

PERSONAL PLANNING TOOLS ADULT GUARDIANSHIP

- 1. Power of Attorney**
- 2. Representation Agreement**
- 3. Health Care Statement – Advance Directive or Instructions**

On September 1, 2011 new laws were passed in relation to the above personal planning tools. While the Power of Attorney has been available to British Columbians for some time Representation Agreements have been in use since 2000. BC Notaries can prepare all of these documents including wills. Having these personal planning documents in place will allow you to make your own choices with regard to your finances and health care and as to who will help you ensure that your wishes are met. Preplanning gives you the right to decide who will look after you and your assets thus avoiding delays in the provision of health care, costly Court proceedings and intervention by the BC Public Guardian and Trustee.

THE POWER OF ATTORNEY

An Adult 19 years or older can appoint another adult as their “Attorney” under a Power of Attorney (POA). The updated POA Act is much more detailed and has clarified some issues that have been ambiguous over time, for example:

1. The POA is for financial and legal matters only (except the making of a will) – it cannot be used for health care or medical decisions or allow the Attorney to “place an adult in a home”;
2. The POA can be in effect at the time of signing or at a later date defined in the POA document (a triggering event);
3. The Act provides a comprehensive guide as to the duties and responsibilities of the Attorney including the Attorney’s requirement to keep records and how an Attorney may resign;
4. The POA Act defines the mental capacity required to make a POA – an Adult must have full mental capacity to sign a POA.

There are 3 types of POA: Specific, General and Enduring. An adult may sign a Specific POA for a specific reason, ie. selling a house or for a specified time limit, ie. for a one year period while away on a trip. Most POAs are General and are also Enduring which means that if the Adult becomes mentally incapacitated then the Attorney can continue to act for the Adult. This is usually why most POAs are prepared – in case someone becomes incapacitated due to an accident, stroke or other illness. It must be stressed, however, that while an Adult is still capable they are able to continue to look after their own affairs as a POA is not an “all or nothing” thing if the

Adult is capable of expressing their wishes. The POA can also be revoked or changed any time while the Adult is capable.

This document is an extremely important planning tool no matter how much property an Adult owns or how much money they have in the bank. If an Adult becomes incapacitated and they do not have a POA then someone must apply to the Court to become the Adult's "Committee". This is a very expensive process involving lawyers, the Courts and the Office of the BC Public Guardian and Trustee.

Careful consideration must be given to who is appointed as an Attorney. The Attorney must be honest, organized, trustworthy and of good character. The general POA document will allow the Attorney to deal with the sale of property, bank accounts, reinvesting money, paying bills, filing income tax returns and seemingly simple tasks like cancelling services such as hydro and cable. The document may never be needed but if it is, both the Adult and the Attorney will be very grateful that it has been done and is available for use in what can be extremely difficult circumstances.

THE REPRESENTATION AGREEMENT

An Adult 19 years or older can appoint another adult as their "Representative" under a Representation Agreement. There are two types of Representation Agreements:

1. A Section 7 Agreement for personal care and healthcare as well as basic financial matters (paying bills).
2. A Section 9 Agreement for health care and medical matters only.

A Section 7 Agreement provides for routine financial, health, and personal care decisions. This document is available to those Adults who have reduced decisional capacity required for a Power of Attorney and Section 9 Representation Agreement and is a very valuable tool in that instance. For the purposes of this article, however, we will focus on the Section 9 Representation Agreement.

A Section 9 Representation Agreement (sometimes called an "Enhanced" Representation Agreement) appoints a Representative to make **health care and medical decisions** for the Adult if the Adult becomes incapable of expressing their wishes and this includes the ability to refuse life-sustaining treatment. This is extremely important because if there is no legally appointed Representative then the "default" person – a Temporary Substitute Decision Maker under the Health Care [Consent] and Care Facility [Admission] Act) - is called upon to make those decisions. Generally speaking this Temporary Substitute Decision Maker (TSDM) is the Adult's next of kin, however, attempting to determine and contact the next of kin can cause delays in providing health care and can cause major disputes among family members when only one member of a class (ie. only one child) is contacted and their instructions followed. Once a TSDM is named it is only for that one medical incident and if further medical decisions are needed in a month's time the hospital and health care staff must go through the same lengthy procedure to find a TSDM. This applies to spouses as well!

The Representative will make decisions for the Adult based on the Adult's wishes expressed verbally or in writing (see next section). A Representation Agreement gives the Adult the Choice of who will make decisions for them. This choice does not have to be the Adult's next of kin but can be a close friend or perhaps only one of many children. It is also possible to name another person rather than the Adult's spouse since the spouse may not always be the best choice. This must be in writing by way of a properly drawn and signed Representation Agreement. A TSDM cannot make personal care decisions, only medical care decisions, leaving them without authority to speak for the Adult in many situations.

THE HEALTH CARE STATEMENT

There are several ways of making your wishes known with respect to health care and medical matters including:

1. Verbally or an informal written expression;
2. By completing and signing a document called "Health Care Instructions";
3. By completing and signing an Advance Directive.

Verbal:

In the event you have not made your wishes known in writing, your Representative must follow your wishes based on what you have stated while capable. If this information has not been communicated your Representative will decide based on what they believe your wishes would be and based on your best interest.

Health Care Instructions:

This is a more formal written document that an Adult can prepare with the guidance of their Doctor. It is notice to your Representative and will be extremely useful in times of urgency and stress. This document will be the most widely used to express health care wishes.

Advance Directive:

An Advance directive is similar to the instructions, however, no decision maker is needed in order for those wishes to be followed. A health care provider must use this document and follow its direction and they will not look to others to help make decisions. This does not allow anyone to override your decisions and its use must be considered very carefully. As with all forms of health care direction this document should be reviewed regularly and changed if necessary to reflect current medical technology and your wishes.

Putting these planning tools in place will help open up discussions among families. Now is the time to discuss these matters when everyone can speak together in a relaxed and comfortable setting and not in a hospital room when the Adult's wishes aren't known or the course of action chosen may not have been the Adult's wishes. Talk to your family, friends and Doctor about your wishes - and make them known and keep them current as your circumstances change and medical advances are made.