

## Representation Agreement with Section 7 Standard Powers



*“My mom may make a Representation Agreement even though she has dementia and cannot make a Power of Attorney.”*

Please also read the fact sheet *Representation Agreement Overview*.

### What is a Representation Agreement with Section 7 standard powers?

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.

The intent of a Representation Agreement with Section 7 standard powers is to ensure personal planning is available to all adults in British Columbia, including those who need help today because their mental competency is in question. Every adult may make a Representation Agreement with Section 7 standard powers.

A Representation Agreement does not replace the informal support that families and friends provide. A Representation Agreement gives legal status to the adult's personal supporters when informal help is not enough.

For example, Mei is a senior who has been diagnosed with dementia. She needs help with most daily living activities and is being assessed for facility care. Her sons help her with meals, taking her medications, and following directions from her physiotherapist. Mei's sons can provide her with informal support but for certain situations they require legal authority to help Mei. For instance, they noticed that Mei was forgetting to pay her bills and the bank would not speak to Mei's sons about setting up direct bill payment from her account unless they had legal authority.

The bank mentioned Enduring Power of Attorney as a legal document that gives authority for financial affairs. Mei had made an Enduring Power of Attorney 10 years ago naming only her husband but he died last year. When Mei's sons brought her to the same notary public they were told that he did not find that she could meet the mental competency requirement for making an Enduring Power of Attorney.

Fortunately, the Representation Agreement Act looks at competency differently than the Power of Attorney Act. The Representation Agreement Act says that an adult

may make a Representation Agreement with Section 7 standard powers even if he or she cannot manage his or her own affairs or make decisions independently. Mei needs assistance now with decision making and will likely need even more support in the future. A Representation Agreement with Section 7 standard powers allows Mei to give her personal supporters the legal authority to help her.

### What areas of authority can be included under Section 7 standard powers?

There are four areas of authority that you can include in a Representation Agreement with Section 7 standard powers. These four areas are



Minor and major health care, which includes medications, tests, surgery, any treatment requiring a general anesthetic, dental care, end-of-life comfort care.



Personal care, such as where the adult lives and with whom, diet, exercise, taking part in activities, personal safety issues.



Legal affairs, which include obtaining legal services and instructing a lawyer, settling an insurance claim, going to small claims court.



Routine management of financial affairs, such as banking, government benefits, Revenue Canada, managing investments.

You can include one or more of these areas of authority in your Representation Agreement. This allows you to customize your Representation Agreement to best suit your needs. For example, if Mei had been capable to make an Enduring Power of Attorney, her sons would have legal authority for financial affairs and she would make a Representation Agreement to cover health and personal care. Given the circumstances, Mei will be including all four areas of authority in her Agreement.

### Who can make a Representation Agreement with Section 7 standard powers?

To make a Representation Agreement with Section 7 standard powers you must be an adult 19 years of age or older.

There is no mental competency requirement to make a Representation Agreement with Section 7 standard powers. This type of Agreement is designed to be a legal alternative to adult guardianship for people who need help today because their competency is in question.

Before the Representation Agreement Act was in place, the only way Mei's sons could get legal authority to help her was to apply to court to become Mei's committee/guardian. In some cases the Public Trustee, a government official, would become the committee/guardian. If someone became committee/guardian for Mei she would lose her civil rights and be considered a non-person under the law. With a Representation Agreement, Mei maintains her rights and her personhood status, while receiving the help she needs.

Some other common examples of people who make Representation Agreements with Section 7 standard powers include, Shaun, a young adult with a developmental disability who communicates by vocalizing and gesturing. Shaun's parents want to help Shaun set up a bank account and a Registered Disability Savings Plan but they will need legal authority to do this. Shaun could make a Representation Agreement and appoint his parents as representatives who would then have the legal authority to assist when Shaun needs it.

Cherry, a woman whose speech and memory has been affected by a brain injury, has the Public Guardian and Trustee managing her financial and legal affairs but nothing in place for health and personal care. Cherry may make a Representation Agreement and appoint her sister to help her with health care and personal care decisions, such as decisions about rehabilitation, occupational therapy, and where to live.

Kam recently suffered a stroke and has no legal documents in place and needs someone to arrange payment of the care facility bills from his bank account. With his nephew's help, Kam may make a Representation Agreement that includes authority for routine management of financial affairs, which would give Kam's nephew the authority to pay Kam's bills from his bank account.

### What makes a Representation Agreement with Section 7 standard powers unique?

There are a few features that make the Representation Agreement with Section 7 standard powers unique from other legal documents. First, the Representation Agreement Act says that the way an adult communicates is not a factor in determining whether the adult may make a Representation Agreement. The law recognizes that some people do not communicate in a traditional way. Some adults communicate non-verbally using gestures, body language, and/or behaviours.

The Act provides a number of other ways to support a different view of competency/capability than is required by the laws governing Wills and Powers of Attorney. For example, the Act states that even if the adult cannot sign a traditional contract or make his or her own decisions, he or she may make a Representation Agreement. This means that Mei, Shaun, Kam and Cherry may be considered mentally incapable of making a Will or a Power of Attorney, yet be capable of making a Representation Agreement with standard powers.

In addition, unless your representative is also your spouse, an extra safeguard is required if the Agreement includes authority for the routine management of financial affairs. The safeguard requirement can be met by either appointing two or more representatives to act jointly for finances or appointing someone as a monitor. The monitor is a particularly special role. Although your monitor cannot make decisions on your behalf, the monitor is there to ensure your representative is following his or her duties. The monitor may also provide support and help with problem solving if necessary and the law says that no one can prevent the monitor from having contact with the adult.

### What is not covered under Section 7?

A Representation Agreement with Section 7 standard powers does not include dealing with real estate, arranging for the temporary financial care of minor children, or acting on the adult's behalf as a director or officer of a company. These authorities can be covered using an Enduring Power of Attorney; see the Nidus fact sheet on *Enduring Power of Attorney*.

Under standard powers you cannot give your representative the absolute authority to refuse life support. Instead, under standard powers refusing life support would require the consensus of the medical team and your family members. A Representation Agreement with standard powers also does not cover broader powers such as consent to treatments with no known benefit, consent to physical restraints, and making arrangements for the temporary care and education of your minor children. Absolute authority to refuse life support and other broader powers can be covered using a Representation Agreement with Section 9 broader powers. For more details see the Nidus fact sheet on *Representation Agreement with Section 9 Broader Powers*.

### How do I make a Representation Agreement with Section 7 standard powers?

There are no ready-made or 'off the shelf' forms for Representation Agreements. If you want to make a Representation Agreement with standard powers, you are not required to consult a lawyer or notary public. Nidus offers a *Self-Help Course* for making and registering these Agreements.