

## Enduring Power of Attorney

### AMENDMENTS

Amendments to British Columbia's Power of Attorney Act, affecting Enduring Powers of Attorney, come into effect on September 1, 2011. The amendments are covered in Sections 10 to 42 of the Power of Attorney Act. The original reference to Enduring Power of Attorney was covered in Section 8, which will be repealed.

This fact sheet highlights some of the key changes and how they may or may not affect an Enduring Power of Attorney made before September 1, 2011.

If you are making an Enduring Power of Attorney for the first time or are making a new one, please see the Nidus fact sheet on [Enduring Power of Attorney](#), which is based on the new legislation.

#### Do I have to make a new Enduring Power of Attorney because of the amendments?

No. An Enduring Power of Attorney (EPA) made before September 1, 2011 remains in effect. However, some of the changes will affect your EPA. For example, there are new duties for those you appointed as your attorney(s). Other changes clarify procedures, such as how to revoke (cancel) your EPA. Some amendments only affect new EPAs and make clear they do not affect existing ones, such as the restriction on who you can appoint.

#### How do I know if I have an Enduring Power of Attorney?

If you made an EPA before September 1, 2011, you may not find the word 'enduring' in the title or in the body of the document. Instead, you will find a sentence which is referred to as the 'enduring clause'. This clause means that the power you give in your Power of Attorney will 'endure' if you become incapable. Check your document for the following or similar sentence, which 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.*

Please note that an EPA, made before, on or after September 1, 2011 only covers financial and legal affairs. An EPA cannot appoint someone to make health care or personal care decisions. Even if your EPA includes wording about this, it does not apply. A Representation Agreement is the only legal document to authorize someone to make health care and personal care decisions on your behalf. Read the Nidus fact sheet on [Representation Agreements](#).

## Changes and an Enduring Power of Attorney made before September 1, 2011

### Restrictions on who can be appointed in an Enduring Power of Attorney

The amendments restrict who can be appointed as an attorney or alternate attorney in an EPA made on or after September 1, 2011. You will not be able to appoint someone who is compensated to provide health care or personal care services to you (for example, a paid caregiver), unless the attorney or alternate is your spouse, parent or child.

You also cannot appoint someone who is an employee of a facility where you live, if the facility provides health or personal care services to you. Your spouse, parent or child is exempt from this restriction. The amendments say these new restrictions do not apply to a valid EPA made before September 1, 2011. For example:

*Kama made an Enduring Power of Attorney in October 2010. Her friend Sunni is appointed as the attorney. Kama has been paying Sunni on a monthly basis since March 2009 to buy groceries, help with meals and house cleaning. Kama does not want to move but her health problems make it difficult to do personal activities. She does not qualify for home support services. The law says it is okay for Sunni to be named in Kama's Enduring Power of Attorney because it was made before September 1, 2011.*

Please note that the Community Care and Assisted Living Act restricts an owner, operator, employee, contractor or volunteer of a licensed facility (including extended care facility and community living agency) from acting as an attorney for a person in care. The exceptions are if the attorney is your spouse, parent or child.

### Remuneration for an attorney

Your attorney is entitled to reasonable out-of-pocket expenses. This has not changed. What has changed are the requirements about the wording you must include in an EPA if you want to pay your attorney a fee. The new requirements do not apply to an EPA made before September 1, 2011. This means your attorney may receive a fee if you specifically authorized this in the EPA document or in an accompanying document you made and signed before September 1, 2011.

## Duties of an attorney

The amendments spell out the duties of attorneys – what they can and cannot do. For example, there are duties regarding how an attorney must make decisions on your behalf. They must keep specific records for the time period they act for you. The amendments also spell out the attorney's right to access information.

These duties apply to all EPAs as of September 1, 2011, no matter when the EPA was/is made.

Please see the Nidus fact sheet on [Role of an Attorney](#).

## Attorney's signature on an EPA

The amendments state that an attorney who is appointed in an EPA made on or after September 1, 2011 must sign the EPA document in front of witness(es) before they can use it. This was not required for EPAs made before September 1st. However, third parties such as financial institutions may adopt it as a policy for all EPAs.

The new requirement for each attorney to sign the EPA before they can act is different from the long-standing practice of each attorney signing a declaration form witnessed by a lawyer or notary public before using the EPA at the Land Title Office. You may encounter different opinions. The best thing is for your attorney to contact the Land Title Office when they find it necessary to use the EPA to deal with your real estate.

## Procedures for Resignation

The amendments also spell out the requirements for an attorney to resign. These procedures apply to an EPA made before September 1st as well as those made on or after that date.

Please see the Nidus fact sheet on [Resigning as an Attorney](#).

## Procedures for Revocation

The amendments spell out the legal requirements for how you can revoke your EPA. These procedures apply to an EPA made before September 1st as well as those made on or after that date.

Please see the Nidus fact sheet on [Revoking an Enduring Power of Attorney](#).

## Circumstances when an EPA automatically ends

The amendments say that an EPA automatically ends if your attorney becomes bankrupt or is convicted of an offence of which you, the adult, was the victim. The authority of your attorney ends if he or she is your spouse and your legal marriage or marriage-like relationship breaks down.

See the Nidus fact sheet on the [Lifespan of an Enduring Power of Attorney](#).

## Note

As previously mentioned, an EPA can only cover financial and legal affairs. A Representation Agreement is the corresponding legal document to cover health care and personal care matters. If you have an existing Representation Agreement, see the fact sheet on [Amendments to a Representation Agreement made before September 1, 2011](#).

## Nidus Personal Planning Registry

Is your existing Enduring Power of Attorney registered with the **Personal Planning Registry**? Find out how you can register information about your EPA so it is available when needed. You can also store a copy (image) of your EPA in the Registry. Read more at [www.nidus.ca/registry](http://www.nidus.ca/registry).