



# Being an Attorney under an Enduring Power of Attorney

This booklet is for Albertans who have been asked to be an Attorney under someone's Enduring Power of Attorney (EPA). It explains what is involved in being an Attorney. It is divided into four sections: a question and answer section touching on issues to consider before you accept the job; a checklist section that helps guide you when the Donor - the person who gave you Power of Attorney - loses capacity; a glossary of common terms; and further resources. If you need more detailed help or legal advice, see the last few pages of this booklet for information on where to get help.



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**Please note** that in this booklet, the term “Attorney” refers to an Attorney appointed under an **Enduring Power of Attorney** that is designed to be in effect even after the person who created it loses **mental capacity**. There is another type of Power of Attorney called a *non-enduring or limited or ordinary* Power of Attorney that does not have this feature. If you are an Attorney under a non-enduring Power of Attorney, please see our booklet titled “Powers of Attorney”.

# Should I agree to the job?

## What’s involved in being an Attorney under an Enduring Power of Attorney?

### What is an Enduring Power of Attorney (EPA)?

An Enduring Power of Attorney is a legal document created by an adult individual called a “**Donor**”. It names a person (the “**Attorney**”) who will act on behalf of the Donor concerning his or her financial matters. It must contain a statement that its terms will continue notwithstanding any mental incapacity or infirmity of the Donor that occurs after the document is made, or that it is to take effect when something specific happens in the future. Usually the Donor states that the Power of Attorney comes into effect when the Donor loses mental capacity, but the Donor could instead specify a date or any other future event they choose.

### What is an Attorney?

An Attorney is the person named in an Enduring Power of Attorney to carry out its directions. An Attorney has the right, while the Donor is still alive, to act on behalf of the Donor with respect to his or her financial affairs. This can include paying bills, depositing and investing money, and even selling the Donor’s house if the EPA gives the Attorney that power. Sometimes the Attorney will act along with the Donor. Sometimes the Attorney will act alone.

An EPA may also name **Co-Attorneys** (also called Joint Attorneys) who will work

together. Unless the EPA contains wording that limits the Attorney's powers, he or she can do anything that the Donor could legally do with regard to the Donor's financial affairs.

An Attorney does not make decisions about health care - for that, one needs a separate document, called a **Personal Directive**.

## Who can be an Attorney?

Any adult can be an Attorney. An Attorney does not have to be a lawyer. You can be an Attorney even if you are a beneficiary under the Donor's will. An Attorney should:

- be honest and trustworthy;
- be capable of doing the job (he or she does not need to be an expert but should be someone who can do a good job of handling financial affairs);
- have the time and willingness to do the job.

It is convenient, but not necessary, for the Attorney to live in the same province as the donor.

**Note**, an Attorney cannot be a witness to the signing of the Enduring Power of Attorney that makes them the Attorney.

## How difficult is it to be an Attorney?

The task can be fairly simple if the Donor has little property and few financial obligations. However, the job of Attorney may be considerably more complicated if:

- the Donor owns a business;
- the Donor has a lot of investments and debts;
- the Donor has minor children; or
- the Power of Attorney is challenged by someone.

If any of these things are true, being an Attorney can be a big job requiring lots of time, energy, careful attention to detail and diplomacy. The amount of work involved will also depend on whether you are the sole Attorney or whether the Donor has named one or more Co-Attorneys to work with you.

## What are the duties of an Attorney under an Enduring Power of Attorney?

An Attorney under an Enduring Power of Attorney must always act to protect the best interests of the Donor. He or she is responsible for such things as:

- managing the Donor's financial **assets** and **liabilities** for what may turn out to be a lengthy period of time;
- using the Donor's assets first for the Donor's support and care. Then, if assets are available, for the support of any dependents of the Donor;
- paying the Donor's bills,
- preparing and submitting the Donor's tax returns;
- maintaining **trusts** for dependent children, if any;
- dealing with legal and accounting matters;
- consulting with the Donor, for so long as the Donor is mentally capable, with those who take care of the Donor, and with the Donor's family and friends;
- making gifts or loans to relatives, and gifts to charity based on the Donor's previous practice and intentions, if the Enduring Power of Attorney specifically gives this power;
- keeping records of all the transactions made on behalf of the Donor;
- if the Donor dies, to give the records to the Donor's **Personal Representative** as named in their **Will**; and
- if required, to apply to the **court** for advice and direction regarding any of these matters.

## Can I accept the job of being an Attorney if I am receiving a gift under the Donor's Will?

Yes. An Attorney can be a **beneficiary** under the Donor's Will. Also, if you are the Donor's spouse, **adult interdependent partner** or dependent child, you may use your authority for your own maintenance, education and benefit. However, you must not let your entitlement under the Will or Enduring Power of Attorney cloud your judgment as to the Donor's best interests while the Donor is still alive.

**For example**, if you are to receive a cash bequest under the Will, you cannot choose to set aside those funds simply to ensure that you will receive them once the Donor dies. You must always act in the Donor's best interests.

## Will I be paid for being an Attorney?

It is possible to be paid as an Attorney under an Enduring Power of Attorney, but it does not happen in all cases. Often an Attorney does not accept a fee if the Attorney is a spouse, adult interdependent partner, family member, or close friend of the Donor.

Sometimes, an Enduring Power of Attorney states an amount that is to be paid to the Attorney as a fee. If it does, the stated amount is the maximum the Attorney can receive. If the EPA does not list any fee, the Attorney may apply to the court for “fair and reasonable” payment. If there is more than one Attorney, the fee is split, but not necessarily equally. It depends on who does most of the work.

Any expenses the Attorney has while completing his or her duties are paid for out of the Donor’s resources. Typical expenses include photocopying, parking, postage and long distance phone calls.

## If I agree to be an Attorney, can I change my mind if circumstances change?

If the Donor still has capacity, you can change your mind at any time. Let the Donor know as soon as possible so that she or he can make a new or amended Enduring Power of Attorney.

You can also resign later, after the Donor has lost capacity. This is called “renouncing”. You must ask the court for permission to renounce. If there is a Co-Attorney, she or he can take over. If there is no Co-Attorney but the Enduring Power of Attorney names an **Alternate Attorney**, the court can appoint that person to take your place. If there is no Co-Attorney or Alternate Attorney named in the EPA, then the EPA will no longer be in effect. To manage the Donor’s finances, someone will have to apply to the court to become a **Trustee**. Different rules apply to this process and legal advice should be obtained.



**Any adult can be an Attorney. An Attorney does not have to be a lawyer. You can be an Attorney even if you are a beneficiary under the Donor’s Will.**

# What happens when...?

## Things to know about being an Attorney

### I have just agreed to be someone's Attorney. What information should I get right now?

Getting some information from the Donor when the EPA is created may make your job easier when it comes into effect. Some things you should know include:

- where the original Enduring Power of Attorney is kept and how to access it;
- where a **notarized copy** of the Enduring Power of Attorney is, so that you will have it when the time comes;
- specifics about property the Donor owns and any debts the Donor has;
- whether any property is owned jointly with others;
- whether beneficiaries are named for specific pieces of property;
- additional details about the Donor's financial and legal wishes, especially with respect to any wishes that you or the Donor feel might lead to disputes or disagreements;
- details about how the Donor's loss of mental capacity will be diagnosed;
- the names and contact details of any other Attorneys (appointed in an Enduring Power of Attorney), **Agents** (appointed in a Personal Directive) and Personal Representatives (appointed in a Will);
- whether anyone will be reviewing your decisions as Attorney (who you will need to keep informed);
- whether you will be paid a fee for your services as Attorney;



- the names and contact details of any other people who have a copy of the EPA;
- the names and contact details of any people that you are to notify when the EPA comes into effect; and
- whether the Donor has property outside of Alberta and whether or not the Enduring Power of Attorney will be accepted in that jurisdiction.

The Donor may not want to share all of this information with you in advance but they should be made aware that you will need it once your powers take effect. Be sure to ask the Donor to let you know of any updates or changes to his or her Enduring Power of Attorney, Personal Directive and Will and to give you updated copies of these documents.

## How does an Enduring Power of Attorney come into effect?

Donors can choose one of two ways for their Enduring Powers of Attorney to come into effect:

- it can take effect immediately when it is signed and continue if the Donor becomes mentally incapable of managing their financial affairs; or
- it can take effect only upon a specific future date or upon the occurrence of a specified event, which may include but is not limited to the mental incapacity or infirmity of the Donor.

If the Donor chooses that the EPA will come into effect when they lose mental capacity, a **Declaration of Incapacity** document will have to be signed when that occurs. This Declaration conclusively confirms that for legal purposes, the Donor no longer has mental capacity. These forms are available from hospitals, care facilities and doctors.

The EPA can (but does not have to) say who is to sign the Declaration of Incapacity. If it does, then whoever is named must sign the Declaration. The Attorney under the EPA can be the person named to make this decision. The written Declaration is regarded as conclusive that the specified contingency has occurred. If the EPA does not say who is to make the Declaration, then two medical practitioners must complete the form.

## As an Attorney, what property will I be dealing with?



**A Declaration of Incapacity confirms that for legal purposes the Donor no longer has mental capacity.**

Unless the Enduring Power of Attorney restricts the Attorney's powers, you will be able to do almost anything that the Donor could have done with his or her financial affairs and property, including investments, vehicles, bank accounts, pensions, business assets and insurance policies. You could even start or defend a lawsuit with respect to any of these assets.

If the Donor wishes the Attorney to have the power to sell or purchase real estate (houses, land, vacation property), the Donor must give that power explicitly in the EPA because of Alberta Land Titles registration policies.

The Donor can also limit the Attorney's powers to dealing with specific assets if he or she chooses.

**For example**, if the Enduring Power of Attorney says that you only have power over the Donor's stock portfolio, then your power is limited to that asset. In this scenario, you would not have the power to sell the Donor's home.

## Is an Enduring Power of Attorney valid if it was made in another province?

If the Donor made an Enduring Power of Attorney that was valid in another province, you may be able to act under that document. It would be best for you or the Donor to check with the court or with a lawyer in the other province.

## The Donor has property outside of Alberta. How would I deal with that property?

If a Donor has made a valid Enduring Power of Attorney in Alberta, that power may be valid in other provinces, but it is possible another province or country may have different laws and choose not to accept it. If the property is real estate, the EPA must specifically give you the power to sell it. You or the Donor should check with a lawyer in the place where the property is located.

## Can I get help from professionals for my duties as an Attorney?

Yes. Although many Attorneys do the work themselves, an Attorney can get help from friends and family members and also from a lawyer, accountant or other professional.

For your peace of mind, you may wish to obtain an assessment when you are selling or disposing of valuable assets such as real estate, collectables and antiques. Reasonable professional fees and costs of appraisals are paid for out of the Donor's resources. You should ask beforehand about the cost for the services provided. Even if you obtain such help, you remain legally responsible. The Attorney must make the decisions, watch over everything, and keep accurate records.

## I have heard that an Attorney's powers can be limited by law. What does this mean?

All Attorneys are governed by the provisions of the Alberta *Trustee Act*. This Act restricts some of the kinds of actions that an Attorney can take.

**For example**, when investing the funds of the Donor, an Attorney may only choose certain kinds of investments. For more information, please consult the *Trustee Act* or a lawyer.

## Are there things that an Attorney can never do?

Yes. By law, an Attorney cannot change the Donor's Will, make a new Will for the Donor, or give a new Power of Attorney on behalf of the Donor. Furthermore, an Attorney must always act in the best interests of the Donor and must never do anything to financially hurt the Donor.

## When does my responsibility as Attorney end?

Your responsibilities continue until one of the following occurs:

- the Donor dies;
- the Donor revokes the EPA while he or she still has capacity;
- the Donor recovers sufficiently to resume control of his or her own affairs;
- the Court of Queen's Bench of Alberta determines that the Enduring Power of Attorney ceases to have effect; or
- the Attorney dies or quits.



**It is possible that the Donor might limit the powers of the Attorney to specific assets.**

# The time has come: where do I begin?

## Checklist: 10 steps to take upon the incapacity of the donor

### 1. Locate the original Enduring Power of Attorney and read it as soon as possible.

Many people keep their original Enduring Power of Attorney in a safety deposit box. To look in the safety deposit box, phone the bank and make an appointment. Take the key, your copy of the EPA and your own identification. Tell the manager of the financial institution that you are the Attorney and are looking for the original EPA. If you can't find the key, the box can be drilled open for a charge. If the Enduring Power of Attorney is there and names you as Attorney, the bank should let you take the document. If they don't, you should seek legal advice.

Some people leave the Enduring Power of Attorney with their lawyer. Problems can arise if they have not kept in touch with the lawyer or **notary**, who may have died, moved or sold the business.

Once you have the original, you may wish to have numerous notarized copies made, as most financial institutions will want to see (and often keep) a notarized or **certified copy** for their records.

### 2. Be sure that there is a proper Declaration of Incapacity.

If the Donor has chosen that the EPA will come into effect when they lose mental capacity, a Declaration of Incapacity document will have to be signed when that occurs. This Declaration conclusively confirms that for legal purposes, the Donor no longer has mental capacity. These forms are available from hospitals, care facilities and doctors.

The EPA can (but does not have to) say who is to sign the Declaration of Incapacity. If it does, then whoever is named must sign the Declaration. The Attorney under the EPA can be the person named to make this decision. The written Declaration is regarded as conclusive that the specified contingency has occurred. If the EPA does not say who is to make the Declaration, then two medical practitioners must complete the form.

You will need the original Declaration of Incapacity. If you are involved with completing this document, ensure that all portions are clearly filled in, it is dated and signed by either the persons named in the EPA or by two qualified medical practitioners. Check to be sure that the document is consistent with any other provisions of the EPA.

### 3. Immediately inform everyone who needs to know.

When a Declaration of Incapacity is issued, inform all the people who need to be notified, in writing. The Enduring Power of Attorney may provide a list of people to inform or the Donor may have told you verbally. Keeping everyone informed helps develop confidence in your actions and may help avoid later complications.

### 4. Find out details about any Personal Directive the Donor may have made.

There are several reasons for doing this.

Assuming you are not the Agent under the Personal Directive, you may want to start talking immediately with this person about personal and health issues affecting the Donor.

**For example**, if the Donor needs to be placed in a care facility, the personal aspects of that decision will fall to the Agent, but since you are responsible for the finances, you will likely want input into the decision.

Even if immediate teamwork is not required, it will likely be required at some point. Start building a working relationship as soon as your responsibility begins.



**Once you have the original Enduring Power of Attorney you may wish to have numerous notarized copies made, as most financial institutions will want to see (and often keep) a notarized or certified copy for their records.**

## 5. Find out details about the Donor's Will.

There are two main reasons for doing this.

- If you are also the Personal Representative appointed under the Will, you will want to know if there are any potential conflict issues with respect to your roles and actions and address those immediately.
- Even if you are not the Personal Representative appointed under the Will, the Will (and/or associated documentation) may contain information that can help you in your decision-making while the Donor is still alive.

Examples:

- If there are family disputes, it is best to find out about them and start to address them as soon as possible.
- If, in his Will, a Donor left a family heirloom to his sister, you can attempt to ensure that the heirloom is not sold unless and until it is absolutely necessary for the care and best interests of the Donor. If you did not know the details of the Will, that heirloom might have been the first item you liquidated.

## 6. Start to make a list of the Donor's assets, payments, debts, and related issues.

Determine the Donor's assets and liabilities by going through the Donor's important documents and contacting financial institutions, insurance companies, brokers, employers and RRSP or RRIF trustees for information. Such a list is very effective for your own organization.

Specifically, make a list of:

- real property (the person's home, cottage, or other land holdings);
- personal property such as jewellery, furniture, vehicles;
- liquid assets such as cash, bank accounts, mutual funds, stocks and bonds etc. Be sure to include certificate numbers, registration and maturity dates;
- any assets owned in **joint tenancy** or **tenancy in common**;
- all **debts**, including monthly payments, financial responsibilities to dependants (such as spousal support or child support), including the dates by which they must be paid;
- any business assets and debts; and
- any other responsibilities (for example: if the Donor was an Attorney for someone else).

You should attempt to find out the value of the Donor's assets. For investments you can contact an investment advisor. For real estate, you can start with the Property

Assessment Notice issued by the municipality. You could also consult a real estate agent. For any hard to value assets, you may hire an appraiser.

Specific tasks under this heading can include:

- if the Donor was a victim of a workplace accident or a crime, looking into any financial compensation that may result (for example: Workers' Compensation, or victims of crime fund);
- ensuring all financial institutions and other interested parties know and have proof of your status as Attorney;
- contacting current or previous employers to determine any benefits or insurance proceeds that may be available (such as disability);
- reviewing tax returns from past years and filing any previous outstanding tax returns;
- acquiring all title documents for property, mortgages, share certificates, bonds, debentures and guaranteed investment certificates;
- obtaining evaluations of real estate, securities, automobiles, and any personal property;
- reviewing insurance to determine adequacy of coverage and make changes if deemed necessary; and
- making sure all legitimate debts are, or continue to be, paid.

## 7. Protect the assets.

As Attorney, you are responsible for protecting the Donor's assets for future use in his or her care and best interests.

**For example**, you may want to make sure objects are insured and safe. You may wish to place valuable papers, cash, or jewellery in a safety deposit box. If the person owned a business, you will need to arrange for its ongoing and proper management.

Common steps to protect the assets include:

- gaining access to, and listing the contents of, the Donor's safety deposit box(es);
- arranging for safe storage of valuable items;
- collecting any monies owed to the Donor;
- gaining access to the Donor's motor vehicle and ensuring it is stored in a safe place until you decide what to do with it;
- gaining access to the Donor's residence to take care of pets, make sure appliances are off, take in mail, mow the lawn, collect the newspapers and related tasks;

- if the Donor was in a rental unit, and if appropriate, making arrangements with the landlord for the removal of the Donor's property (or terminating the lease or arranging a sub-lease, depending on the circumstances);
- if appropriate, canceling the Donor's driver's licence, magazine and newspaper subscriptions, cable television, club memberships, telephone and requesting refunds;
- obtaining **Canadian Pension Plan**, or other pension plan, and/or disability payments, and when the time comes, obtaining **Old Age Security** and Registered Retirement Income Fund (RRIF) payments;
- ensuring there is enough insurance coverage;
- obtaining information on outstanding credit card balances and canceling cards (if appropriate);
- contacting Canada Post to reroute the Donor's mail; and
- send change of address forms to organizations the Donor deals with.

## 8. Deal with the assets.

Once you are ready, you must begin to deal with the assets. In some instances, you will want to retain and/or invest assets. In other instances, you may want to liquidate assets and use the proceeds for the care of the Donor. For real estate assets held in joint tenancy or tenancy in common, you will have to consult and/or negotiate with the co-owner. Remember that you must always act in the best interests of the Donor, and use the assets for the Donor's support and care. If you are uncertain with respect to any of these matters, you can always seek the advice of a lawyer or apply to the court for advice and direction.



**As Attorney, you are responsible for protecting the Donor's assets for future use in his or her care and best interests.**



## 9. Keep proper records.

One of your duties as Attorney is to keep complete and detailed financial records. There are numerous reasons for this.

- Under the terms of the Enduring Power of Attorney, you may have to provide a financial report to the Donor or to other interested parties on a regular basis.
- Even if the EPA does not require regular reporting to anyone, the Donor can ask for a financial report at any time, and, by law, you are required to provide it.
- If someone else has evidence suggesting mismanagement or theft or believes that you are mentally incapable of being an Attorney, they may ask the court to review your accounts and records. This process is called a “passing of accounts”. They may also report the matter to the Public Trustee. This Office investigates claims involving a mentally incapable person who is believed to be at serious financial risk.
- Regardless of the length or complexity of the task, keeping organized will help make your job easier. This in turn will amount to less stress on you.

Keeping complete and detailed accounts includes keeping lists of:

- the Donor's assets as of the date of the 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;
- the Donor's liabilities as of the date of the Attorney's first transaction;
- liabilities incurred and paid and the date and particulars of each transaction;
- expenses and payments taken by the Attorney and how they were calculated;
- any court orders relating to the Attorney's authority;

You should keep these records until:

- you cease to act for the Donor and you receive a release from someone authorized to give it,
- another person acquires authority to manage the Donor's property and you give the records to that person; or
- if the Donor dies, giving the records to the Donor's Personal Representative.

## 10. Keep people informed.

You may be dealing with the Donor's loved ones and caregivers for a short time or many years. Everyone will have their own ideas about the best interests of the Donor and what the Donor would or would not have wanted. Interpersonal problems may arise.

To help prevent conflicts:

- consider providing the closest loved ones with a copy of the Enduring Power of Attorney (unless it says otherwise).
- keep them informed of big decisions and the reasons for them. Often, giving a warning or an explanation can help lessen disagreement. Keeping all the affected loved ones informed also helps develop confidence in your actions.
- remain aware of any dispute between loved ones, as this may help you put a stop to issues before they arise.
- show respect and consideration for the opinions and thoughts of others. You are ultimately responsible and you must make the decisions that your duty requires. However, a positive attitude towards others can sometimes help with decisions that you know might be met with some resistance.



**Under the terms of the Enduring Power of Attorney, you may have to provide a financial report to the Donor or the other interested parties on a regular basis.**

# How can it go wrong?

## Some of the most common problems

### What if I can't find the original Enduring Power of Attorney?

If the original Enduring Power of Attorney is not at the Donor's home, it may be in a safety deposit box or at the office of the lawyer who drafted it. To look in the safety deposit box, phone the bank and make an appointment. Take the key, the Declaration of Incapacity and your own identification.

If you have checked the Donor's safety deposit box and lawyer's office and you still can't find the original EPA, check with the Donor's relatives and close friends. They may know where it can be found. If the lawyer who drafted the document is no longer in practice, you can contact the Law Society of Alberta, Information Management Services. It will search its records to see if it can help you find the missing original document.

Without at least a copy of the Enduring Power of Attorney, it is impossible to proceed. You must apply to the court for what is called "**trusteeship**". You become the trustee rather than the Attorney.

### I found an Enduring Power of Attorney that is handwritten, signed, and dated, but no one else witnessed it. Is it valid?

No. In Alberta, although an Enduring Power of Attorney can be handwritten, all legal requirements must be met. This includes the signature of at least one witness. The witness must see the Donor sign the document and the Donor must see the witness sign the document at the same time.

## What if I have disagreements with the other Co-Attorneys?

If the Co-Attorneys do not agree, it may cause problems.

**For example**, if one Co-Attorney wants to sell the house and the other disagrees, there will be no sale. If you have serious disagreements with other Co-Attorneys you may need to contact a lawyer. Disputes may have to be settled in court.

If there is more than one Attorney, you are legally responsible for what the other Attorney does.

**For example**, if the other Co-Attorney takes funds from the estate, you have to make up the loss. You can then sue the other Co-Attorney.

## What if the Donor's family members are fighting?

How you proceed within the direction of the Enduring Power of Attorney is up to you, but keeping the peace may help avoid even more problems later. Setting a plan, then sharing that strategy with all the affected loved ones at the same time, may build trust and provide a setting where they hear each other ask questions and get answers. Keeping all the affected loved ones informed also helps develop confidence in your actions.

If you are the Attorney and the Donor's loved ones disagree with your decisions on how to proceed, you may wish to obtain the advice of a lawyer. You may ultimately have to apply for directions from the Court of Queen's Bench.

## What if I do not exactly follow the directions in the Enduring Power of Attorney?

An Attorney must follow the directions of the Donor as expressed in the Enduring Power of Attorney as well as the provisions of the *Trustee Act*. If an Attorney fails to act reasonably, or acts in a way that is not at all consistent with the Power of Attorney or the *Trustee Act*, interested parties can take legal action to have the Attorney held accountable. An Attorney who acts in an irresponsible manner may be liable for his or her actions.

## What happens if the Donor's money runs out?

If it appears that funds may run out, get immediate advice from a lawyer so that you do not become personally liable for the debts. In addition, you may wish to contact government and social services agencies to find out whether there is funding for which you can apply. Take these steps well in advance of the money actually running out.

## What do I do if I think that I made a mistake?

Remember that no one is perfect. That said, you are legally responsible for the financial situation of another person and the situation should be treated with great care. Consider talking to your lawyer about the issue and, if necessary, ask the Court of Queen's Bench of Alberta for advice and direction.



**If you are the Attorney and the Donor's loved ones disagree with your decisions on how to proceed, you may wish to obtain the advice of a lawyer. You may ultimately have to apply for directions from the Court of Queen's Bench.**

# What Do the Words Mean?

## Glossary

### **Adult Interdependent Partner**

A person with whom you are in an adult interdependent relationship.

### **Adult Interdependent Relationship**

A term unique to Alberta and governed by the *Alberta Adult Interdependent Relationships Act*. A “relationship of interdependence” is 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.

There are two possible ways for such a relationship to exist, through a formal agreement, or if two people have lived together in a relationship of interdependence for at least three years or where there is a child of the interdependent relationship by birth or adoption.

### **Agent(s)**

A person appointed to act on behalf of another person under a Personal Directive.

### **Alternate Attorney**

Someone who is named in an EPA to act if someone else named can’t act.

### **Assets**

What a person owns. Fixed assets are tangible things such as houses, vehicles, furniture or jewellery. Liquid Assets are either cash or things that can easily be converted to cash such as Guaranteed Investment Certificates, RRSPs, pension plans, mutual funds, stocks and bonds.

**Attorney**

A person who is empowered to act on behalf of the Donor under a Power of Attorney.

**Beneficiary**

A person or organization that you leave something to in your Will.

**Canada Pension Plan**

A form of retirement income that is available to all Canadians who have worked and paid into the system through deductions from their pay cheques.

**Certified Copy**

A copy of a document that a Commissioner of Oaths has certified as an exact copy of another document.

**Co-attorney(s)**

An Attorney who has powers at the same time as another Attorney. The powers may be over the same parts of the estate or over different parts of the estate. Also called a joint attorney.

**Court**

References to the court mean the Court of Queen's Bench of Alberta.

**Debt(s)**

What a person owes. These can also be called "liabilities" and may include credit card balances, loans, and mortgages.

**Declaration of Incapacity**

A written document that confirms that a specified contingency stated in the Enduring Power of Attorney, including but not limited to the Donor's mental incapacity or infirmity has occurred, bringing the Enduring Power of Attorney into effect.

**Donor**

A person who gives a Power of Attorney or an Enduring Power of Attorney.

**Enduring Power of Attorney**

A document that allows the person you name to act for you with regard to your financial affairs. It can either:

- take effect immediately upon signing and continue if you become mentally incapable of managing your financial affairs; or
- take effect only upon a specific future date or upon the occurrence of a specified event, which may include but is not limited to mental incapacity or infirmity.

**Joint Tenancy**

A type of ownership where any two or more persons (related or not) may equally own property and the property passes to the survivor or survivors on the death of one (without flowing through the estate of the deceased).

**Liabilities**

All of the legal obligations a person has, including debts.

**Mental Capacity**

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.

**Notary (or Notary Public)**

In Alberta, a person given the powers set out for Notaries in the *Notaries and Commissioners Act*, which includes the power to certify that a document is an exact copy of another document.

**Notarized Copy**

A copy of a document that a notary has certified as an exact copy of another document.

**Old Age Security**

A monthly payment available to Canadians aged 65 and older who apply and meet certain requirements. Unlike CPP, it is not dependent on a person's employment history and a person does not need to be retired in order to qualify.

**Personal Directive**

A document created under the provisions of the *Alberta Personal Directives Act*, the purpose of which is to allow another person, called an Agent, to make personal decisions (including healthcare decisions) on behalf of the person signing the Personal Directive (who is called the Maker).

**Personal Representative**

The person named in a Will who is responsible for managing the estate and for carrying out the instructions in the Will. (Previously known as an Executor/Executrix)

**Tenancy in Common**

A type of ownership where any two or more persons (related or not) may own property, but, unlike joint tenancy, the shares need not be equal, and there is no right of survivorship (on the death of an owner, the share does not flow to the other tenant in common, but rather, flows through the estate of the deceased tenant).

**Trust(s)**

A trust is a way of holding property. One person (or company), called the trustee, holds and uses property for the benefit of another person, called the beneficiary.

**Trustee**

A person or company named to manage a trust. Trustees have strict legal duties they must follow called fiduciary duties.

**Will (or last Will and Testament)**

A properly signed, dated and witnessed legal statement of a person's last wishes as to the disposition of his or her property after death.



# Where can I get more help?

## Queen's Printer Bookstore

For print copies of Acts or Regulations call  
780-427-4952 in Edmonton  
403-297-6251 in Calgary

Toll-free in Alberta, dial 310-0000 followed by the 10-digit phone number of the office you wish to contact.

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

Electronic copies of Acts and Regulations can be found by searching the alphabetical list at:

[http://www.qp.alberta.ca/Laws\\_Online.cfm](http://www.qp.alberta.ca/Laws_Online.cfm)

- *Powers of Attorney Act*
- *Trustee Act*
- *Adult Guardianship and Trustee Act (AGTA)*

## Alberta Human Services

Enduring Powers of Attorney Public information webpage

<http://humanservices.alberta.ca/guardianshiptrusteeship/opt-represented-adults-enduring-powersof-attorney.html>

Guardianship and Trusteeship

<http://humanservices.alberta.ca/guardianshiptrusteeship.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

Programs and services for seniors [www.health.alberta.ca/seniors.html](http://www.health.alberta.ca/seniors.html)

## Canadian Legal FAQs

[www.law.faqs.org/albertafaqs/](http://www.law.faqs.org/albertafaqs/)

- Legal Services
- *Wills and Estates in Alberta*

## Kerby Centre

1133 - 7 Avenue S.W.  
Calgary, Alberta, T2P 1B2

Phone: 403.265.0661 Fax: 403.705.3211

E-mail: [generaloffice@kerbycentre.com](mailto:generaloffice@kerbycentre.com)

Website: <http://kerbycentre.com>

## 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

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

## Older Adult Knowledge Network

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

## Resolution and Court Administration Services (RCAS)

Counsellors can help you find the right court forms and assist with filling them out and filing them. They can also refer you to other helpful community resources.

Toll free access in Alberta call: 310.0000 or 1.855.738.4747

[www.rcas.alberta.ca](http://www.rcas.alberta.ca)

## Student Legal Services (Edmonton)

An association of volunteer law students providing year-round free legal services to individuals who are unable to afford a lawyer. Call in advance.

11011 - 88 Avenue NW  
Edmonton, AB T6G 0Z3

Call: 780.492.8244

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

## Student Legal Assistance (Calgary)

An association of volunteer law students providing year-round free legal services to individuals who are unable to afford legal services.

3390 Murray Fraser Hall  
University of Calgary  
Calgary, AB T2N 1N4

Phone: 403.220.6637

[www.slacalgary.com](http://www.slacalgary.com)

## Seniors Association of Greater Edmonton (SAGE)

100 - 102A Avenue NW  
15 Sir Winston Churchill Square  
Edmonton, AB T5J 2E5

Phone: 780.423.5510 Fax: 780.426.5175

E-mail: [info@MySage.ca](mailto:info@MySage.ca)

Website: [www.MySage.ca](http://www.MySage.ca)

# Being an Attorney under an Enduring Power of Attorney

This booklet is one of many publications produced by the Centre for Public Legal Education Alberta. All publications can be viewed and downloaded for free by visiting [www.cplea.ca/publications](http://www.cplea.ca/publications) or [www.cplea.ca/store](http://www.cplea.ca/store)

Other publications related to this topic that may interest you include:

- Making a Will
- Making a Personal Directive
- Making an Enduring Power of Attorney
- Being a Personal Representative
- Being an Agent
- General Powers of Attorney
- Planning Your Own Funeral
- *Adult Guardianship and Trustee Act*

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Canada

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You should **NOT** rely on this booklet for legal advice. It provides general information on **Alberta law only**. December 2016.