

Do You Need an Enduring Power of Attorney?



Public Guardian and Trustee of Yukon

Information Resources - Whitehorse, Yukon

Office of the Public Guardian and Trustee

867-667-5366; toll free (in Yukon) 1-800-661-0408, ext. 5366

Email: publicguardianandtrustee@gov.yk.ca

Web site: www.publicguardianandtrustee.gov.yk.ca

Location: Third Floor Andrew A. Philipsen Law Centre, 2134 – 2nd Avenue

Yukon Public Law Library

867-667-3086; toll free (in Yukon) 1-800-661-0408, ext. 3086

Email: yukon.law.library@gov.yk.ca

Web site: www.justice.gov.yk.ca/prog/cs/library.html

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

Registry of the Supreme Court of Yukon

867-667-5937; toll free (in Yukon) 1-800-661-0408, ext. 5937

Email: courtservices@gov.yk.ca

Web site: www.yukoncourts.ca/courts/supreme.html

Location: Ground Floor Law Courts, 2134 – 2nd Avenue

Non-Government

Yukon Public Legal Education Association (YPLEA)

867-668-5297; toll free (in Yukon) 1-866-667-4305

Email: ypleayt@gmail.com

Web site: www.yplea.com

Law Society of Yukon (Lawyer Referral Service)

867-668-4231

Email: info@lawsocietyyukon.com

Web site: www.lawsocietyyukon.com

Lawyer Referral Service - half-hour consultation with a lawyer - \$30 plus GST

Lawyers

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

IMPORTANT!

This guide has been produced by the Office of the Public Guardian and Trustee in the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication.

ENDURING POWER OF ATTORNEY

What is an enduring power of attorney?

An enduring power of attorney ("EPA") is a legal document that allows another person to act on your behalf with respect to your property and financial affairs if you become mentally incapable of managing your own affairs.

Why do I need an enduring power of attorney?

An EPA lets you choose someone you trust to handle your property and financial affairs when you are no longer able to manage them. Without an EPA, someone would need to apply to the court to act as your guardian with respect to financial matters, which takes time and is expensive.

Examples of how an EPA can work:

Andy has recently been told he has Alzheimer's Disease. Currently he is able to handle his own financial affairs and is mentally capable, but he knows that soon he will be unable to do this. By making an EPA, Andy can give his eldest son, Robert, the power to take care of his property and financial affairs, when he is unable to do so.

Karen is involved in a motorcycle accident which leaves her with such serious physical injuries that she cannot do her banking or pay her bills. Because she has an EPA that comes into effect on her physical infirmity, her financial affairs can be managed while she is unable to do so.

What will my attorney be able to do?

The person you name as attorney is legally able to do such things as:

- manage your property and pay all expenses in connection with it, such as your rent and utilities;
- lease, sell, mortgage and manage your real property;
- have access to and deposit and withdraw from your bank accounts and any safety deposit box;
- invest your money;
- sue or settle an account on your behalf for unpaid debts owing to you or that you owe; and
- deal with the maintenance, education and benefit of your dependent children or spouse.

When does an enduring power of attorney come into effect?

Your EPA takes effect as soon as it is signed and witnessed, unless you say in your EPA that you do not want your attorney to be able to act on your behalf until after you become mentally incapable of managing your own affairs.

When can an enduring power of attorney be cancelled?

An EPA is terminated if:

- it is revoked in writing by you, the donor, at a time when you are mentally capable of understanding the effect of revoking it;
- you die or your attorney dies (and you have not appointed an alternate attorney);
- your attorney renounces the appointment and gives you notice while you are still capable and the EPA is not yet in effect; or
- your attorney or any other interested person applies to the Supreme Court of Yukon for an order terminating your EPA.

When can I make an enduring power of attorney?

You can make an EPA any time as long as you are 19 years of age and are mentally capable.

How do I decide who should be my attorney?

Your attorney must be an adult age 19 or older. Your attorney will have very wide powers to deal with your property on your behalf; therefore, you should carefully choose someone you trust and who is also good with finances. You may choose more than one attorney to jointly manage your affairs. You may also choose an alternate attorney in the event that your original attorney is unable or unwilling to act when needed.

Where do I go to make an enduring power of attorney?

Obtain advice from a lawyer. Then choose your attorney, and perhaps an alternate attorney, and ask them if they are willing to act in this capacity on your behalf.

Have a lawyer prepare an EPA that:

- complies with the *Enduring Power of Attorney Act*;
- appoints your attorney and provides any restrictions on his or her powers to manage your property and financial affairs; and
- states when you wish your EPA to take effect (either immediately or upon your mental incapacity or physical infirmity).

You may wish to provide your attorney with a copy of your EPA and let them know where you are keeping the original EPA.

How do I make sure an EPA is legal?

In order to make sure that your enduring power of attorney (“EPA”) is legal:

- You, the donor, must be an adult who is mentally capable of understanding the nature and effect of the document. You must also make the EPA voluntarily.
- Your EPA must be signed in the presence of a lawyer, and that lawyer must sign a certificate of legal advice that states that you attended before the lawyer and that you, the donor, appeared to understand the nature and effect of the document.
- The EPA must be in writing, and you must sign and date it.

A power of attorney is enduring (i.e. will be in effect after you have lost mental or physical capacity) if it states either that:

- a) it will continue in effect despite your mental incapacity, or
- b) it is to take effect when you become mentally incapable or physically infirm.

The person that you appoint to act on your behalf (the attorney) must accept this responsibility.

Should my attorney be paid for his or her services?

Your attorney is entitled to be reimbursed from your estate for any reasonable expenses he or she incurs while managing your property and financial affairs. You may also choose to state in your EPA that your attorney may receive an allowance from your estate for the time and effort he or she spends managing your property.

Additional Notes

Your attorney will have wide powers to deal with your financial affairs, unless restricted by you. Although your attorney is required by law to act in your best interests, an attorney may abuse his or her powers. Make sure that you choose your attorney carefully. For instance, you should consider whether the person:

- is someone you trust;
- will likely act in your best interests; and
- has good judgment and financial management skills.

You should make the decision to make an EPA freely and voluntarily and without undue pressure from anyone else, in particular your chosen attorney.

You can cancel your EPA at any time as long as you are mentally capable of understanding what you are doing. This must be done in writing.

This guide was prepared as a source of general information only. You should not rely on it for legal advice. If you require legal advice, please contact a lawyer.

For more information, please contact:

The Lawyer Referral Service at 668-4231 - provides a certificate that entitles you to one half-hour consultation with a lawyer on the list at a minimal cost.

The Law Line at 867-668-5297 - a toll-free phone-in system that gives information about the law.

NOTES

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For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

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