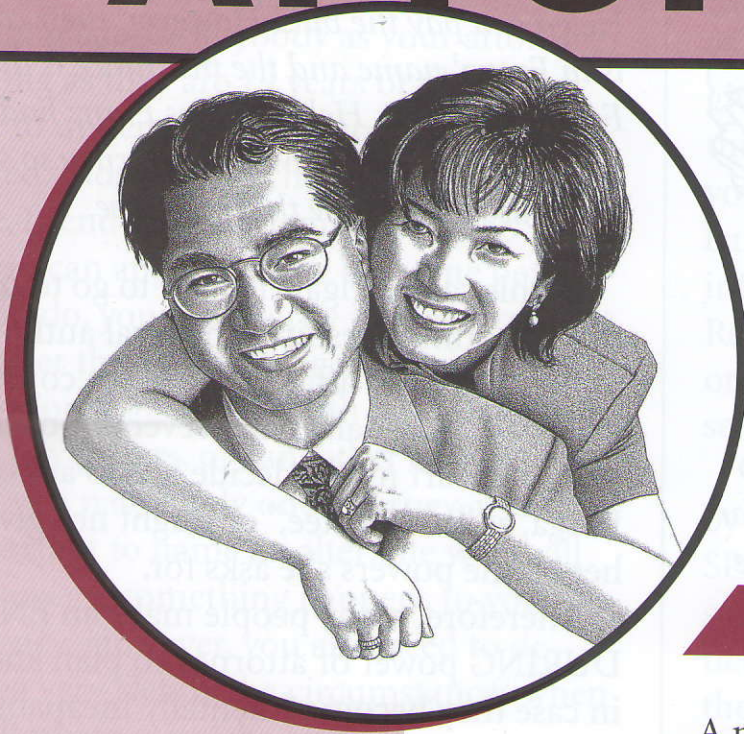


UPDATED

# POWER OF ATTORNEY



*This booklet explains how a power of attorney can help you to look after your current and future financial affairs. It describes some common examples. See page 10 for where to get help with your particular situation.*

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



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## What is power of attorney?

A power of attorney is a legal document. When you give someone power of attorney you give him or her the legal power to take care of financial and legal matters for you. This might include paying bills, depositing or withdrawing money from your bank account, investing your money or selling your house.

The person you give this power to is called THE ATTORNEY (in this case, attorney does not mean lawyer). You are called THE DONOR.

Power of attorney does not give the attorney authority to make decisions about your health care. It covers financial and legal matters only.

## What powers of attorney are used for

There are many reasons people make a power of attorney. One reason is because they are physically unable to look after their affairs due to travel or injury.



*EXAMPLE: Anita is leaving the country to visit her grandchildren. She may be gone for a long time. She wants to give her niece the authority to pay her bills when she is away. Anita makes a power of attorney.*

Another reason people often make a power of attorney is in case they become “mentally incapable” due to illness, disease or accident. See the sample on page 6.

A power of attorney is a simple and inexpensive way to plan ahead and choose

who will help you with your finances. If you become “mentally incapable” and you do not have a power of attorney, your family may have to go to court to get the legal right to manage your affairs.

*EXAMPLE: Franz had an accident at work. He is in hospital in a coma. Franz and his wife Helga have a joint bank account so Helga can pay the bills. However, their car is in Franz’ name and the insurance is due. Franz can’t sign. Helga wishes Franz had made an enduring power of attorney so she could use it to renew the insurance.*

In this case, Helga will have to go to court to get “committeeship” (the legal authority to handle Franz’ affairs). Going to court is expensive, it usually takes several months, and the court might decide not to appoint Helga, as “committee,” or might not give her all the powers she asks for.

Therefore, many people make an ENDURING power of attorney to plan ahead in case they become “mentally incapable.”

*EXAMPLE: Ruth’s doctor has told her that she has early signs of Alzheimer Disease and she will gradually lose her mental abilities. Ruth makes an “enduring” power of attorney*

### Pre-planning for health care decisions

The law sets out who will make health care and treatment decisions for you when you no longer can. Usually, this is your closest relative, such as your spouse or child. You can plan ahead by making a representation agreement that names whoever you want to make those decisions, such as a friend.

For the legal remedy which best suits your circumstances, you should consult with a lawyer or Notary Public.

*naming her son, Hiram, as her attorney. He will be able to manage her money for her when she can no longer act for herself.*

See ENDURING powers of attorney, page 4.

## Naming an attorney

You can choose anybody as your attorney, so long as they are 19 years or older and able to understand the responsibilities involved. Most people choose their husband, wife, friend or other family member.

You can appoint more than one person. If you do, you must write in the document whether they will act together or individually. (For instance, do both of them have to sign any papers, or can either one sign?)

If you name only one attorney, it is very important to name an alternate who will take over if something happens to your attorney. However, you also need to describe very clearly the circumstances when an alternate may take over.

Your attorney will have significant power, so choose somebody you trust, and who is comfortable with financial matters. Take the time to talk with that person about what you want and would expect them to do. Ask if he or she is willing to be your attorney.

You can choose a trust company as your attorney. Ask the trust company how much it will charge you. You can also name the Public Guardian and Trustee (a government official). The Public Guardian and Trustee also charges fees.

## The attorney's powers and responsibilities

The attorney is like your agent. He or she must act honestly and in good faith, in YOUR best interests. Your attorney must keep careful records of any financial activities, and must keep your affairs separate from his or her own.

A GENERAL POWER OF ATTORNEY gives your attorney the power to do anything financial or legal that you can do for yourself. This could include dealing with bank or credit union accounts, getting information from Canada Customs and Revenue Agency (Revenue Canada) in order to do your income tax, insuring or selling your car, or selling real estate.

You can also limit your attorney's powers by making a power of attorney only for a SPECIFIC TASK. For example, you can give someone power of attorney to sell a particular piece of property or you can give them powers for a limited period of time.

*EXAMPLE: Anita makes a specific power of attorney so that her niece can deposit Anita's pension cheques and pay her bills. The niece only has access to Anita's chequing/savings account, and only until Anita comes home from her trip.*

If you want your attorney to sell your real estate or deal with mortgages or easements, there are special requirements. See POWERS OF ATTORNEY FOR REAL ESTATE, page 9.

## When powers of attorney start

A power of attorney comes into effect as soon as it is signed. However, it does not have to be used immediately. Make sure your attorney knows when you want him or her to act.

## When powers of attorney end

A **SPECIFIC** power of attorney ends when the job it describes is done (for instance, the piece of property is sold) or on the date it says (for instance, the day Anita comes back from her trip).

A **GENERAL** power of attorney automatically ends:

- if you become incapable (**UNLESS** you include an “enduring” clause, see next heading),
- if your attorney dies (unless you name an alternate, or more than one attorney),
- if you die,
- if you are certified as “incapable” by a Director of a Mental Health facility,  
OR
- if the court appoints a “committee” to make decisions for you.

You can also **CANCEL** a power of attorney at any time. See page 5.

## Enduring powers of attorney

A power of attorney automatically ends if you become “mentally incapable” **UNLESS** you add a sentence that says you want it to continue. This sentence makes it an “enduring” power of attorney:

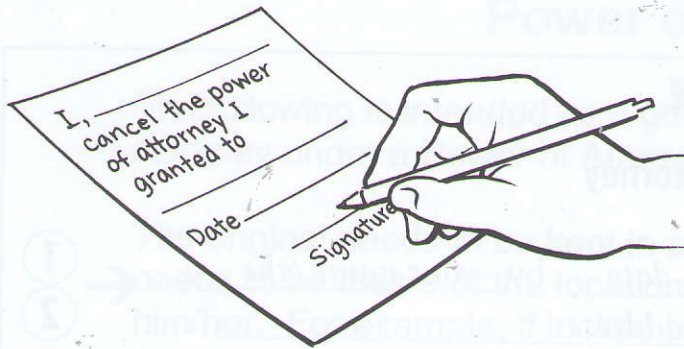
“In accordance with the Power of Attorney Act, I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.”

An enduring power of attorney does **NOT** cover health care or personal care decisions.



*Plan ahead – before things get out of control.*

## Some common questions about powers of attorney



### How do I cancel a power of attorney?

You can cancel (revoke) your power of attorney at any time. Notify your attorney in writing.

**EXAMPLE:** "I, (your name), cancel the Power of Attorney I granted to (name of your attorney).

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Send a copy of the notice to any organizations, companies or individuals your attorney deals with.

### If I make a new power of attorney, does it automatically cancel the old one?

No. More than one power of attorney can be in effect at the same time. If you want to be sure you have only one power of attorney in effect, when you make a new power of attorney, write at the beginning:

*"I revoke any and all powers of attorney I have previously made."*

### Can my attorney be someone who lives in another province?

Yes. The person you name as your attorney does not have to live in BC.

### Can my attorney decide to quit?

Yes. Your attorney must tell you (preferably in writing) that he or she does not wish to continue. When that happens, you (or the attorney) need to notify any organizations, companies or individuals that the attorney deals with, and then you will need to make a new power of attorney.

### Do I have to pay my attorney?

Your attorney is entitled to be paid back for any out-of-pocket expenses. If you also wish to pay your attorney a fee, you must write this in the document. If a trust company or the Public Guardian and Trustee is your attorney, they will ask you to sign an agreement that says they can charge fees.

### Banks and powers of attorney

Banks and credit unions often have their own power of attorney forms. Those forms are only for your dealings with that particular financial institution.

Some banks or credit unions may refuse to accept power of attorney documents you write yourself or that you make with a lawyer or Notary Public. They have no legal right to refuse. Speak to the manager. If necessary, call a lawyer.

## Sample

Here is an example of a general power of attorney with two attorneys and an “enduring clause.” (See notes on page 7.)

### SAMPLE

#### Power of Attorney

This general power of attorney is given on date, by your name (the donor), of your-full address.

← ①  
← ②

I appoint name of attorney, of attorney's address

and name of attorney, of attorney's address

← ③

who may act separately to be my attorneys in accordance with the Power of Attorney Act and do on my behalf anything that I can lawfully do by an attorney.

← ④

*In accordance with the Power of Attorney Act, I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.*

← ⑤

This power of attorney is not subject to any conditions or restrictions.

← ⑥

Signature of Witness: \_\_\_\_\_

Name of Witness (print): \_\_\_\_\_

Address of Witness: \_\_\_\_\_

Signature of Donor: \_\_\_\_\_

← ⑦

This format will not allow your attorney to deal with real estate. Replace this section with the box at bottom of page 7.

The notes below refer to SAMPLE Power of Attorney on page 6.

- ① This is the date you sign the document.
- ② Use your full name as it appears on your bank accounts, taxes, or financial papers (for example “Harold John Armstrong” instead of “Harry Armstrong”).
- ③ To name an alternate, write: I appoint (name) of (address) to be my attorney if (name of attorney) dies, or is unable or unwilling to act.”
- ④ If there is more than one attorney you must say EITHER “who shall act together” OR “who may act separately.”
- ⑤ This is the “enduring” clause (please see page 4).
- ⑥ You can list any conditions or restrictions on your attorney’s power.
- ⑦ The witness must be 19 years or older and should NOT be your spouse or the person you are naming as the attorney. It could be a neighbour, friend, etc.

If you want your attorney to be able to sell your vehicle or renew the insurance on your vehicle (if you are not able to do it) you and the witness must sign the power of attorney in front of a lawyer or Notary Public who will then “notarize” it (put their seal on it). (Not shown in SAMPLE.)

If you want the power of attorney to deal with real estate matters (see page 9), a lawyer or Notary Public must witness this section. The box below would replace the witness section in the sample on page 6.

Execution Date			Transferor(s) Signature  (signature of person giving power of attorney)
Year	Month	Date	

Officer Signature(s)  
  
(stamp and signature of lawyer or notary)



### **Do I need professional help?**

It's best to get some professional help, especially if you have a complicated or unusual situation.

According to ICBC and the motor vehicle branch, your power of attorney must be "notarized" if you want your attorney to have the power to renew the insurance or sell your vehicle (if you can't do it yourself). This means a lawyer or Notary Public puts his or her seal on the document when you make it, to confirm that you and the witness signed it in front of him or her.

If you go to a lawyer or Notary Public, find out how much they will charge you. Phone around and compare prices. See page 10 about how to find a lawyer or Notary Public.

If your power of attorney deals with real estate, you **MUST** go to a lawyer or Notary Public. See page 9.

### **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, community advocate, or legal professional. You can also insist that your attorney get legal advice about his or her responsibilities. For example, attorneys

must keep accurate records, and attorneys must not take a personal benefit from the person's assets.

Be sure you choose someone you **TRUST** as your attorney. If possible, 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.

Remember that a power of attorney takes effect as soon as it is signed, but it does not have to be used until you need help. You may want to give the power of attorney document to someone else you trust, and tell him or her when to give it to the attorney.

You can put limits on the power you give your attorney. You can require the attorney to keep records of your finances and show you those records regularly. You should also review your bank statements.

Misusing a power of attorney is a crime. If your attorney abuses his or her power, cancel the power of attorney immediately and then get legal advice. You may be able to sue your attorney to get back any money or property that has been taken.

If you are incapable and cannot cancel your power of attorney, you or someone else can call the Office of the Public Guardian and Trustee and report the situation. They will investigate.

### **I made a power of attorney ten years ago. Is it still good?**

Yes. However, you should check it over to make sure that it will do what you want and the information is accurate. You may decide to make a new one.



It's a good idea to review all your financial affairs (including your will) every two or three years. Addresses change, and so do people's lives. Stay up to date.

### **What about powers of attorney made in another province or country?**

Each province in Canada has its own laws and procedures for powers of attorney. This booklet applies to residents of BC who have finances and property in BC. For information about powers of attorney in another province or country, consult a legal professional. You may also want to read a book called "Power of Attorney" by Self Counsel Press, which is sold at stationery and bookstores, and is in many libraries.

### **If I have property in another province, will my BC power of attorney apply?**

Possibly. However, the safest approach is to check with a lawyer in that province.

### **My mom made a power of attorney in Alberta before she moved to BC. Is her power of attorney still okay?**

It is likely the power of attorney made in Alberta will be recognized in BC. However, it may not be effective in dealing with real estate property. If possible, she should make a new power of attorney.

## **Powers of Attorney for Real Estate**

If you want your attorney to have the power to sell your real estate property or deal with mortgages or easements, there are special requirements. You must go to a lawyer or Notary Public to have the document prepared, and here are a few things you should know:

- Your power of attorney must use the *exact* name that is listed on your real estate property at the land title office. For instance, if the name on the property deed is "Chung Hon Lee, you cannot use "C.H. Lee." If you are not sure of the exact name, do a search at the land title office.
- A power of attorney for real estate gives your attorney the power to sell or transfer property to someone else, but NOT TO HIM OR HERSELF. If you want to include that power, it has to be specifically written in. Discuss this with your lawyer or notary.
- You must sign the power of attorney in the presence of a lawyer or notary, and the lawyer or notary must also sign.
- You must register the power of attorney at the land title office and pay the registration fee. Check at your local land title office for the current fee. You can wait to register it, but don't wait to check with the office to make sure it meets the requirements.
- A power of attorney for real estate ends automatically in three years UNLESS it is an "enduring" power of attorney OR you say, "Section 56 of the Land Title Act does not apply."

# Responsibilities and Requirements of an Attorney under a Power of Attorney

The following is intended as a guideline of your responsibilities as an Attorney under a Power of Attorney.

The original needs to be kept in a safe location but the Attorney needs to be aware of the location and it must be accessible to him/her. For example, if locked in a safety deposit box and the Attorney does not access to the box, the document will be useless.

If you ever need to use the Power of Attorney document, you must show the **ORIGINAL DOCUMENT** to whatever organization you need to allow you to sign (e.g. the bank, motor vehicle office, municipal hall to claim the home owner's grant, etc.). You may allow them to make a copy, if they require it. They should then return the original to you.

Should you need to use it for Land Title Office purposes, the Land Title Office normally requires you to surrender the original to them. If you require the Power of Attorney returned, you must specify to the Land Title Office (or to whomever is sending it to the Land Title Office) that you must have it returned. The Registrar of the Land Title Office will then make a certified copy of it and return the original to you.

If you sign anything for the Donor by way of the Power of Attorney, it is imperative you keep a careful record of what you have done (e.g. if you sign their car insurance, keep a photocopy of the form; if signing cheques, keep their cheque register up to date, or keep a record of cheques written, dates, amounts, etc.). You are accountable to the person who gave you the power (i.e. the Donor), the family, the courts and/or the Public Trustee as to what you used the document for and why.

**You may not convert the Donor's assets into your name or use the same for your personal gain.**

The Donor may revoke the Power of Attorney at any time and should they do so, you must NOT use the document after being made aware that it has been revoked.

**AS AN ATTORNEY, YOU SHOULD:**

1. **Get an accurate, detailed listing of assets taken under your responsibility at the starting date: all bank balances, brokerage accounts, and pension sources and monthly entitlements.**
2. **Keep accounts separate from your own affairs.**
3. **Record all funds received and expenses paid.**
4. **Reimburse yourself only for items you purchased for the sole benefit of the Donor.**
5. **Prepare an annual summary of accounts reconciling opening and closing balances for each bank and brokerage account.**
6. **Ensure that tax returns are prepared on time, and make adequate installment payments. Confirm that all entitled income is being collected.**
7. **Remember your responsibility is to the Donor and that you have no powers beyond those specified.**

**AS AN ATTORNEY, YOU SHOULD NOT DO:**

1. **DO NOT incur new debts without a clear plan as to both the benefit to the Donor and the means of repaying the debt from current income sources.**
2. **DO NOT take any funds for your services unless they are clearly provided for in the Power of Attorney. When in doubt as to your authority, you may always apply to the Courts for direction.**
3. **DO NOT make any loans or distributions to family members, even if everyone agrees to it.**
4. **DO NOT borrow funds or accept gifts from the Donor.**
5. **DO NOT convert the Donor's assets to your name or use the Power of Attorney for your personal gain.**