



## ENDURING POWER OF ATTORNEY - My role as "Attorney"-

### What is an "Attorney"

- When a person makes an Enduring Power of Attorney, he or she appoints another person to manage finances and other assets. The person who makes a power of attorney is called the **donor**.
- The person appointed to act on the donor's behalf is called the **attorney**.

### I have been appointed as *Attorney*...What do I do now?

This is a guide to assist people appointed as **\*attorney** under an Enduring Power of Attorney (EPA) so that they better understand their duties and responsibilities for managing the assets and property of the **\*donor** and for making decisions on the donor's behalf.

For more information on Enduring Powers of Attorney, please see the booklet "Understanding an Enduring Powers of Attorney" and "Ten Common Questions about Enduring Power of Attorney".

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### What is an Enduring Power of Attorney?

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

### Some general information about Powers of Attorney

A "power of attorney" is a document that gives another person the power to deal with your financial and legal affairs.

Being an attorney creates a special kind of responsibility, called a "fiduciary duty". A fiduciary is a person who is entrusted with property or power for the benefit of another person. This creates a duty or responsibility for the Attorney to act in the best interests of the donor, at all times.



Attorneys appointed under an Enduring Power of Attorney must be especially aware of their duties and responsibilities because they may be managing the assets and financial affairs of a person who has become mentally incapable. A "mentally incapable person" is a person who is no longer mentally able to make decisions about his or her financial or legal matters.

A power of attorney can be to act on another person's behalf for a specific task, like selling a house. A power of attorney can also be for broad, sweeping powers to manage another person's financial and legal affairs.

A power of attorney can be limited to the time the donor is still mentally competent (a "General" Power of Attorney) or it can start or continue on if the donor becomes mentally incapable after signing (an "Enduring" Power of Attorney).

### **What is expected of me as an attorney?**

As a general rule, an attorney must at all times follow the donor's wishes, present and past. You must act according to the donor's values and standards, if he or she is unable to express those values and standards. An exception to this is where the donor is no longer capable and what the donor is requesting would put the donor at risk of harm or in danger, or cause a loss of assets that would not be in the donor's best interests. In such a case you must act in the donor's best interests to protect those assets.

Being an attorney can be difficult because you must balance the needs of the donor with his or her personal values. You must act how a reasonably prudent or careful person would in order to manage his or her assets, and in the donor's best interests.

You cannot take any profit or benefit from your role as an attorney, unless the power of attorney document specifically says you may or you have the permission of a court.

You should not take any of the donor's money for personal use, even as a loan. You could be prosecuted criminally or sued if you use the donor's assets or money in a way that benefits you.

Being an attorney can be particularly difficult if you are the spouse of a person who has become mentally incapable. It is expected that an attorney will keep the



donor's assets separate from his or her own assets, but this may be impossible or impractical if you also depend on the donor for income and contribution to living expenses. Be sure to keep careful records, and if you are in this situation, speak to a lawyer, a social worker or a care assistant so that everyone involved with the donor understands your situation and is clear about your needs too.

### **What are the specific duties and responsibilities of an attorney?**

When acting, you must:

- (a) take the care that a reasonably prudent or careful person would in managing the donor's affairs (If you are a professional such as an accountant or lawyer, or if you take a fee, a higher standard of care may be required of you);
- (b) keep and produce financial records, including a current list of assets, liabilities, invoices, bank statements and all other records that might be needed to show what you have done in your role as an attorney (It is a good idea to make an inventory when you first start acting, and to keep good records on a monthly basis.);
- (c) act in the best interests of the donor, taking into account the current wishes of the donor and any known beliefs, values and instructions set out by the donor;
- (d) give priority to the donor's health care needs (if payments are needed for this) and to make sure personal effects are available for the donor (i.e. if the donor is in a care facility but might want special items from home);
- (e) make routine payments of bills and pay debts owed by the donor from the donor's account;
- (f) keep the donor (and any other attorneys) fully informed, to the extent possible, of your actions made on the donor's behalf;
- (g) keep the donor's property separate from your own; and
- (h) keep the donor's information private except if you need to release information to perform your duties.



## **Who do I need to Contact?**

While everyone's situation is different, you should notify several people or institutions when you start acting as an attorney. These may include:

- (a) financial institutions with which the donor has dealings (banks, investment companies, investment advisors, etc.);
- (b) government department providing benefits to the donor (e.g. Employment and Income Assistance for Persons with Disabilities (PWD), Old Age Security (OAS), Canada Pension Plan (CPP), Veterans Affairs, etc.);
- (c) other party providing benefits to the donor such as the Workers' Compensation Board, Employment Insurance, private pension sources, private insurance, Unions, etc.;
- (d) the institution or other place of residence where donor may live;
- (e) agency providing medical coverage (e.g. Yukon Health Care, Blue Cross, private medical insurance, etc.);
- (f) municipal or Yukon property tax authorities, municipal utilities authority ;
- (g) utility service providers (electricity, cable, internet, telephone, home heating oil suppliers etc.); and
- (h) Canada Revenue Agency.

## **How do I deal with Banking Arrangements?**

You should make an appointment to speak to a bank representative about the donor's account. By going in person, you will have a chance to speak to a banker directly and set up a good working relationship for the future. The bank will ask for your proof of identification, will want your signature and will copy the Enduring Power of Attorney for their files.

You should deal with the donor's account in the same manner from time to time, such as always banking in person or using cheques. You should not use the donor's bank card even if the donor has given you the PIN number. This makes it difficult to track what transactions.



If you withdraw cash from the donor's account, you must keep good records of what the money is used for and you should obtain receipts for any payments made.

Any new investment made on behalf of the donor must be authorized by the *Trustee Act*. If you are making investments, you may wish to do so through an investment advisor and after obtaining legal advice about the types of investments permitted.

Any income for the donor should go into the donor's account and bill payments made through withdrawals from the account (set up automatic withdrawals or use cheques). Keep **your money separate from the donor's money even if you are the donor's spouse**. If your spouse becomes incapacitated and you act as attorney, you may wish to set up a separate account for your spouse's income sources for clear record keeping.

### How do I keep track of finances?

You are required to account for how you handle the donor's financial affairs. The enduring power of attorney may specify the person who can ask you for information and records, or a court may require you to show information and records. If the donor dies, you may also need to account to the executor of his or her estate.

The accounts which you may be required to present include:

- (a) an inventory of property and debts at the beginning and end of the accounting period;
- (b) a statement of all property and money received during the accounting period;
- (c) an statement of all property distributed and money paid out during the accounting period;
- (d) an indication of all changes to property (such as a sale of a house) and all debts paid or incurred during the accounting period;
- (e) a statement of all expenses incurred or paid during the accounting period;
- (f) records that balance the opening net value of the estate with the closing net value of the estate; and



- (g) a proposed calculation for any fees you want to take (if the enduring power of attorney permits a fee to be claimed).

You may also be required to provide documentation confirming ownership by the donor of the assets described in the accounts. You may wish to have a bookkeeper help you with your records and accounts.

### **When should you seek legal advice?**

Seek legal advice before:

- (a) making gifts, advances, or charitable contributions from the donor's finances;
- (b) making loans to yourself or others (even with paperwork) from the donor's finances;
- (c) taking any compensation for acting as attorney;
- (d) taking compensation for providing care-giving services to the donor;
- (e) purchasing property from the donor;
- (f) making new investments unless you have been clearly advised by a financial expert that they are in accordance with the *Trustee Act*;
- (g) designating a beneficiary for insurance, pension, registered assets, or any other purposes; and
- (h) delegating decision-making authority to any other person.

Even if the enduring power of attorney gives specific authorization to do these things, you should first obtain legal advice.

### **Other Important Information**

An Enduring Power of Attorney made after 2005 may only be used for the purposes of managing financial and legal affairs. It is not valid for care or health decision-making, which are managed under an Advance Directive.



If you are concerned that a person who is acting as an attorney is not handling the donor's affairs properly, or is taking advantage of an incapable or vulnerable adult, you may wish to seek legal advice or to contact Senior Services/Adult Protection Unit at Health and Social Services (1-800 661-0408 extension 3946 or 456-3946 or the Office of the Public Guardian and Trustee (1-800 661-0408 extension 5366 or 667-5366).

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