



UNDERSTANDING AN ENDURING POWER OF ATTORNEY

This is a brief guide about an Enduring Power of Attorney. It answers these questions.

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What is an Enduring Power of Attorney (EPA)?

An "enduring power of attorney" (EPA) is a specific kind of power of attorney that continues on or comes into force and gives another person the power to deal with your financial and legal affairs if you become mentally incapable to do so.

Why should I make an EPA?

By making an enduring power of attorney *you* choose a person you know and trust, to make decisions and manage your finances if you become mentally incapable of doing it yourself.

If you become mentally incapable and have not named an enduring power of attorney, a loved one or another person must apply to the court before he or she can manage your affairs. This usually takes a lot of time and money and it is the court that decides who takes on this responsibility.

Who can make an EPA?

You can make an enduring power of attorney as long as you are 19 or older and you understand the document at the time it is signed.

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Who can I name in an EPA?

Any person over 19 can act as your attorney. (An "attorney" in this case is the person you name in your enduring power of attorney.) A good attorney is someone who is trustworthy and who has enough knowledge of financial matters, like banking and caring for assets, that he or she will manage your affairs carefully and safely. A bank or other financial institution can also be appointed as an EPA if that institution is willing to act for you.

Can I appoint more than one person?

You can appoint more than one person when you make an enduring power of attorney. The people named will share in the decision-making. You can also appoint an alternate person to act on your behalf if your first attorney is not able or refuses to act as your attorney.

What are the requirements for making an EPA?

An enduring power of attorney *must*:

- be in writing and signed by the maker (also called the "donor"). (There are special exceptions if the maker cannot sign because of physical disability or because he or she cannot write.);
- contain a statement saying that it is to continue if the maker becomes incapable, or that it comes into effect when the maker becomes incapable;
- have a Schedule of Notes attached to it. (In the Yukon, the *Enduring Power of Attorney Act* requires that a document called "Notes on Enduring Power of Attorney" must be attached to every EPA that is completed, in order for the EPA to be valid. The Notes are a part of the *Act*. The Notes explain what an EPA is, and how EPAs work. The Schedule of Notes are available online, or from the YPLEA office.);
- include a statement signed by the attorney saying he or she agrees to act as the attorney; and
- have a Certificate of Legal Advice signed by a lawyer attached to it. (This certificate states that you understand the document and that you are signing it of your own free will and that no one is pressuring you to sign it.

In all cases the person making the EPA *must* be capable of understanding the document when he or she signs it.



When does an EPA end?

- An enduring power of attorney comes to an end if you die or your attorney (and any alternate attorney) dies or becomes incapable of acting as your attorney.
- Your attorney or an interested party can also apply to a judge of the Supreme Court of Yukon for an order removing your attorney.
- You can cancel your enduring power of attorney anytime you are mentally capable of doing so. If you are still capable, your attorney can give notice he or she is not willing to act as your attorney in the future. You would need to appoint another attorney if this happened.

Quick facts about an Enduring Power of Attorney

- Enduring powers of attorney do not let another person make health care decisions or living arrangement decisions for you. EPAs are for financial and legal affairs only (such as banking or selling land).
- A document to appoint a person to make health care decisions for you is called an Advance Directive. (See YPLEA publication on *Understanding Advance Directives* and website information at www.yplea.com.)
- Most people choose their spouse, an adult child or other family member or a close friend to be their "attorney" (a person or persons who you appoint to handle your financial and legal affairs).
- An EPA does not replace or cancel a will. An EPA comes to an end if you die or your "attorney" dies.



This guide provides basic information on an enduring power of attorney. If you need further information, contact the YPLEA Law line at 668-5297 or toll free 1-866-667-4305.

Lawyers in the Yukon may also be willing to discuss estate planning with you for a minimal fee. Half-hour lawyer referral certificates and a list of participating lawyers may be obtained from the Law Society of Yukon office. Call 668-4231 for more information.

For further information on YPLEA's project "Empowering Yukon's Seniors and Elders: Planning and Prevention Tools", and the prevention of abuse or neglect of older adults and legal resources to reduce the risk, contact:
Project Coordinator at yplea.seniors@gmail.com or phone 867-393-2044.

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