

Legal Documents for Financial and Legal Affairs Representation Agreement Section 7 or Enduring Power of Attorney

This fact sheet is for adults who are currently able to manage their own financial and legal affairs and want to plan for the future in case they need assistance due to physical or mental incapability.

This fact sheet is based on the Representation Agreement Act and Power of Attorney Act of British Columbia as amended on September 1, 2011. If you made a Representation Agreement or Enduring Power of Attorney before that date, go to www.nidus.ca—Information—Resources to read about documents made before Sept. 1, 2011.

Which legal documents can I choose from?

There are two legal documents in B.C. to cover financial and legal affairs. These are:

1. A Representation Agreement with Section 7 routine financial and legal affairs (RA7).
2. An Enduring Power of Attorney (EPA).

Nidus has short fact sheets on these documents, with examples on how the law applies to real-life situations. Go to www.nidus.ca—Information.

For legal documents that cover health and personal care, go to www.nidus.ca—Self-Help—Making RA9.

How do I choose?

The first step in deciding between an RA7 and an EPA for finances is to look at the capability requirements of each.

The Power of Attorney Act outlines the requirements for making an EPA. The law says the adult must understand six specific items in order to be considered capable of making an EPA. This includes understanding what you own and its value and your legal obligations to others. For more detail, see the Nidus EPA Fact Sheet. Go to www.nidus.ca—Information—Enduring Power of Attorney.

There are no specific capability requirements that you have to meet in order to make an RA7. It depends on the individual and their circumstance. This means that an adult who does not meet the capability requirements for the EPA may make an RA7. For help and forms, go to www.nidus.ca—Self-Help—Making RA7. The RA7 can also include health and personal care.

Many people who are capable of making an EPA may still choose to make an RA7 for finances, but this is only after they determine they do not need the authorities covered only by an EPA.

When is an EPA a must?

If you meet the capability requirements for the EPA, the next issue to consider is what authorities you need to cover. You will want to think about your future circumstances as well as your current needs.

An RA7 covers routine management of financial affairs. An EPA covers the same as an RA7 and more. For details, see the attached chart.

An EPA is the only planning document to use if one or more of the following apply to you:

- You own real estate property – for example, a house, condo, recreational property. This applies whether you are the only owner on the title of the property or you own it jointly with your spouse or one or more other people. This also applies to property you own but do not live in.
- You are a director or officer of a company – for example, you own a business or you are on the board of directors.
- You want to pay a fee to the person you appoint, for when they are acting on your behalf.
- You want the person you appoint to be able to:
 - Use your property for the benefit of others such as: lending your money or transferring ownership of your vehicle.
 - Delegate any of their decision making authority to others, such as professionals or family members.
 - Use their own judgement and take more risks with your investments than is allowed by the Trustee Act.
 - Take out a new loan on your behalf or guarantee one for someone else.

If you need to make an EPA, see the Nidus EPA Preparation Guide. Go to www.nidus.ca—Self-Help—Making EPA.

What other differences are there between an RA7 and an EPA?

If you do not need any of the authorities covered only by an EPA, then other differences may determine your choice.

The following page lists differences between an RA7 and an EPA, which are largely due to the history and underlying philosophy of the legislation governing each of these legal tools.

RA7 vs. EPA: Familiarity

People often ask, “How come I’ve never heard of Representation Agreements before?”

The Power of Attorney Act has been in existence in B.C. since 1875, so it is no surprise that the term ‘power of attorney’ is familiar to the public. However, there are still many common misunderstandings about this law. For example, many British Columbians mistakenly believe that a Power of Attorney can cover health care. There is also often considerable confusion about the differences between a ‘power of attorney,’ ‘enduring power of attorney,’ and a ‘bank power of attorney.’

By contrast, Representation Agreements are relatively unknown, as the Representation Agreement Act only became law in 2000. Also, this law was created through a unique partnership between citizens and community groups and the government, with the involvement of financial, legal and health professionals. Since it was not developed in the more common top-down way, it may take longer to become well-known.

RA7 vs. EPA: Duties of those appointed

Would you prefer that the duty of the person you appoint be: 1) to act according to your wishes or 2) to act in your best interests?

The Representation Agreement Act is based on the principle of self-determination, which means the duty of a representative is to carry out your wishes, values, and beliefs – not their own.

The Power of Attorney Act is based on the best interest model. This means the person you appoint (called your attorney) has the duty to act according to what they believe is best for you. The recent amendments to the EPA require your attorney to also “take into account” your current wishes and your known beliefs and values, and to “foster” your independence.

RA7s incorporate the idea of supported decision making, which recognizes that, in real life, capability is not ‘all or nothing.’ For example, if you need help with banking, rather than taking over all of your financial and legal affairs, a representative under the RA7 may assist you in this one area. They do not have to be involved in other aspects unless it is necessary. Also, the emphasis is on assisting you rather than acting on your behalf.

The EPA follows the traditional substitute decision making approach, which is based on the view that you are either capable or you are not capable.

This approach assumes that if you are not capable of managing your day-to-day banking, you must be incapable of all financial and legal affairs. This leads to the duty of your attorney to act on your behalf.

You can read more about the role and duties of those appointed in an RA7 or an EPA. Go to www.nidus.ca—Information—Resources.

RA7 vs. EPA: Built-in safeguards

Do you like the idea of the monitor role that the RA7 offers as a built-in safeguard?

When making an RA7, you can assign three roles: representative, alternate representative and monitor. An EPA has two roles: attorney and alternate attorney.

There are more roles in a Representation Agreement to recognize the importance of a personal ‘network’ in providing support and safety. Representation Agreements help strengthen and create personal networks.

The monitor is not a decision making role, but rather serves as a safeguard and support for your wishes, and can be useful in resolving conflict. This role is unique to Representation Agreements, and some adults choose the RA7 because of it.

Go to www.nidus.ca—Information—Representation Agreement—Resources—Role of a Monitor.

An RA7 for routine finances requires a built-in safeguard. You can satisfy this requirement by appointing two representatives who will act together (jointly), or by appointing someone in the role of monitor. The safeguard requirement for finances is waived if your representative is your spouse.

RA7 vs. EPA: Procedures

You do not need a lawyer or notary public in order to make an RA7. You will need to arrange for two independent witnesses to watch you sign. Nidus offers a Preparation Guide and legal forms for making an RA7. Go to www.nidus.ca—Self-Help—Making RA7.

You do not need a legal professional to make an EPA unless it needs to be valid for Land Title purposes (for dealing with various real estate matters). However, many of the EPA authorities require specific wording so it is advisable to get legal help. Nidus has developed a Preparation Guide. Go to www.nidus.ca—Self-Help—Making EPA. Nidus does not provide legal forms for an EPA, as lawyers and notaries public will want to prepare an EPA form that fits your specific needs.

Does the RA7 or the EPA fit my situation?

Frequently Asked Questions

Many seniors have straightforward financial affairs. They do not own real estate; they receive pension income and may have some investments along with their bank accounts. An RA7 may be sufficient for their needs. An RA7 is also often the first personal planning document a young adult in college, university or the workforce will make. Most people will make more than one personal planning document in their lifetime. If you own real estate, own a business or have complex investments, you will require an EPA.

Nidus receives questions about many different situations. Here are some examples to help you learn more about how these documents apply to different situations.

Q I own real estate property – my home – but I don't want it to be sold until I die. Does this mean I don't need to make an Enduring Power of Attorney?

A Although you don't want your home sold during your lifetime, circumstances could arise that make this unavoidable. You may require the money from the sale of the property for your care in a facility. Even if you have additional funds to cover private care in your own home, you may have a health condition that cannot be managed at home or that makes it difficult to retain staff for private care. Other events may also interfere with your wish. If your property has to be sold and you are incapable, someone will have to get authority to act as your guardian, called Committee of Estate. You will not have control of this process. To stay in charge of your affairs, it is a good idea to make an EPA to choose who will have authority to manage your affairs and how.

Make Adult Guardianship a Last Resort

If you do not make your own arrangements for financial and legal affairs and you become incapable, someone, usually a family member or a friend, may have to apply to the Supreme Court of B.C. to act as your guardian, called Committee of Estate. This involves hiring a lawyer. Fees to the lawyer, to doctors for assessments and to the Court range from \$5,000.00 to \$10,000.00 (and sometimes more). These fees will come out of your estate.

If a judge finds you mentally incompetent, he or she can appoint the family member or friend who applied for authority, to be your Committee of Estate. The judge may require the Committee to be bonded, which necessitates initial and ongoing fees. The judge may impose other conditions. Committeeship applications can take a minimum of three to four months.

When you are declared incompetent by a judge, you lose your decision making rights. In legal terms, you are a non-person. The Committee of Estate will take over management of all of your financial and legal affairs. They will have to submit reports on how they are managing your financial affairs to the Public Guardian and Trustee (a government official) for approval. The PGT charges a fee to review the accounts.

Committee of Estate is difficult to reverse. If you recover from an illness or injury and are able to manage your own financial and legal affairs, you would have to hire a lawyer, get re-assessed by two doctors and if they find you now capable, a judge can decide to remove the Committeeship. The cost for this is similar to the initial application.

In situations where there is no family member or friend to apply to be your Committee of Estate, the Public Guardian and Trustee may take over your financial and legal affairs through a different procedure. This involves an assessment by a designated health care provider who submits a Certificate of Incapability to the PGT. The PGT charges fees to manage your affairs, which comes out of your estate.

Q My mother is moving from Ontario to live with me in B.C. She had a stroke a couple of years ago. It left her with some paralysis that affects her mobility. My brother has been looking after her financial affairs since her stroke. He has her Ontario Power of Attorney for Finances. Does my mother need anything for B.C.?

A Your brother should be able to continue to manage her bank accounts, investments and any other property she owns in Ontario. He should also be able to deal with any federal institutions such as Canada Revenue Agency or Old Age Security.

However, your mother will probably want to open a bank account in B.C. Your brother could use the Ontario Power of Attorney in B.C. after your mother moves, if he goes to a lawyer in Ontario to get a "Certificate of Extra Jurisdictional Solicitor" completed. The form is to confirm that the Ontario Power of Attorney is valid according to Ontario law and performs the function of a B.C. EPA. The other option is that your mother could keep the Ontario document in place for Ontario financial affairs and make an RA7 for financial and legal affairs in B.C. She could appoint you as the representative and your brother as the monitor.

Q My wife and I are both listed on the title of our condominium. She has dementia and needs a lot of support. We went to the notary public to make an Enduring Power of Attorney. I made one but the notary said my wife did not meet the test of capability. Should my wife make an RA7? What will happen if we need to sell the condominium?



A Your wife may make an RA7 to ensure routine financial and legal affairs are covered. For example, you will need this authority to access information about your wife's affairs from Canada Revenue Agency or Old Age Security. If you own your vehicle in joint names, you will need the RA7 to renew the insurance or to sell the vehicle.

If the condominium needs to be sold, someone will have to apply to BC Supreme Court to become Committee of Estate for your wife. However, selling may not be necessary for some time and there may be other options such as renting the condominium. In the meantime, with an RA7, you will be able to assist your wife with various financial and legal affairs; she can also name an alternate and monitor in case something happens to you.

Q My 25 year old grandson was in a serious motorcycle accident and has a brain injury. We do not know yet how long his recovery will take. We can't get access to his mail to pay his bills or to his bank account to check on the balance; we need to apply for disability benefits. Will an RA7 help?

A Yes. An RA7 covers routine financial and legal affairs, which would give legal authority to people your grandson trusts and who know him. They will be able to assist him with banking and applying for disability benefits as well as dealing with ICBC about his accident claim.

When your grandson recovers from his injuries, he can decide whether he would like to keep the RA7 in case he needs help in the future; or, he can decide to make an EPA – it is always a good idea to have a legal plan in place. An RA7 is an alternative to guardianship. This avoids having to apply to the Supreme Court of BC to become his Committee of Estate in order to help him.

One advantage of making an RA7 over Committee of Estate is that an RA7 can easily be revoked (cancelled). Committee of Estate is difficult to reverse.

Q My grandmother lives on her own. She was recently taken to emergency because of a serious fall in her apartment. After she was admitted to hospital, it became clear that she has memory problems and confusion. The social worker said she is being assessed for dementia and it is not safe for her to go back to living on her own. They are looking at placement in a care facility. They asked who has legal authority for finances as they need information about her taxes and someone will have to arrange to pay the facility fees. She has nothing in place. How can we help her?

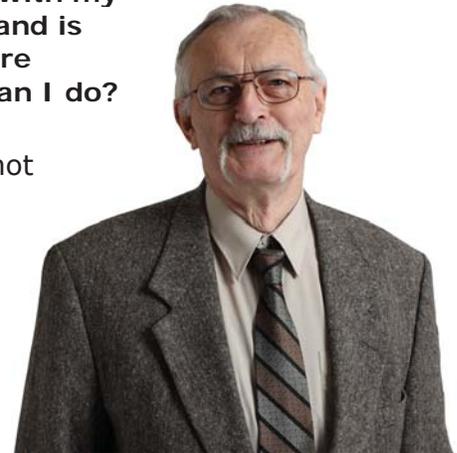
A If your grandmother is confused about her financial affairs, she might not meet the capability requirements to make an EPA. While her current situation is complicated by the crisis, it seems her financial affairs can be dealt with by an RA7.

But with your help, she may make an RA7 for financial and legal affairs. An RA7 covers routine management of financial affairs, which includes receiving her pension, paying her bills, accessing information from Canada Revenue and re-directing her mail. You could also review her finances to see if she might be able to afford private care in her own apartment.

Q I am a senior and live in a housing cooperative. I just have my government pension and some savings. I am scheduled for surgery soon. I want to make sure that somebody can pay my bills, and help me with other finances in case something happens during or after the surgery. My family lives in Manitoba and although we talk regularly by phone and they visit once a year, it would be impractical for them to deal with my day-to-day finances. My friend lives in the same complex and is willing to help and I trust her. She said she would feel more comfortable if my family is involved in some way. What can I do?

A Since you do not own real estate and it appears that you do not have other needs that can only be addressed by an EPA, the RA7 may fit your current needs.

You could name your friend as your representative and have one of your family members in Manitoba to be the monitor. Your relative will then have an opportunity to stay in touch with your representative as a support and to keep up to date about your affairs.



Planning for Health Care and Personal Care

This resource material is about personal planning for legal and financial affairs. It is important to also prepare your documents for health care and personal care.

- If you can make your own health care and personal care decisions and want to plan for your future, go to www.nidus.ca—Self-Help—Making RA9.
- If you are assisting an adult who needs help making health care and personal care decisions (for example, due to dementia or a brain injury), go to www.nidus.ca—Self-Help—Making RA7.

RA7 – EPA Comparison Chart

FINANCIAL AUTHORITIES	RA7	EPA
SAME financial authorities for RA7 and EPA		
Bank matters - e.g. open/close an account, deposit/withdraw funds.	Yes	Yes
Renew or make payments on existing loans.		
Obtain financial benefits or entitlements.		
Make and manage your investments according to the Trustee Act.		
Act as the Account Holder for a Registered Disability Savings Plan.		
<i>See the definition of routine management of financial affairs for the complete list. (Link on last page)</i>		
SOME DIFFERENCES between RA7 and EPA financial authorities		
Create, cancel or change a beneficiary designation in an instrument, other than a Will.	When converting an instrument, a beneficiary designation must be consistent with the designation of the original instrument. E.g. RRSP to a RIF. Can NOT cancel or change a beneficiary designation.	When renewing, replacing or converting an instrument, the beneficiary must be the same as you named in the original. For a new instrument, your estate must be the beneficiary. Can change a designation you made, only if the court authorizes it.
Delegate authority to someone else. (This is different than appointing an alternate. In this case, the person appointed could delegate their authority to someone else.)	Can delegate authority only with respect to investments and only to a qualified investment specialist.	Delegating is automatically allowed with respect to investments and also for other decision making areas if you specify it in your EPA.
Buy, renew, or cancel motor vehicle, household, or other insurance on your behalf.	Yes , except can NOT purchase a new life insurance policy.	Yes , except EPA must specify purchasing a new life insurance policy.
Make charitable donations.	Yes , up to a defined limit, if it is your practice and is within your means.	Yes , with more flexibility than allowed in an RA7.

FINANCIAL AUTHORITIES	RA7	EPA
OTHER financial authorities		
<p>Deal with any matters involving the Land Title Office .</p> <p>For example, deal with:</p> <ul style="list-style-type: none"> • Buying and selling real estate property. • Taking out a new mortgage. • Builders' liens. • Mineral and agricultural rights. • Laneway housing. • Leasing your real estate property for a term of 3 years or more. 	No	Yes , if your EPA is signed by a lawyer or notary public in B.C.
Act on your behalf as a director or officer of a company you own or serve on.	No	Yes
Take a fee when carrying out their duties.	No	Yes , if you specify the amount or rate in your EPA.
Use your money or property for the benefit of themselves or others. This could involve borrowing/lending your money, transferring ownership of your vehicle or real estate or making gifts.	No	Yes , with some exceptions or conditions.
Take more risks with your investments than allowed by the Trustee Act.	No	Yes , if you specify this in your EPA.
Take out a new loan on your behalf, or guarantee one for someone else.	No	Yes
Use your credit card.	No	No

LEGAL AUTHORITIES	RA7	EPA
Obtain legal services.	Yes	Yes
Instruct a lawyer to act on your behalf to begin, continue, compromise, defend or settle any legal proceedings.	Yes, except cannot <i>begin</i> divorce proceedings on your behalf.	Yes
Represent you in small claims court.	Yes	Yes
Settle a claim for compensation on your behalf.	Yes	Yes
<i>When assisting in the context of a legal proceeding, as above, your representative can act as your litigation guardian. This term is used in law when someone has to act on behalf of another individual in legal matters.</i>		
Make a new Will on your behalf or change your existing Will.	No	No

This chart provides a general overview only. It is not intended to be a complete inventory or comparison.

More Information

For more details on making and registering an RA7 or EPA, please see the Nidus Preparation Guides. Go to www.nidus.ca— Self-Help—Making RA7 or Making EPA.

To read the Definition of Routine Management of Financial Affairs (for the RA7), go to www.nidus.ca— Information—Representation Agreement—Resources.

To access the legislation governing the RA7 and EPA, go to www.bclaws.ca - select *Statutes and Regulations*. See the *Representation Agreement Act and Regulation* and the *Power of Attorney Act and Regulation*.

To find a lawyer in B.C., call the Lawyer Referral Service at 604.687.3221 or 1.800.663.1919. To locate a notary public near you, contact the Society of Notaries of B.C. at 604.681.4516 or 1.800.663.0343 or search at www.notaries.bc.ca.