

## Lifespan of an Enduring Power of Attorney

This fact sheet is based on Part 2 of the Power of Attorney Act of British Columbia as amended September 1, 2011. If you made an Enduring Power of Attorney (EPA) before that date, see the Nidus fact sheet about amendments affecting **EPAs made before September 1, 2011**.

### When Does an Enduring Power of Attorney Come Into Effect?

When you make your EPA, you need to state if it will be in effect both while you are capable and while incapable, or only while incapable. If you want your attorney to act for your financial affairs if you are physically incapable (for example, when you are on vacation or if you are bedridden) as well as if you become mentally incapable, your document must say it will be in effect for both.

#### A word about capability/incapability

We often think of mental incapability as 'all or nothing' but it is much more 'gray' than black and white. People with dementia will report having good days and bad days. They sometimes feel they are in a fog and other times things are perfectly clear. This means an attorney may need to step forward and act at certain times and step into the background when they are not needed.

Other illnesses and injuries may require an attorney to provide temporary or periodic help. This means attorneys will need flexibility for when they can act.

If you say that the EPA comes into effect only when you are mentally incapable, it may cause delay. Your affairs may be on hold until someone evaluates the conditions spelled out in your EPA for determining whether you are incapable and decides if your attorney can act. If the reason for not giving your attorney authority to act while you are capable is because you do not trust them to act only when needed, do not appoint them.

#### EPA comes into effect immediately

Most EPAs come into effect immediately upon 'execution' while you (the adult) are still considered capable. You may continue managing your own affairs even if the EPA is in effect. For example:

*Elsie made an Enduring Power of Attorney and a Representation Agreement for health and personal care before her elective surgery.*

*She knew there would be a meeting of her Strata Council while she was in hospital and she wanted her son to participate on her behalf and deal with any issues. She also wanted to be prepared in case anything happened. As it turned out she got an infection after her surgery and had to stay in hospital longer. Her son reported to her on the Strata meeting and other matters she asked him to handle. After she returned home, the EPA went back in the drawer and Elsie continued to manage her own affairs.*

An EPA made on or after September 1, 2011 is 'executed' when you (the adult) have signed and dated your EPA and your signature is witnessed. Your attorney must also sign the EPA and have their signature witnessed before they can act.

The Power of Attorney Act says you can name someone under 19 in your EPA, but this person cannot begin to act as your attorney until they are an adult (19 years or older).

#### EPA comes into effect later, when a trigger event has occurred

The Power of Attorney Act says you can state in your EPA that it will come into effect only when you are incapable. You must describe how your incapability will be determined and who will confirm this. This is referred to as a 'trigger event' or a 'springing clause.'

Coming up with wording for an effective trigger event is challenging, and requires careful consideration. For example,

*Geraldine has been diagnosed with dementia and is planning to make an Enduring Power of Attorney to plan for the future. Geraldine thought she would say the EPA comes into effect when her doctor determines she is incapable. However, she is re-thinking this after she met Sandi, the daughter of a former support group member whose dementia was more advanced. Sandi said she was having a lot of problems helping her father with his finances because the doctor said her father was still capable. Without the EPA, Sandi could not help pay his bills or set up direct bill payment. It was frustrating, not just for her, but also for her father. He became very upset when he realized he was being charged for late payments as he always took pride in not paying interest.*

If you have a recurring/episodic mental illness such as a mood disorder, you might use the symptoms of your mental illness as the trigger event for aspects of your EPA. You should also make a Ulysses-type Representation Agreement to address health care and personal care issues.

## When does an attorney's authority end?

### If the attorney is unwilling or unable to act

An attorney's authority ends if, for example, the attorney becomes incapable or dies. An attorney can also resign. For more information on resignation, see the Nidus fact sheet on [Resigning as an Attorney](#).

Any remaining attorneys you appoint may continue to act even after one of your attorney's authority has ended, unless you include wording in your EPA to disallow this.

### If your spouse is an attorney and your relationship ends

Unless you include special wording in your EPA, your spouse's authority as an attorney ends when your relationship breaks down. The Power of Attorney Act defines "spouses" as a couple who are legally married or living in a marriage-like relationship. This includes common-law and same sex spouses. There is no requirement on how long you must have been together.

### If the attorney goes bankrupt or is convicted

An attorney's authority automatically ends if your attorney applies for bankruptcy, or is convicted of an offence in which you are the victim.

## When does the EPA document end?

### When you specify

You can state in your EPA that under certain conditions, some or all of your attorney's powers are suspended (on hold) or will end.

### If your attorney acts while they are working at a licensed facility and you are in care

The Community Care and Assisted Living Act states that your EPA ends if you are receiving care through a licensed facility or agency and an owner, operator, employee, contractor or volunteer of a licensed facility or agency *acts* as your attorney. The law makes an exception if your attorney is your spouse, parent, or child.

### If all attorneys and alternates cannot act

The EPA ends if no one is able or willing to act. You may be able to make a new EPA or a [Representation Agreement with Section 7](#) standard powers to cover routine financial and legal affairs. If none of these are available, adult guardianship is the last resort. See the next headings.

### If the Public Guardian and Trustee takes over your financial affairs

If a designated health care provider signs a Certificate of Incapability to Manage Finances and sends it in to the Public Guardian and Trustee (PGT) your EPA will be suspended. The PGT has the authority under the Patients Property Act to decide if the EPA may stay in effect or if the PGT will take over management of your financial and legal affairs. If the PGT takes over, your EPA is ended. The reason a health care provider would likely sign a Certificate of Incapability is because they do not know there is an EPA or they are concerned about abuse.

### If a judge appoints someone as committee/guardian of your financial affairs

Someone may apply to the B.C. Supreme Court under the Patients Property Act to be appointed Committee (guardian) over you or your affairs. If the judge finds you mentally incompetent, your EPA ends.

### When the adult dies

Your EPA ends when you (the adult) die. If you made a Will, your executor takes over.

## How Do I Change or Cancel my EPA?

### Revoking or Cancelling your EPA

If you are capable of making an EPA, you are capable of revoking (cancelling) one. Making a new EPA does not automatically cancel a previous one. The Power of Attorney Act spells out the procedures for revoking. For details, see the Nidus fact sheet on [Revoking an EPA](#).

### Changing your EPA

If you want to make changes to your EPA, the changes will need to be executed (signed and witnessed) in the same way as when the document was first made. This can be very complicated and confusing. The general practice is to revoke your old EPA and make a new one.