

General Powers of Attorney



This booklet is for Albertans who want to know more about General Powers of Attorney. A Power of Attorney allows you to plan for the future by appointing someone else to manage your financial affairs while you are still alive. This booklet gives general information only, not legal advice. If you need more detailed help or legal advice, see the Resources section at the back of this booklet.



You should **NOT** rely on this booklet for legal advice.
It provides general information on **Alberta law only**. 2020

DISCLAIMER

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

The information contained in this booklet was correct at the time it was produced. Be aware that there may have been subsequent changes which make the information outdated at the time you are reading it. The Legal Resource Centre of Alberta Ltd. will not be responsible for any loss arising from reliance on or action taken (or not taken) as a result of this information.

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What is a General Power of Attorney?

A General Power of Attorney is a written, signed, dated and witnessed legal document. It gives someone else the right to act on your behalf with respect to your financial affairs while you are still alive.

In this booklet, the terms “General Power of Attorney” and “Power of Attorney” mean the same thing.

A **Personal Directive** is a written, signed, dated and witnessed document that appoints someone else (your Agent) to look after your personal matters (non-financial only).

For more information on Personal Directives, see CPLEA's booklet called '**Making a Personal Directive**'.

A Power of Attorney does **not** give someone authority to make decisions about your health care or personal decisions – for that you need a separate document called a **Personal Directive**.

When you make a Power of Attorney, you are the “**Donor**” and you give your authority to another person (your “**Attorney**”) to deal with your financial affairs. Your Power of Attorney only applies while you are alive.

More than one Power of Attorney can be valid at the same time. For example, you might have different documents for different purposes. It can become confusing if more than one Power of Attorney provides the same powers to different people. As well, if your Powers of Attorney contradict each other on certain things, then the direction in the newest Power of Attorney is valid and the direction in the older Power of Attorney is not.

General Power of Attorney vs. Enduring Power of Attorney

The main difference between the two documents is:

- A General Power of Attorney is only valid when you have **mental capacity**. If you lose the mental capacity to make financial decisions for yourself, then a General Power of Attorney is no longer valid and your Attorney will no longer be able to act on your behalf.
- An **Enduring Power of Attorney** is a type of Power of Attorney. It states that it continues to be valid after you lose mental capacity. An Enduring Power of Attorney can come into effect on a certain date or event (such as when you lose mental capacity).

Mental capacity means the ability to understand information that is relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of the decision.

Financial Decisions

Financial decisions are decisions about financial matters. A **financial matter** is any matter relating to buying, selling, managing or protecting property. Essentially, a financial matter refers to anything you can own (including money). Financial decisions include paying bills, filing taxes, investing money or selling a home (if the EPA gives the Attorney that power).

An **Enduring Power of Attorney** is a type of Power of Attorney that continues on even if you lose mental capacity.

For more information about Enduring Powers of Attorney, see CPLEA's booklet called '**Making an Enduring Power of Attorney**'.

An **estate** is all of the property you own at your death. Property that you own as joint tenants with other people or that you have designated a beneficiary for do not form part of your estate.

A **Will** is a legal statement of how a person wants their property to be dealt with after their death.

When to Use a General Power of Attorney

You might need a General Power of Attorney for many reasons:

- When you temporarily need help with your financial affairs, such as if you are injured or recovering from an illness. Remember, a Power of Attorney is only valid while you have mental capacity. It becomes invalid when you lose mental capacity.
- If you are travelling out of the country and want someone to manage your finances while you are away.
- If you are buying or selling property in another province or country and cannot sign the legal documents in person, then you can appoint an Attorney to act on your behalf for that transaction only.

A Power of Attorney can be for a specific purpose or for general purposes. It can be for a specific transaction or for a longer period of time. If you want your Attorney to be able to buy or sell real estate, you need to give your Attorney this specific power in your Power of Attorney.

You can still make financial decisions for yourself even if you have a Power of Attorney as long as you have mental capacity. You can:

- make decisions by yourself and have your Attorney carry out your instructions (such as signing documents or depositing money);
- consult and decide things together with your Attorney; or
- have your Attorney take over all responsibility for your financial affairs.

Your level of involvement, and your Attorney's level of responsibility, is up to you.

Financial Institutions and Powers of Attorney Forms

Banks, credit unions, trust companies and other financial institutions usually have their own Power of Attorney forms that they like their customers to use for assets held by the institution.

If you already have your own General Power of Attorney that gives your Attorney authority over all your financial assets, you might not need to sign the bank's form. The institution should accept a General Power of Attorney that meets the legal requirements described in this booklet.

The bank's form is only valid for assets held at that bank. Before you sign the bank's form, note the following:

- it might be a good idea to review it with your lawyer or another trusted advisor;
- if you already have a General Power of Attorney, the bank's form might take priority over the General Power of Attorney if the two documents conflict.

Joint Accounts vs. Power of Attorney

Some people set up joint accounts with another person rather than appointing that person as their Attorney.

A joint account is an account where two or more people have ownership rights over the account. Each owner can deposit or withdraw money from the account. As a joint account holder, you share equal access to and responsibility for all the transactions that go through the account, unless your banking agreement says something different. You should have absolute trust in the person that you name as a joint account holder.

Joint accounts include the right of survivorship (except in Quebec). This means that if one account holder dies, the other account holders become the owners. The money in a joint bank account is not part of your **estate** because it automatically goes to the other account holders.

Advantages	Disadvantages
<ul style="list-style-type: none"> • can be useful and convenient • bank can set up without you having to get legal advice or make a Power of Attorney • other account holders automatically become the owners of the account when you die • account does not form part of your estate and so probate fees might be less when you die 	<ul style="list-style-type: none"> • other owners can use funds you deposit in the account (unless your banking agreement sets limits) • other owners can only deal with the money in your account (unlike an Attorney, who can deal with any of your assets) • you cannot leave the money to someone in your Will (it automatically goes to the other account holders) • can cause disputes with family members • if one of the account holders has financial problems or declares bankruptcy, their creditors could make a claim on the joint account

Things to Think About Before Making a Power of Attorney

- What kind of Power of Attorney do you need? Will a General Power of Attorney suit your needs or do you need an Enduring Power of Attorney?
- What kind of powers should your Attorney have? Should they have broad powers to deal with all of your financial matters? Or do they just need to deal with one financial issue?
- Could you achieve the same result by opening a joint account with the person you would appoint as your Attorney? Or do you need your Attorney to deal with more than money in your bank account?
- When should your Power of Attorney come into effect (start)? When should it end? What will happen if you lose mental capacity?
- Whom should you name as your Attorney? Do you trust this person? Do they have the skills and experience necessary to deal with your financial matters?
- Who should prepare your Power of Attorney?

Making a Power of Attorney

A Power of Attorney must be in writing and must be dated and signed by both you (the Donor) and a witness, in the presence of each other. You must be 18 years of age or older. You must, at the time of signing, understand the nature and effect of the document.

The Attorney appointed under a General Power of Attorney cannot be a witness to the document.

You can make your own Power of Attorney, or you can get a lawyer to help you.

Appointing an Attorney

The term “Attorney” refers to the person you chose to act on your behalf with regard to your financial affairs. Your Attorney can be:

- a person (such as a **spouse, adult interdependent partner**, child, other family member or close friend, or legal or financial professional); or
- a financial institution, such as a trust company.

Any person appointed to be an Attorney:

- must be 18 years or older and mentally competent;
- must act in your best interests;
- should be trustworthy and reliable;
- should be aware of your wishes and general intent;
- should have the time, confidence and ability to act on your behalf;
- should be willing to do the job.

It is convenient, but not mandatory, for your Attorney to be in the same city or province as you.

An **adult interdependent partner** is a person with whom you are in an adult interdependent relationship.

An **adult interdependent relationship** is a term unique to Alberta for relationships outside of marriage and governed by Alberta's *Adult Interdependent Relationships Act*.

A **spouse** is a person to whom one is legally married.

You do not have to pay your Attorney. It might be a good idea to talk to your Attorney about their expectations for payment. If you choose a trust company, or a legal or financial professional, to act as your Attorney, you will likely have to pay for their services. Make sure you understand what their fees will be. You should include any payment terms in your Power of Attorney.

You can name one or more Attorneys to act at the same time (**Co-Attorneys**). You can require that your Co-Attorneys act together (“jointly”) or you can have them act separately as well as together (“severally and jointly”). If they can act severally and jointly, then either of your Attorneys will be able to act alone on your behalf. If one is away or sick, for example, the other would still be able to sign cheques or give instructions on your behalf. If you do not indicate that they can act severally, they will have to do everything together. Be aware that naming Co-Attorneys may make things more complicated if decisions need to be made quickly.

If you name Co-Attorneys, you should include some way for them to resolve disputes if they arise.

You should also name at least one **Alternate Attorney** who can act if your Attorney dies, becomes mentally incapacitated or otherwise cannot act for you. If you name several alternatives, you should be clear in what order they should act.

Attorney Powers

You can choose what powers your Attorney will have. You can give your Attorney broad or narrow powers. If you choose, your Attorney can do anything on your behalf that you can do, with a few exceptions.

Your Attorney cannot:

- make a Will for you or change your existing Will;
- appoint someone else to be your Attorney;
- change a **beneficiary** on a life insurance policy;
- make a Personal Directive for you.

The **beneficiary**, of an **estate**, is a person (individual or organization) who inherits all or part of a deceased person's estate.

If you would like your Attorney to buy or sell real estate on your behalf, you must specifically say so in the Power of Attorney. Your Attorney will need to file an original copy of the Power of Attorney with Alberta's Land Titles Office to carry out your instructions.

EXAMPLES

You might only need an Attorney to watch over a rental property you own for a short period of time – to make sure taxes are paid and to deposit rent cheques.

You might need your Attorney to deal with all of your financial matters (pay your bills, complete your income tax returns, etc.) for an indefinite period of time while you recover from a serious surgery.

Coming into Effect

Your Power of Attorney must say how it comes into effect. You can choose if it comes into effect:

- on the day it is signed;
- on a date stated in the Power of Attorney;
- when a certain event occurs.

Your Power of Attorney can continue on indefinitely. It can also say if it comes to an end on a certain date stated in the Power of Attorney or when a certain event occurs.

**If you are First Nations and ordinarily live on-reserve,
the law may be different.**

The *Indian Act* applies to you. For more information, contact:

Bearpaw Education

780.428.0187 or www.bearpaweducation.ca OR

Indigenous and Northern Affairs Canada

<https://www.aadnc-aandc.gc.ca/eng/>

Changing or Cancelling a General Power of Attorney

You can change or revoke (cancel) your General Power of Attorney at any time as long as you have mental capacity. If you make any changes, let your Attorney know. Any changes or revocations must be in writing.

Your Power of Attorney automatically comes to an end if:

- you lose mental capacity;
- you die;
- you revoke (cancel) it;
- a court determines that the Power of Attorney no longer has effect;
- a court grants a **trusteeship order** in respect of you;
- your Attorney dies or quits or a trusteeship order is granted over that person and there is no Alternate Attorney to take over.

Where to Keep your Power of Attorney

Once your General Power of Attorney is completed and signed, you can do one or more of the following with it:

1. You can put your original Power of Attorney in a safe place that your Attorney knows about and can access quickly if needed.
2. You can execute multiple originals of your Power of Attorney so that you can keep one original and give originals to your Attorney and Alternate Attorneys.
3. You can leave the original with a trusted person, such as a lawyer, with specific instructions about when to release it. If you do this remember that it may be years before your Power of Attorney is needed, and the person you left it with may have moved or died in the meantime.
4. You can let your family members, accountant or other trusted advisors know that you have a Power of Attorney. You may also leave a copy with them. You should make a list of the people you give a copy to so that you can let them know of any future changes as well.

Reviewing a General Power of Attorney

Review your Power of Attorney:

- at least once a year;
- whenever there are important changes in your relationships with others;
- if any of your family members, or others close to you, get divorced, married or die;
- if your Attorney dies or says that they are no longer able or willing to act for you;
- if there are any significant changes in your health; or
- if you move to a new province or country. You should consult with a lawyer in that place to make sure your General Power of Attorney is valid there.

After you review your Power of Attorney, you can decide if it needs an update.

In most situations, a photocopy of your Power of Attorney will not be enough. The people or companies you are dealing with will require either an original or a **notarized copy**.

A **notarized copy** is a document certified by a notary as a true copy of the original.

In Alberta, a notary is a person given powers by the *Notaries and Commissioners Act* to certify documents.

Glossary

adult interdependent partner

A person with whom you are in an adult interdependent relationship.

adult interdependent relationship

A term unique to Alberta for relationships outside of marriage and governed by Alberta's *Adult Interdependent Relationships Act*.

It is a "relationship of interdependence" between two people who:

- have lived together for three years or more; or
- live together and have a child together, by birth or adoption; or
- have signed an adult interdependent partner agreement.

A "relationship of interdependence" exists where two people:

- share one another's lives; and
- are emotionally committed to one another; and
- function as an economic and domestic unit.

Agent

A person named in a Personal Directive to make personal decisions on behalf of the Maker.

Alternate Attorney

A person named in a Power of Attorney to act if another Attorney cannot act.

Attorney

A person who is named to act on behalf of the Donor in a Power of Attorney or an Enduring Power of Attorney.

beneficiary

Of an **estate**, a person (individual or organization) who inherits all or part of a deceased person's estate.

Of a **trust**, a person (individual or organization) who receives a benefit from a trust.

Co-Attorney

An Attorney who has powers at the same time as another Attorney. The powers may be over the same financial decisions or over different financial decisions. Co-Attorneys can have 'joint' powers (they must decide things together) or 'joint and several' powers (either Attorney can decide).

Donor

A person who makes a Power of Attorney or an Enduring Power of Attorney.

Enduring Power Of Attorney

A type of Power of Attorney that continues on even if you lose mental capacity.

estate

All of the property you own at your death. Property that you own as joint tenants with other people or that you have designated a beneficiary for do not form part of your estate.

mental capacity

The ability to understand information that is relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of the decision.

Personal Directive

A written, signed, dated and witnessed document that appoints someone else (your Agent) to look after your personal matters (non-financial only).

Power of Attorney

A written, signed, dated and witnessed document that gives someone else (your Attorney) the right to act on your behalf with respect to your financial affairs while you are still alive. A Power of Attorney can be for a specific act, a definite period of time, or general in nature.

spouse

A person to whom one is legally married.

Will

A legal statement of how a person wants their property to be dealt with after their death.

Resources

Legislation

Alberta Queen's Printer

For free electronic and print copies of Acts or Regulations.

www.qp.alberta.ca

Government & Court Services

Government of Alberta

www.alberta.ca

Alberta Courts

www.albertacourts.ca

Resolution and Court Administration Services (RCAS)

Resolution and court support services across Alberta.

1.855.738.4747

<https://www.alberta.ca/rcas.aspx>

Office of the Public Guardian and Trustee

Services and support for vulnerable Albertans and their families.

Toll-free: 310.0000 then 780.422.1868

www.alberta.ca/office-public-guardian-trustee.aspx

Legal Services

Law Society of Alberta Lawyer Referral Service

Provides names of three lawyers. Each lawyer to provide half-hour consultation free of charge.

Toll-free: 1.800.661.1095

<https://www.lawsociety.ab.ca/public/lawyer-referral/>

Legal Aid Alberta

Toll-free: 1.866.845.3425

www.legalaid.ab.ca

Edmonton Community Legal Centre (ECLC)

Legal clinic in Edmonton. Call for hours and eligibility.

780.702.1725

www.eclc.ca

Calgary Legal Guidance (CLG)

Legal clinic in Calgary. Call for hours and eligibility.

403.234.9266

<http://clg.ab.ca>

Community Legal Clinic – Central Alberta

Legal clinics in Central Alberta. Call for hours and eligibility.

Central Alberta: 403.314.9129

Fort McMurray: 587.674.2282

Lloydminster: 587.789.0727

Medicine Hat: 403.712.1021

www.communitylegalclinic.net

Grande Prairie Legal Guidance

Legal clinic in Grande Prairie. Call for hours and eligibility.

780.882.0036

www.gplg.ca

Lethbridge Legal Guidance

Legal clinic in Lethbridge. Call for hours and eligibility.

403.380.6338

<http://www.lethbridgelegalguidance.ca/>

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This booklet is one of many publications produced by the Centre for Public Legal Education Alberta. All publications can be viewed and downloaded for free by visiting www.cplea.ca/publications or **you may order pre-printed publications to be sent to you by visiting www.cplea.ca/store**

Other publications related to this topic that may interest you include:

- Making a Will
- Making a Personal Directive
- Making an Enduring Power of Attorney
- Being a Personal Representative
- Being an Attorney Under an Enduring Power of Attorney
- Being an Agent
- General Powers of Attorney
- *Adult Guardianship and Trusteeship Act*

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