

Understanding Enduring Powers Of Attorney

Office Of The
Public Trustee

**Government
of Alberta** ■
Justice

An Enduring Power of Attorney is an important legal document you can use to appoint someone to make financial and legal decisions on your behalf. If you are the one passing the authority to someone else you are called the donor. The person you pass the authority to is called the attorney. An Enduring Power of Attorney is “enduring” because an attorney’s power continues in force even if, or comes into effect after, the donor becomes mentally incapacitated.

Why You Need An Enduring Power Of Attorney

An Enduring Power of Attorney allows you to prepare for a time when you may become ill or suffer a disability and as a result become unable to manage your own financial and legal affairs.

What Are The Requirements To Make An Enduring Power Of Attorney

- Be made in writing and dated;
- Be signed by the donor in the presence of a witness;
- Be signed by the witness in the presence of the donor; and
- State that it is to continue in effect notwithstanding any mental incapacity or infirmity of the donor that occurs after the execution of the Power of Attorney, or that it is to take effect on the mental incapacity or infirmity of the donor.

When Does An Enduring Power Of Attorney Take Effect

- Immediately; OR
- When the donor becomes mentally incapacitated; OR
- When some other event specified by the donor occurs.

Who Should You Choose As Your Attorney

The attorney should be someone you trust and are confident will act in your best interest. Your attorney should also have some knowledge and experience to be able to deal with your property and finances. It is also important to ask the attorney beforehand to ensure that they are willing to accept the appointment. If you are considering appointing a financial institution, you will want to ensure that you are aware of any fees that may be charged.

- Any adult or financial institution can be appointed to act as attorney;
- The attorney appointed does not have to live in Alberta;
- You can appoint both a person and financial institution to act;
- **The Public Trustee cannot act as an attorney.**

Keep Your Enduring Power Of Attorney Current

An Enduring Power of Attorney should be periodically reviewed to ensure the powers, terms and choice of attorney are current.

Cancelling An Enduring Power Of Attorney

You can cancel an Enduring Power of Attorney at any time as long as you have the mental capacity to do so. The cancellation must be in writing. The attorney and all other third parties relying on the original Enduring Power of Attorney should be immediately notified. A new Enduring Power of Attorney should then be executed to ensure there is someone designated to handle your financial and legal affairs in the event of incapacity.

When A Donor Dies

Upon the death of the donor, the Enduring Power of Attorney ends and the attorney must then account for all of the donor's property and report to the personal representative of the deceased's estate.

You May Want To Hire A Lawyer To Help

While it is not necessary to hire a lawyer to prepare the Enduring Power of Attorney, it is recommended. A lawyer can guide you through the process, explain your options and ensure that it is properly drafted. For example, you may have concerns about limiting the authority your attorney has, or want your Enduring Power of Attorney to only take effect upon mental incapacity.

Personal Directive

You can make a Personal Directive which appoints an Agent to make personal and non-financial decisions on your behalf if you become mentally incapacitated and are unable to make decisions yourself. If you become mentally incapacitated and do not have a Personal Directive, then someone may need to go to Court to obtain an order appointing a co-decision-maker or a guardian who will make decisions in your best interest.

Trusteeship

If your attorney refuses to act, then someone will need to go to Court and be appointed your trustee. This person can be any adult, a trust company, or as the last resort, the Public Trustee. The Court may appoint a trustee only if it is satisfied that less intrusive and less restrictive alternative measures than the appointment of a trustee will not adequately protect the donor's interests in respect of financial matters, and the proposed trustee will act in your best interest and is suitable having regard to your wishes if ascertainable, the trustee's relationship to you, the ability of the trustee to effectively manage your finances, and any circumstances, including the trustee's place of residence, that could impair the Court's ability to oversee and control the trustee.

The Public Trustee will not apply to the Court to be appointed as a person's trustee or consent to being appointed unless the Public Trustee is satisfied:

- the person has assets requiring protection and ongoing management
- there is no other person willing, able and suitable to act as trustee

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This publication was prepared as a public service to Albertans by the Office of the Public Trustee with the assistance of the Court Services Division of Alberta Justice and is intended to give information about trusteeship under the *Adult Guardianship and Trusteeship Act*. It is not intended to give legal advice for which a lawyer should be retained. The *Adult Guardianship and Trusteeship Act* and its Regulations should also be consulted. The Public Trustee does not warrant the outcome or result of using the information in this publication. This publication is current to September 1, 2009.