



General Powers of Attorney

This booklet was developed for Albertans who want to know more about the content and uses of General Powers of Attorney. It provides general legal information on Alberta law only. It does not provide legal advice. If you need more detailed information, consider a self-help publication or asking for a lawyer's advice.

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

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A General Power of Attorney is a document that can be used to arrange for another person to manage your financial affairs and your assets for you for various reasons such as extended travel or temporary illness or infirmity.

This resource is designed for people who are considering whether they should make a General Power of Attorney. It explains the difference between General Powers of Attorney and Enduring Powers of Attorney, what is involved in making a General Power of Attorney and how it can be of benefit to you.

In this booklet the terms "General Power of Attorney" and "Power of Attorney" are used interchangeably and mean the same thing.

Definitions

What is a General Power of Attorney?

A General Power of Attorney, which is often called just a Power of Attorney, is a legal document that you (the "**Donor**") make to give another person (or more than one person), called your "**Attorney**" the ability to handle all or some of your financial affairs and property for you. It can stipulate a start and an end date, can continue indefinitely, until you lose **mental capacity**, or die.

What is the difference between a General Power of Attorney and an Enduring Power of Attorney?

A General Power of Attorney continues to be valid only while you have mental capacity. If you lose the mental capacity to make financial decisions for yourself, then a General Power of Attorney is no longer valid and your Attorney will no longer be able to act on your behalf.

An Enduring Power of Attorney contains a statement that specifically says that it is to continue to be in effect even after you lose mental capacity. Enduring Powers of Attorney can also be worded so that they only come into effect when you become mentally incapable or **infirm**.



The Alberta Powers of Attorney Act uses the word "attorney" but the person you choose does not have to be a lawyer.

What is meant by “mental capacity”?

Mental capacity means that you are able to understand and appreciate the financial and legal decisions that you make and the likely results and consequences of making these decisions.

What is meant by financial assets and financial affairs?

Your financial assets are the things you own. They include real estate like houses, land, vacation property or condominiums (legally called “real property”) other physical assets such as jewelry, vehicles, art and furniture or anything else of value that has a physical form (legally called “personal property”), and non-physical assets such as bank accounts, cash, mutual funds, stocks, bonds, pension benefits and other investments.

Your financial affairs include matters such as paying bills, renewing or changing your investments and arranging for your tax returns to be prepared and filed.



A General Power of Attorney becomes invalid if you lose mental capacity.

Choosing to make a General Power of Attorney

Why would I choose to make only a General Power of Attorney instead of an Enduring Power of Attorney?

A General Power of Attorney is best used in a situation where you temporarily need assistance with your financial affairs. A General Power of Attorney becomes invalid as soon as you become mentally incompetent.

An Enduring Power of Attorney is used to manage your affairs for the long term. You may never lose your mental capacity, an Enduring Power of Attorney helps plan for the chance you do. A properly prepared Enduring Power of Attorney continues to be valid after you lose mental competency.

In what circumstances should I make a General Power of Attorney?

A General Power of Attorney can be a very useful tool for managing your affairs while you temporarily need help. For instance, you can draft it to say that your Attorney will be responsible for paying your bills from your chequing account while you are on a six-month winter vacation in Costa Rica. Or, knowing that you are facing a serious operation with a lengthy healing time, you can arrange for your Attorney to manage all of your financial affairs until you are well again.



You should consider making an Enduring Power of Attorney if you are looking at managing your affairs for the long term.

Your General Power of Attorney can start and end on dates you choose to cover these situations. It can be as limited or comprehensive in scope as you choose to make it in terms of the powers that you give to your Attorney. In this way, a General Power of Attorney can provide you with convenience and peace of mind.

Can I still make financial decisions for myself if I have a General Power of Attorney?

Yes, as long as you have mental capacity, you can still make decisions about your finances. You can:

- Make financial decisions by yourself, so that your Attorney merely carries them out for you on your instructions;
- Consult and decide things together with your Attorney; or
- Have your Attorney take over all responsibility for your financial affairs. It is up to you.

For example: Your adult daughter who lives in the same city as you do, can go to the bank for you to make deposits, make changes to your investments and pay your taxes, as you direct her. You would have control of your finances together with your daughter. Or, you could arrange for your daughter to make all financial decisions for you for a limited period of time or until you lose mental capacity.

Who should I choose as my Attorney?

Most people choose someone they know well and trust. It may be a spouse, child, other family member or trusted friend. The person or persons must be an adult according to the law in your province.

In Alberta, a person is an adult at age 18. Your Attorney must have full mental capacity and understand the responsibilities of this role. Although the *Alberta Powers of Attorney Act* uses the word “attorney”, the person you choose does not have to be a lawyer. Your Attorney under a General Power of Attorney does not even have to be a person. You can appoint a financial institution as your Attorney.

What should I consider when choosing someone to be my Attorney?

You should consider the following factors:

- **Experience:** Does this person have a good understanding of financial and property matters? Do they handle their own finances well?
- **Trustworthiness:** Has this person always been open and honest with you? Have you known the person long enough or well enough to be sure of their character? Do you believe that this person will always act in your best interests?
- **Availability:** Does this person have the time to take on the tasks involved for you as well as handle their own affairs? Have you asked this person if they would be willing to undertake this responsibility for you? Do they live near enough to you so that they can be readily available and easy to contact?
- **Reliability:** Do you have confidence that you can rely on this person to do a competent job and see it through to its completion?

Should I expect to pay the person I name as my Attorney?

You do not have to pay your Attorney. However, it would be a good idea to have a conversation with your Attorney to reach an agreement about payment. If you choose your spouse or close family member or friend, it is unlikely that they would expect to be paid.

If you choose a trust company, or a legal or financial professional, you will likely have to pay for their services. You should ask questions and be sure you understand what their fees will be. You should include this information in your Power of Attorney.



If you would like your Attorney to be able to sell or deal with any real estate that you own, you must specifically say so in your General Power of Attorney.

POWERS UNDER A GENERAL POWER OF ATTORNEY

What powers will my Attorney have under my General Power of Attorney?

The powers that your Attorney will have under your General Power of Attorney depend entirely on you. You can make the powers in it as broad or as restricted as you choose.

For example: You might state that you only wish your Attorney to watch over a rental property you own, make sure that the municipal taxes are paid and deposit the rent cheques. You can stipulate a start and end date during which your Attorney will look after your rental property, so that when you return from an extended vacation, you resume control. Or, you could grant your Attorney full power to deal with all your financial matters, pay all your bills and arrange for your tax returns to be completed and filed for an indefinite period of time.

If you would like your Attorney to be able to sell or deal with any real estate that you own, you must specifically say so in your General Power of Attorney. Your Attorney will need to file your General Power of Attorney with the Registrar of Alberta Land Titles in order to carry out your instructions.

What legal responsibilities does my Attorney have?

If you live in Alberta and make your Power of Attorney here, your Attorney must follow a law called the *Powers of Attorney Act*. Every province has similar legislation. Your Attorney must keep proper accounts, be prepared to report to you on all of his or her activities, and must always act in your best interests. He or she must treat all information concerning your financial affairs in confidence.

Are there some things that an Attorney cannot do?

An Attorney cannot make a Will for you, change your existing Will, appoint someone else to be Attorney for you instead of themselves, change a beneficiary on a life insurance policy or make a **Personal Directive** for you.

Can my Attorney make decisions about my health care and medical issues for me under a General Power of Attorney?

No, an Attorney cannot make these decisions. If you are worried about these sorts of issues in your life, you should make a document that, in Alberta, is called a Personal Directive.

All provinces have these documents although they may be called different names. The person you name as your Attorney under a General Power of Attorney or under an Enduring Power of Attorney can also serve as your decision-maker under your Personal Directive. You would want to consider the same qualities for the person you name in your Personal Directive as you would in choosing your Attorney.



The powers that your Attorney will have under your General Power of Attorney depend entirely on you. You can make the powers in it as broad or as restricted as you choose.

Making a General Power of Attorney

How do I make a General Power of Attorney?

There are a number of ways you can get started. You can:

- Pick up a package at a registry office or a stationery store that will include forms and instructions for filling in the document. Be sure that the package is for use in Alberta;
- Have your lawyer prepare a General Power of Attorney for you;
- Visit your bank and arrange with them to make a General Power of Attorney. However, a General Power of Attorney prepared by your bank will only be valid for assets that are held at that bank, such as bank accounts and investment certificates.
- Download a Power of Attorney form from various online legal document businesses. Be sure that the form that you download is for use in Alberta.



If you move to a different province or country, get legal advice to be sure that your General Power of Attorney is valid in the new jurisdiction where you live.

What things should I consider before making a General Power of Attorney?

Here are some things to think about when making your Power of Attorney:

- What kind of Power of Attorney do you need? Will a General Power of Attorney best suit your needs or should you be thinking about an Enduring Power of Attorney?
- Consider whether you might be able to achieve the same result in handling your financial affairs by creating a joint banking account with a close relative or friend;
- Decide when you want your General Power of Attorney to start;
- Decide when you want your General Power of Attorney to end, how you can change or cancel it and what would happen if you or your Attorney should pass away or become mentally incompetent;

- Think about the trustworthiness and reliability of your proposed Attorney and ask him or her if they are willing to undertake this responsibility for you;
- Decide if you want to have one person act as your Attorney or if you would like to appoint Co-Attorneys. You can stipulate if one can act alone or if they must both decide together. If they must both decide together, be sure that they can work together co-operatively and with your best interests at heart. You can also put in a dispute resolution mechanism if they disagree;
- Consider naming an alternate Attorney who can step in if for some reason your Attorney cannot continue to act for you;
- Decide if you want to give your Attorney limited or wide ranging power over your financial assets, and whether it will be for a specific or general purpose;
- Decide what sort of accounting you would like to receive from your Attorney, including whether you want to see regular statements and updates;
- If you are using a Power of Attorney form from a kit or stationery store, make sure that you read it and the instructions over very carefully and that you understand them. It is very important that you meet all the legal requirements for completing and witnessing the form or you run the risk that it may not be valid; and
- Consider having a lawyer look over your completed Power of Attorney to be absolutely sure that everything is in order.

Are there certain requirements that must be met when making a General Power of Attorney?

Yes. A General Power of Attorney can be entirely handwritten or filled in by the maker (you), but it must be signed and dated and it must be witnessed by at least one witness.

The person who makes the General Power of Attorney and the witness must see each other sign the document, so they must be in the same room at the same time and witness each other's signature.

The Attorney appointed under a General Power of Attorney cannot be a witness to the document that appoints them as Attorney.

Once I have made a General Power of Attorney, can I change it?

You can change or revoke your General Power of Attorney, change the person you name as your Attorney or add another person as a Co-attorney at any time. If you do, be sure to let your Attorney know. Remember too, that if you lose mental capacity, your General Power of Attorney becomes void.



Consider naming an alternate Attorney who can step in if for some reason your Attorney cannot continue to act for you.

What do I need to do once I have made my General Power of Attorney?

After you have made a General Power of Attorney, you should:

- Review it from time to time to make sure that it still reflects your circumstances and your wishes about the handling of your financial affairs;
- Continue to review your own financial records on a regular basis as long as you are able and you want to do so;
- Talk to your Attorney regularly to make sure he or she is up to date about your financial affairs;
- Ask your Attorney for regular financial updates and reporting;
- Consider getting legal advice about your situation or terminating your General Power of Attorney if you have any doubts or concerns about the way your Attorney is handling your affairs that you cannot resolve through discussion and accounting, and
- If you move to a different province or country, get legal advice to be sure that your General Power of Attorney is valid in the new jurisdiction where you live.

FINANCIAL INSTITUTIONS AND GENERAL POWERS OF ATTORNEY

My advisor at my bank is suggesting that I sign a Power of Attorney on the bank's form. Should I do that?

Banks, credit unions and trust companies usually have their own Power of Attorney forms that they like their customers to use for assets on deposit with them.

If you already have your own General Power of Attorney that gives your Attorney authority over all your financial assets, it is probably not necessary for you to sign the bank form. The bank form is only valid for assets held at that bank. Before you sign the bank's form, it might be a good idea to review it with your lawyer or another trusted advisor. Be aware, too, that if you sign the bank's form, it might invalidate the General Power of Attorney you have already signed, if the two conflict in some way.



Be aware, if the two conflict in some way, the bank's Power of Attorney form might invalidate the General Power of Attorney you have already made.

My financial advisor at my credit union is telling me that they will not accept my General Power of Attorney and that I must sign its form. Is this correct?

As long as your General Power of Attorney meets all the legal requirements under the *Alberta Powers of Attorney Act*, it is a valid legal document and should be accepted by your financial institution. Consider asking to speak to a supervisor about the advice you are receiving.

JOINT BANK ACCOUNTS

My advisor at my bank is suggesting that I might want to set up a joint bank account with my son instead of making a General Power of Attorney. How does a joint account work?

In some cases, it might be that a joint bank account is all that you need. A joint bank account is one in which two or more people have ownership rights over the account, so that they may all deposit and withdraw funds and deal with the money in the account no matter who deposits the money. As a joint account holder, you share equal access to and responsibility for all the transactions that go through the account, unless you state otherwise in your banking agreement.

Is a joint account a good idea?

A joint account can be very useful. The bank can set it up for you without you having to obtain legal advice or create a General Power of Attorney. It could be very convenient if you will be away for an extended time or if you expect that your health and mobility issues will be long-term. However, be aware that a joint account will only allow your Attorney to deal with funds in the account. A Power of Attorney can cover a much wider range of financial assets, including real estate.

Except for the province of Quebec, joint accounts include the right of survivorship. This means that if one of the account holders dies, the other account holder becomes the owner, and has full rights to deal with the funds in it. The money in a joint bank account is not included in the probate of the deceased holder's estate. Your estate will pay less in probate fees and the money will be readily available to your joint account holder to pay funeral expenses and wind up your affairs.



Joint account holders share equal access to and responsibility for all the transactions that go through the account unless stated otherwise in the banking agreement.

Are there drawbacks to using a joint bank account instead of a General Power of Attorney?

Yes, there can be some drawbacks. You must realize that all of the funds that you deposit in the joint bank account can be withdrawn and dealt with by the other joint account holder, unless your banking agreement sets limits.

It can be very difficult to challenge these decisions after they are made and to recover any money that may be misappropriated. You may have to go to court to challenge the actions of your joint account holder and this could be difficult, prolonged, and expensive. Therefore, you must have absolute trust in the person with whom you share the account.

Sometimes, the existence of a joint bank account can cause disputes within a family. You cannot leave the money in a joint bank account to someone in your Will.

For example: If you create a joint bank account with your nephew because he lives in your city and your children do not, your nephew can claim after your death that the money is his by right of survivorship and that you meant for him to have it. The money would not be available to your children unless they decide to challenge your nephew's claim in court.

Also, if one of the joint account holders has financial problems or declares bankruptcy, it is possible that his or her creditors could make a claim on your joint account.



You cannot leave the money in a joint bank account to someone in your Will.

Where can I get more help?

Glossary

Attorney

A person empowered to act on behalf of the donor under a power of Attorney. The person does not have to be a lawyer.

Donor

A person who gives a Power of Attorney.

Infirm

The word 'infirm' is used in the *Powers of Attorney Act* but is not defined. In common language it means not physically or mentally strong, especially because of age or illness.

Mental Capacity

Mental capacity means that you are able to understand and appreciate the financial and legal decisions that you make and the likely results and consequences of making these decisions.

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).

Where can I get more help?

Resources

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

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

http://www.qp.alberta.ca/Laws_Online.cfm

Powers of Attorney Act

Trustees Act

Adult Interdependent Relationships Act

Adult Guardianship and Trustee Act (AGTA)

Alberta Health

Programs and services for seniors

www.health.alberta.ca/seniors.html

Protection for persons in care

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

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>

Canadian Legal FAQs

www.law.faqs.org/albertafaqs

Legal Services

Wills and Estates in Alberta

Dial-A-Law

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

Toll-free in Alberta 1.800.332.1091

Kerby Centre

1133 - 7 Avenue S.W.

Calgary, Alberta, T2P 1B2

Phone: 403.265.0661 Fax: 403.705.3211

E-mail: 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 talk to about your legal problem. 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

Older Adult Knowledge Network

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

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 Website: www.MySage.ca

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

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.sledmonton.com

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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 or www.cplea.ca/store

Other publications in the series that may interest you include:

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

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