



Enduring Power of Attorney

Careful financial planning becomes increasingly important as we age, particularly if you are living with a chronic illness such as Parkinson's disease. As Parkinson's progresses, your ability to make decisions may be affected by physical and cognitive changes common to the disease.

Enduring Powers of Attorney allow you to appoint another person (an "Attorney") to make financial and legal decisions on your behalf if you do become incapable of making such decisions for yourself. An Enduring Power of Attorney can help you ensure that your wishes will be respected in the event that you are unable to independently manage your legal and financial affairs.

The principle advantages of doing an Enduring Power of Attorney are as follows:

1. You can designate who will be your Attorney. You have the choice of designating a single Attorney or multiple Attorneys. You may also designate an Alternate Attorney who will act if for some reason your Attorney(s) cannot act or continue to act as your Attorney(s);
2. You can designate when your Attorney will begin making financial and legal decisions on your behalf. This is usually either immediately upon execution of the Enduring Power of Attorney or upon a triggering event, such as a doctor's opinion that you are incapable of making your own financial and legal decisions;
3. You can designate the scope of the authority the Attorney has to make decisions on your behalf;
4. So long as you have capacity to do so, you can revoke your Enduring Power of Attorney; and,
5. No court proceedings are necessary to appoint someone to make financial and legal decisions on your behalf.

Selecting your Attorney

As an Enduring Power of Attorney is a powerful document, it can cause you a lot of harm if misused by your Attorney. Accordingly, it is important that you consider carefully who to appoint as your Attorney. Your Attorney should be someone you trust, such as a close friend or family member. If you have no family member or friend that you want to appoint, you could consider appointing a trusted advisor or a trust company. However, you cannot appoint anyone who is paid to provide you with personal care or health care or who works at a facility through which you receive personal care or health care, unless that person is your child, parent or spouse.

To protect you against misuse by your Attorney, legislation is in place which sets out duties and obligations for Attorneys, including the duty:

- (a) to act honestly and in good faith;
- (b) to exercise the care, diligence and skill of a reasonably prudent person;
- (c) not to dispose of property that they know is specifically being left to someone in your Will, unless the disposition is necessary to comply with the Attorney's duties;
- (d) to keep records, which must be available for you to inspect; and,
- (e) to act in your best interests, taking into account your current wishes, known beliefs and values and any directions that are set out in your Enduring Power of Attorney.

Designating the Scope of the Power Given to your Attorney

An Enduring Power of Attorney can provide your Attorney with very specific powers or with very general powers to make financial and legal decisions on your behalf. A general Enduring Power of Attorney gives your Attorney the power to do nearly anything in relation to your financial or legal affairs that you could do if you were capable, including dealing with your bank accounts, insuring or selling your car, or selling your home.

In designating the scope of the power given to your Attorney, it is important to note that unless your Enduring Power of Attorney specifically provides for it, your Attorney cannot:

- (a) be paid for acting as your Attorney;
- (b) transfer any land you own to themselves;
- (c) make a gift or loan to themselves from your property; or,
- (d) make gifts or loans from your property in any given year that total more than the lesser of 10% of your taxable income in the previous year and \$5,000.

In addition, there are certain powers that cannot be granted to an Attorney, such as the power for an Attorney to make a Will for you.

What happens if you don't have an Enduring Power of Attorney

If you have not appointed an Attorney in an Enduring Power of Attorney, when a financial or legal decision needs to be made for you and you are incapable of making the decision on your own behalf, the B.C. Supreme Court can appoint a person to make these decisions for you. That person has to apply to the court to be your committee. Often a family member or close friend will apply. The Public Guardian and Trustee may also apply to become your committee, or the court may appoint the Public Guardian and Trustee as your committee if there is family conflict.

The major disadvantages with committees include the following:

- (a) it takes several months and costs thousands of dollars in legal fees to obtain a court order appointing a person as your committee;
- (b) if the application to the court for a committee order is opposed, the delay and costs in obtaining a court order will be even greater;
- (c) the scope of powers granted to a committee in relation to managing your financial affairs are generally more limited than those you could grant to your Attorney. For instance, a committee order generally limits the ability of the committee to access the capital in any of your accounts without the consent of the Public Guardian and Trustee. Furthermore, a committee would have no ability to make gifts out of your assets to your family, friends or charities you support;

- (d) your committee annually must provide the Public Guardian and Trustee with accounts, which are prepared at your cost; and,
- (e) your committee would be entitled to be paid out of your assets for acting as your committee.

The existence of an Enduring Power of Attorney allows a person you have chosen to take care of your financial and legal affairs without these delays and added costs, within the scope of decision making powers that you set out for them.

Helpful Resources

- **The Nidus Personal Planning Resource Centre & Registry** provides detailed information on Enduring Powers of Attorney and Representation Agreements. You can contact them at 604 408 7414 or visit their website at www.nidus.ca.
- **The Ministry of Attorney General's website, www.ag.gov.bc.ca/incapacity-planning**, provides information on incapacity planning, including forms that can be used. Please note that it is still recommended that you consult a lawyer or notary public, as the forms provided by the Ministry may not be appropriate for use by all persons and the Ministry does not provide legal advice.
- **Dial-A-Law®** is a library of legal information that is available by phone, as recorded scripts, and by audio and text, on the Canadian Bar Association BC Branch website. You can contact them at 604 687 4680 in the Lower Mainland or 1 800 565 5297 elsewhere or visit their website at www.dialalaw.org.
- **People's Law School** offers public legal education and information. You can contact them by phone at 604 331 5400, by email at info@publiclegaled.bc.ca, or visit their website at www.publiclegaled.bc.ca

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