

Representation Agreement

Overview



“My mom is making a Representation Agreement because she needs help today; I am making one in case I need help in the future.”

What is a Representation Agreement?

A Representation Agreement is a legal document available to adults in British Columbia for personal planning. It allows you to authorize one or more personal supporters to be your representative to help you manage your affairs and, if necessary, to make decisions on your behalf in case of illness, injury, or disability.

A Representation Agreement is the only way you can appoint someone to assist you or to act on your behalf for health care and personal care matters. It can also cover routine financial affairs.

The Representation Agreement Act is the result of law reform initiated by citizens and community groups. The purposes of the Act are to: 1) provide a legal alternative to adult guardianship for adults who need help today, and 2) enable planning for the future. The Representation Agreement Act came into effect in February 2000.

What areas of authority are covered by a Representation Agreement?

The authorities you can include in a Representation Agreement are described in Sections 7 and 9 of the Representation Agreement Act. Each section has different capability requirements, which are discussed under the next heading.

Standard powers are outlined in Section 7 of the Act and consist of minor and major health care, personal care, legal affairs and routine management of financial affairs. This legal document can address many situations, particularly those where an adult needs help today. See the Nidus fact sheet *Representation Agreement with Section 7 Standard Powers*.

The broadest health and personal care powers are listed in Section 9 of the Act. This document is used by adults who want to plan for the future to cover all health and personal care matters possible. It can also cover arrangements for the care of minor children. See the Nidus fact sheet on *Representation Agreement with Section 9 Broader Powers*.

Who can make a Representation Agreement?

To make a Representation Agreement, you must be an adult – 19 years of age or older. Representation Agreements are designed to be used by all adults: those who may need help today; and those who want to plan for the future.

The Representation Agreement Act says that an adult may make a Representation Agreement with Section 7 standard powers even if they cannot manage their own affairs or make decisions independently. There is no specific capability requirement in order to make this type of Agreement. The Act recognizes that capability involves many factors because each person and situation is different. For details see the fact sheet on *Section 7 Standard Powers*.

To make an Agreement with Section 9 broader powers, you must meet a specific capability requirement. You must understand the types of decisions covered by the broader powers and the possible effects of giving these powers to your representative. For more details see the fact sheet on *Section 9 Broader Powers*.

How do I make a Representation Agreement?

There is no requirement to consult a legal professional to make a Representation Agreement. Nidus has produced standard forms for each type of Representation Agreement. Nidus can also provide a customized form if the standard one does not fit. The forms are available on the website at www.nidus.ca — click on *Self-Help*.

Who should I appoint in my Agreement?

Most people appoint a spouse or partner, family member, or friend, in their Agreement. Those you appoint may live in another city, province, or country. The law has some restrictions. You cannot appoint: 1) someone who is compensated to provide health or personal care services to you (e.g. a paid caregiver); or 2) an employee of a facility where you live if the facility provides health or personal care services to you. These restrictions do not apply if the person is your spouse, parent or child.

There are many factors to consider when choosing who to involve in your Representation Agreement, such as: your trust in them, their skills and abilities, and their understanding of your wishes and values.

What roles are available in a Representation Agreement?

There are three roles described in the Representation Agreement Act:

- A representative is the person who has legal authority to assist you or to act on your behalf.
- An alternate representative is a back-up in case your representative is unable or unwilling to act.
- A monitor is a safeguard and ensures that the Representation Agreement is working for you. A monitor does not make decisions for you.

It is important that everyone named in the Representation Agreement communicates and works well with one another.

What are the duties of a representative?

The duties of a representative are outlined in Section 16 of the Representation Agreement Act, which says that your representative must act honestly, in good faith, and within the law. Your representative's first responsibility is to assist you to make your own decisions.

If your representative has to make a decision on your behalf, he or she must check with you first to determine your current wishes. If your current wishes cannot be determined or are not reasonable to carry out, then any pre-expressed wishes must be followed. If these are unknown, decisions are made according to your values and beliefs. As a last resort, your representative may make a decision based on what he or she thinks is best for you (your best interest). Read more on duties in the Nidus fact sheet on *Role of Representative*. See also, *Role of Monitor*.

Does my representative get paid?

Representatives, alternate representatives, and the monitor are entitled to be reimbursed for reasonable out-of-pocket expenses related to carrying out their duties. The law says you cannot pay a representative for making health care decisions on your behalf. If you want to pay your representative(s) a fee for other areas of authority, this must be spelled out in the Agreement and it must be authorized by the B.C. Supreme Court.

When should I make an Agreement?

The best time to make an Agreement is before a crisis occurs. When you turn 19 years old, the age of majority in B.C., parental rights end and no one, not even your spouse, has legal authority

to manage your affairs if you cannot do so. This may present a problem if you need help due to an illness or injury. Most people will make more than one Representation Agreement in their lifetime.

When does an Agreement take effect?

A Representation Agreement is in effect when the adult and witnesses have signed. However, depending on the set up of the Agreement, at least one representative and the monitor—if one is named—must also sign. Each additional representative and alternate must also sign before they can act. To be safe, it is a good idea for everyone to sign as soon as possible. The Agreement will stay in the drawer until needed, and yet is 'ready to use' in case of an emergency.

You can include a statement in your Agreement to say it will come into effect at a later time. This requires careful consideration and specific wording to be sure it will come into effect at the times you need it. See the Nidus fact sheet on the *Lifespan of a Representation Agreement*.

Can I revoke my Representation Agreement?

Yes, you can revoke/cancel your Representation Agreement. The Representation Agreement Act outlines specific requirements for revoking. Making a new Representation Agreement does not automatically cancel your previous one. See the Nidus fact sheet on *Revoking an Agreement*.

When does a Representation Agreement end?

A Representation Agreement ends if you revoke it or when you die. An Agreement also ends if someone is appointed to be your legal guardian (i.e. Committee of Estate and/or Committee of Person) through the B.C. Supreme Court. The financial and legal authorities in your Representation Agreement end if the Public Guardian and Trustee takes them over. For details, read the *Lifespan of a Representation Agreement*.

What is not covered by a Representation Agreement?

When people are planning for the future, it is common that they will make an Enduring Power of Attorney to cover financial and legal affairs and a Representation Agreement to cover health and personal care matters. Making an Enduring Power of Attorney is important if you own real estate property, as the authority for routine financial affairs under the Representation Agreement does not include dealing with real estate. See the Nidus fact sheet on *Enduring Power of Attorney*.

