

## Understanding Power of Attorney

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A Power of Attorney is a legal document. When you give someone power of attorney you give him or her the legal power to take care of financial and legal matters for you. This might include paying bills, investing your money or selling your house. The person you give this power is called the attorney. He or she is not your lawyer. The power of attorney does not give that person authority to make decisions about your health care. It covers financial and legal matters only.

### Types of Power of Attorney

- **SPECIFIC:** Allows your attorney to do a specific task. The power ends when the task is completed. For example, A bank PoA only covers the accounts held by that bank and, perhaps, only at that branch. It does not cover other investments or real estate and does not give your attorney the right to challenge debts or sue on your behalf, or enter into an agreement with a care facility, should you be incapable of doing these things yourself.
- **GENERAL:** Gives your attorney a very wide power. It is generally used when decisions need to be made about your property or financial matters. An example is when you are out of the country for an extended period of time and need someone to manage your affairs for you.
- **ENDURING:** A general enduring PoA (which is the most common kind of PoA) covers all financial and legal matters and allows your attorney to act for you even if you become mentally incapable. In most general enduring Powers of Attorney (PoA), the person granting the Power of Attorney (the Grantor) appoints someone to be his or her attorney in accordance with the *Power of Attorney Act*.

It ends if you die or the court appoints someone to act for you.

### Lawful Uses of a Power of Attorney

The attorney has the obligation to look after the legal and financial affairs of the Grantor. The Grantor must exercise good judgment in picking an honest and trustworthy attorney, as the

attorney could interfere, legally, in the Grantor's affairs as soon as the PoA is signed.

The assets of the Grantor are always the assets of the Grantor and must be used for the Grantor's benefit. They never become the assets of the attorney or others.

It is legal for the attorney to:

- Pay bills and direct investments
- Change banks or investment houses, as long as the Grantor's name is on the accounts
- Sell the Grantor's home and, perhaps, purchase another home for the Grantor in the Grantor's name; if another home is not purchased, put the net proceeds into the Grantor's account or investments
- Commence or defend a legal action on behalf of the Grantor (i.e. an ICBC claim) or settle a legal action
- Arrange a line of credit or loan for the Grantor, as long as the proceeds of the line of credit or loan are used for the benefit of the Grantor (i.e. consolidate debts; pay for long term care)

### **Not Lawful Uses of a Power of Attorney**

An attorney under a PoA is not allowed to:

- Make or change the Grantor's Will
- Commence divorce proceedings, unless it can be established that a divorce is in the Grantor's best interests
- Make gifts or transfer assets to the attorney, family members, friends or charities without the express consent (written consent is best) of the Grantor

So, can an attorney buy holiday gifts on the grantor's behalf? If the Grantor lacks mental capacity or was pressured, any consent to gifts is not valid and the attorney may be charged with fraud or forced to personally repay the gift to the Grantor or his/her estate.

### **Procedure**

- You must be mentally competent and understand the nature and effect of the document.
- Your attorney should be someone you trust.
- It must be in writing and you must sign it.
  - While the BC *Power of Attorney Act* allows for a PoA from a store-bought kit, you may not be able to complete it correctly or, even if correctly completed, it may not be accepted by all banks and investment houses. It will definitely **not be**

**valid** to deal with real property.

- A lawyer or notary can prepare a PoA acceptable for all purposes for as low as \$100 plus tax. Don't take a chance, as it may be too late to do another one once you find the "kit" PoA does not work.
- You need at least one witness.
- Banks often have their own forms for power of attorneys. Several standard forms are available at stationery stores. If you are dealing with land it is more complicated and you should have a lawyer or notary public assist you.
- If you want to cancel your power of attorney, notify your attorney in writing and date the document. Then, write to the organizations that have been dealing with the attorney and tell them it has ended.

### **Do you need a Power of Attorney (PoA)?**

You need a PoA if:

- You have a bank account only in your name and bills to pay
- You have investments only in your name
- You own your home, whether or not anyone else is on title

Life can be unpredictable so it is important to have a plan in case you become incapable of managing your financial affairs, either temporarily or permanently.

### **What are alternatives to a PoA?**

- *Joint Names on an Account* – If you have one main bank account and need someone to help pay your bills, you can add that person's name to your account. There are two types of joint ownership of a bank account, and banks should have different forms for you to complete for each:
  - You intend that person to inherit the account when you pass away; or,
  - You only want that person to pay the bills and the account is to be a part of your estate.
- *Committeeship* – If there is no PoA in place and you become financially incapable, your family may have to apply to the Court for an order appointing a "committee". This person has the same basic powers as under a PoA, but it is very expensive and may take months.
- *Public Guardian and Trustee* – If it is thought that you don't have a PoA, the government may step in and take over through the office of the Public Guardian and Trustee.

**For more information**

***Lawyer Referral:*** 30 minute consultation for \$25. Call 604-687-3221.

***Dial-a-Law:*** Free, pre-recorded legal information. Call 604-687-4680 (Lower Mainland) or 1-800-565-5297 (elsewhere).

***Law Students Legal Advice Clinics:*** Call 604-822-5791.

***North Shore Community Resources Legal Information:*** Call 604-985-7138.