

## Responsibilities and Requirements of an Attorney, under a Power of Attorney

**U**nder the *Adult Guardianship and Planning Statutes Amendment Act*, enacted on September 1, 2011, there will be some new terms for Powers of Attorney.

### Guidelines for the Attorney

The following is intended as a guideline of responsibilities for an “Attorney” (not a legal professional) under a Power of Attorney. The person who has granted the Power of Attorney is called the Adult or sometimes the Donor.

To use the Power of Attorney document, you must show the original to the institution or organization—for example, the bank, Motor Vehicle Office, Municipal Office (for the Homeowner’s Grant)—so you can sign on behalf of the Adult.

- You may allow the organization to make a copy, if required, but the original
- must be returned to you.
- Should you need to use the document for Land Registry purposes, the Land
- Title Office (or the Notary, if you are e-filing) will require the original Power of Attorney. The Registrar or the Notary will make a copy and return the original to you.
- You must indicate you want the original returned to you.

### Things You Must Do . . .

When you sign any documents on behalf of the Adult, it is imperative that you keep a careful record of everything you do.

You ultimately may be accountable to the Adult, the family, the courts, and/or the BC Public Guardian and Trustee regarding your management of the Adult’s affairs. Make an accurate and detailed list of assets taken under your responsibility at the start date, including all bank balances, brokerage accounts, pension sources, and monthly entitlements.

1. If you sign a form for the Adult’s car insurance, keep a photocopy of the form.
2. Keep the Adult’s accounts separate from your own.
3. Record all funds received and expenses paid.
4. Reimburse yourself only for items you purchased for the sole benefit of the Adult. Reimburse yourself for related expenses such as ferry fares, gas, and long-distance charges you have incurred while acting in your capacity as Attorney.
5. Report to the Adult on a regular basis. If the Adult becomes incapable, share this information with a third party preferably assigned by the Adult while capable, such as a sibling or the Adult’s accountant.
6. Prepare an annual summary of accounts, reconciling opening and closing balances for each bank and brokerage account.
7. Ensure tax returns are prepared on time and make adequate installment payments. Confirm all entitled income is being collected.
8. Pay property taxes and claim the Homeowner Grant, if applicable.
9. Apply for benefits to which the Adult may be entitled.
10. Remember your responsibility is to the Adult; you have no powers beyond those specified in

the document.

### **Things You Must NOT Do . . .**

1. DO NOT incur new debts without a clear plan as to both the benefit to the Adult and the means of repaying the debt from the current income sources. For example, a loan to improve accessibility to the home so the Adult can remain at home, provided the Adult's income will comfortably cover the payments.
2. DO NOT take a fee for your services unless it is clearly provided for in the Power of Attorney document.
3. DO NOT make any loans or make distributions to family members, even if everyone agrees to it, unless authorization to do so is clearly provided in the Power of Attorney document.
4. DO NOT borrow funds or accept gifts from the Adult unless authorization to do so is clearly provided in the Power of Attorney document.
5. DO NOT convert the Adult's assets to your name or use the Power of Attorney for your personal gain, unless authorization to do so is clearly provided in the Power of Attorney document.

The Adult may revoke the Power of Attorney at any time, provided he or she has the necessary mental capacity to do so. Should he or she do so, you must not use the Power of Attorney document after you have been made aware it has been revoked. Under section 11 of the new Act, however, until the contrary is demonstrated, an Adult is presumed to be capable of making decisions about his or her own financial affairs, and understanding the nature and consequences of making, changing, or revoking an Enduring Power of Attorney.

If you are in doubt about the Adult's capacity to revoke a Power of Attorney, you should refrain from using it until a medical assessment is done to prove capacity one way or the other. When in doubt as to your authority as the Attorney, you can apply to the courts for direction. You would hire a lawyer to assist you with that.

The original Power of Attorney should be kept in a safe location; the Attorney needs to be aware of the location and it must be accessible to him or her. For example, if it is locked in a safety deposit box, and the Attorney does not have access to the box, the document will be of no use. If you have been appointed, make sure you have the information and legal authority to obtain the document when needed, or ask the Adult for a certified copy.

Remember, the Power of Attorney is for financial matters and does not include health care decisions. If the Adult is capable, he or she can make a Representation Agreement for health care and personal care decisions.

### **BC Notaries and Powers of Attorney**

BC Notaries have a duty of care to their clients to ensure the person to whom the Adult is granting the Power of Attorney is likely to be trustworthy. The Notary preparing the document will focus on a series of salient points, including the following.

1. What is the length and strength of the relationship between the Adult and the proposed Attorney?
2. What is the past behaviour of the individual to be named as Attorney? Are there signs of

- irresponsibility, lack of judgment, and an inability to handle his or her own affairs?
3. Is the Adult considering appointing a son or daughter who is not financially responsible with his or her own affairs? In that case, another individual should be considered to serve as the Attorney. Just because someone is a close family member does not mean that person is best suited for the job.
  4. Likewise, if the Adult is appointing a person he or she barely knows and who has recently befriended the Adult, extra caution should be taken.
  5. When capacity is in question, the Adult will be asked to provide written consent so the Notary can contact the Adult's physician for an opinion regarding the Adult's capability.

The Notary may refuse to prepare the Power of Attorney document if the above points raise red flags.

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