as an economic and domestic unit. To meet these criteria, the relationship need not necessarily be conjugal (sexual). It can be platonic.</p> <p>There are two possible ways for such a relationship to exist.</p> <ul style="list-style-type: none"> <li>• If you have made a formal and valid adult interdependent partner agreement with the other person (two people that are related by either blood or adoption <i>must</i> enter into such an agreement in order to be considered adult interdependent partners); or</li> <li>• If you are not related by either blood or adoption and if you have: <ul style="list-style-type: none"> <li>– lived with the other person in a “relationship of interdependence” for at least 3 continuous years; or</li> <li>– lived with the other person in a “relationship of interdependence” of some permanence where there is a child of the relationship (either by birth or adoption).</li> </ul> </li> </ul>
<b>assets</b>	what you own. Assets can include things such as money, land, investments, and personal possessions such as jewellery and furniture.
<b>Attorney</b>	a person who is empowered to act on behalf of the donor under a Power of Attorney. This person does not have to be a lawyer.
<b>declaration of incapacity</b>	a written document that confirms that a maker of a personal directive and/or the donor of a Power of Attorney no longer has the mental capacity to make decisions on his/her own behalf.
<b>donor</b>	a person who gives a Power of Attorney.
<b>Enduring Power of Attorney</b>	<p>covers your financial affairs and allows the person you name to act for you even if you become mentally incapable. It can either:</p> <ul style="list-style-type: none"> <li>• take effect immediately upon signing and continue if you become incapable of managing your financial affairs; or</li> <li>• take effect only upon you becoming incapable of managing your financial affairs, or some other specified event (this is also known as a “Springing” Power of Attorney”).</li> </ul>
<b>Immediate Power of Attorney</b>	covers your financial affairs and takes effect as soon as it is signed and stops if you become mentally incapacitated. You might give this Power of Attorney if you need someone to look after your financial transactions while you’re away from home for an extended period of time.
<b>legal representative</b>	means an attorney under the <i>Powers of Attorney Act</i> or a guardian or trustee under the <i>Adult Guardianship and Trusteeship Act</i> .
<b>mental capacity</b>	the ability to understand information that is relevant to the making of a decision and the ability to appreciate the reasonably foreseeable consequences of the decision.
<b>Power of Attorney</b>	a written, signed, dated and witnessed document that gives someone else the right to act on your behalf with respect to your financial affairs. This can include paying bills, depositing and investing money on your behalf, and even selling your house. The Power of Attorney may be for a definite, specific act, or it may be general in nature. It may take effect immediately (Immediate Power of Attorney), can continue upon mental incapacity (Enduring Power of Attorney), or can come into effect only upon incapacity or some other event (Springing Power of Attorney).
<b>represented adult</b>	means a person who is the subject of a guardianship order or trusteeship order, or both, made under the Alberta <i>Adult Guardianship and Trusteeship Act</i> .
<b>spouse</b>	a person to whom one is legally married
<b>Springing Power of Attorney</b>	a Power of Attorney that covers your financial affairs and allows the person you name to act for you only once you become mentally incapable (or some other specified event).
<b>trusteeship application</b>	a court application, brought under the Alberta <i>Adult Guardianship and Trusteeship Act</i> , that asks the court to appoint a particular person as the trustee or guardian of an adult who no longer has the mental capacity to make decisions on his/her own behalf.
<b>trusteeship order</b>	a trusteeship order as defined in the <i>Adult Guardianship and Trusteeship Act</i> .

## 8. Where can I get more help?

### Community Resources

For a copy of the *Powers of Attorney Act* contact the Queen's Printer Bookstore.

780-427-4952 in Edmonton

403-297-6251 in Calgary.

Toll-free service in Alberta, dial 310-0000.

Website: [www.qp.alberta.ca](http://www.qp.alberta.ca)

- The *Powers of Attorney Act* is available electronically at: [www.qp.alberta.ca](http://www.qp.alberta.ca). See the alphabetical list of Acts.
- The *Adult Guardianship and Trustee Act* (AGTA) came in to force in 2009. More information is available on the Alberta Human Services website at: <http://humanservices.alberta.ca/guardianship-trusteeship/opg-adult-guardianship-trusteeship.html>.
- The *Adult Guardianship and Trustee Act* (AGTA) is available electronically at: [www.qp.alberta.ca](http://www.qp.alberta.ca). See the alphabetical list of Acts.
- The *Adult Guardianship and Trustee Act Regulation* is available electronically at: [www.qp.alberta.ca](http://www.qp.alberta.ca). See the alphabetical list of Acts.
- Alberta Human Services. *Enduring Powers of Attorney*. Public information webpage at: <http://humanservices.alberta.ca/guardianship-trusteeship/opt-represented-adults-enduring-powers-of-attorney.html>

For more information about **applications for trusteeship** under the *Adult Guardianship and Trustee Act* (AGTA) please contact the Office of the Public Trustee toll-free, call 310-0000. See also:

<http://humanservices.alberta.ca/services-near-you/15363.html>

#### Alberta Supports Contact Centre

Toll-free in Alberta: 1-800-644-9992

Edmonton area: 780-644-9992

For regional offices see:

<http://www.health.alberta.ca/seniors/contact-seniors.html>

#### Alberta Health, Protection for Persons in Care

Information and Reporting: 1-888-357-9339

Fax: 780-415-8611

Mailing Address: Station M, Box 476

Edmonton, AB T5J 2K1

<http://www.health.alberta.ca/services/protection-persons-care.html>

#### Older Adult Knowledge Network

[www.oaknet.ca](http://www.oaknet.ca)

#### Seniors Association of Greater Edmonton (SAGE)

100 – 102A Ave, 15 Sir Winston Churchill Sq NW  
Edmonton AB, T5J 2E5

Phone: 780-423-5510, Fax: 780-426-5175

Email: [info@MySage.ca](mailto:info@MySage.ca), Website: [www.MySage.ca](http://www.MySage.ca)

#### Law Society of Alberta Lawyer Referral Service

A Lawyer Referral Operator will provide you with the names of three lawyers in your area that you can consult. Each lawyer will provide a half-hour consultation free of charge.

Toll free: 1-800-661-1095

Calgary Area: 403-228-1722

[www.lawsociety.ab.ca/public/lawyer\\_referral.aspx](http://www.lawsociety.ab.ca/public/lawyer_referral.aspx)

#### Legal Services Centre

A program of Legal Aid Alberta, which provides legal information and referrals to Albertans and legal advice to eligible callers. This free service is available across Alberta. Toll-free in Alberta: 1-866-845-3425

To see the qualifications for free legal advice, visit

<http://www.legalaid.ab.ca/help/Pages/Eligibility.aspx>

The Legal Services Centre does not provide legal information or legal advice by e-mail.

#### Student Legal Services

A nonprofit, charitable organization of approximately 300 volunteer law students that provide year-round free legal services to those individuals who are unable to afford a lawyer. Please call in advance as student volunteers are not always available at all hours.

11011-88 Avenue

Edmonton, AB T6G 0Z3

Phone: 780-492-8244

Website: [www.slsedmonton.com](http://www.slsedmonton.com)

#### Dial-A-Law

Pre-recorded legal information messages available  
24 hours a day, 7 days a week.

Toll free: 1-800-332-1091

## Family Law Information Services

Provided at designated Family Justice Services locations; for more information see:

<http://www.albertacourts.ab.ca/fjs/flic.php>

## Legal Aid Society of Alberta

Provides legal services to financially eligible applicants.

Toll-free in Alberta: 1-866-845-3425

Website: [www.legalaid.ab.ca](http://www.legalaid.ab.ca)

## Notes

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This booklet is one of a number produced by the Centre for Public Legal Education Alberta that may interest you. Other booklets related to this topic include:

- Making a Will
- Making a Personal Directive
- Making a Power of Attorney
- Being a Personal Representative
- Being an Attorney
- Being an Agent
- *Adult Guardianship and Trusteeship Act*
- Grandparents' Rights

## CPLA

The Centre for Public Legal Education Alberta is a non-profit society whose purpose is to provide Albertans with reliable information about their rights and responsibilities under the law.



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### Alberta Law Foundation

The People's Law School, Vancouver, BC

Linda Callaghan

Ackroyd LLP, Edmonton, for reviewing this booklet

### Justice Canada

You should **not** rely on this booklet for legal advice. It provides general information on **Alberta law only**.

October 2016

a publication of  
**LAW NOW**