HUMMINGBIRD
NOTARIES

VANCOUVER
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A GUIDE FOR ATTORNEYS

Acting under an Enduring Power of Attorney in British Columbia

You have been appointed as Attorney in an Enduring Power of Attorney (EPOA). This means the person who made it (the "adult") trusts you to manage their financial and legal affairs. Your duties are set out in the *Power of Attorney Act* (POAA). This guide explains what you can do, what you must do, and what you must not do.

1 | WHEN YOU CAN ACT

- Read the EPOA carefully. It may take effect immediately, or only if the adult becomes incapable. It may also contain conditions or restrictions.
- Your authority continues if the adult becomes mentally incapable. It ends when the adult dies, when the EPOA is revoked or terminated, or if you resign, become incapable or bankrupt. If you are the adult's spouse, it usually ends if your relationship ends, unless the EPOA says otherwise (POAA s. 29).
- If you are an alternate Attorney, you may act only in the circumstances the EPOA describes, for example if the first Attorney cannot or will not act.
- When the adult dies, your authority ends immediately. The Executor named in the Will then takes over.

2 | HOW TO USE THE EPOA

- Keep the original EPOA safe. Banks and other institutions will usually ask to see the original or a notarized copy.
- Sign documents in a way that shows you are acting for the adult, for example: "Jane Smith, by her Attorney, John Smith".
- To deal with real estate, the EPOA must be filed at the Land Title Office. We can help you with this.
- The EPOA covers financial and legal matters only. Health care and personal care decisions are made by the adult's Representative under a Representation Agreement.

3 | YOUR DUTIES (POAA S. 19)

- Act honestly and in good faith, and with the care, diligence and skill of a reasonably prudent person.
- Act only within the authority given in the EPOA.
- Act in the adult's best interests, taking into account their current wishes, known beliefs and values, and any directions in the EPOA. Encourage the adult to take part in decisions as much as they can.
- Give priority to paying for the adult's personal care and health care needs.
- Invest the adult's money only as permitted by the *Trustee Act*, unless the EPOA says otherwise.
- Keep the adult's money and property separate from your own (except property you already own jointly).
- Do not sell or give away property that you know is left as a specific gift in the adult's Will, unless it is necessary to meet your duties. Keep the adult's personal belongings available to them where reasonable.

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4 | RECORDS YOU MUST KEEP

- When you first act, make a list of the adult's assets and debts, with estimated values.
- Keep that list up to date, and keep records of every transaction: bank statements, receipts, invoices and a note of decisions made.
- Be ready to show your records to the adult, and to others entitled to see them, at any time.

5 | WHAT YOU MUST NOT DO

- Do not make or change a Will for the adult. Any Will an Attorney makes for the adult has no effect (POAA s. 21).
- Do not make gifts or loans, including to yourself, unless the EPOA expressly allows it or the law permits it. Without express permission, gifts and loans are limited: the adult must have enough left for their care, must have made similar gifts while capable, and the total in a year cannot exceed the lesser of $5,000 or 10% of the adult's taxable income for the previous year.
- Do not mix the adult's money with your own, or use it for your own benefit.
- Do not change beneficiary designations on RRSPs, RRIFs, TFSAs or insurance except as the law allows (generally with a court order).

6 | PAYMENT, HELP AND RESIGNING

- You may be reimbursed for reasonable expenses. You may be paid for your time only if the EPOA allows it.
- You may hire qualified professionals, such as an accountant or investment advisor, to help you, but you remain responsible for decisions.
- You may resign by giving written notice to the adult and to any other Attorneys, as set out in the POAA.
- Misusing an EPOA is serious. The Public Guardian and Trustee can investigate concerns about financial abuse, and an Attorney can be held personally responsible for losses.

QUESTIONS

If you have questions about your role, please contact Tanvi Ahuja, Notary Public, Hummingbird Notaries, at 604.760.1037 or ask@hummingbirdnotaries.com. Our office is The Perch, 60-323 Jervis Street, Vancouver.

This guide provides general information about British Columbia law to help you understand your role. It is not legal advice for your particular situation, and the law may change. Please contact us, or an estate lawyer, before taking any step you are unsure about.