

Make and Register a Representation Agreement

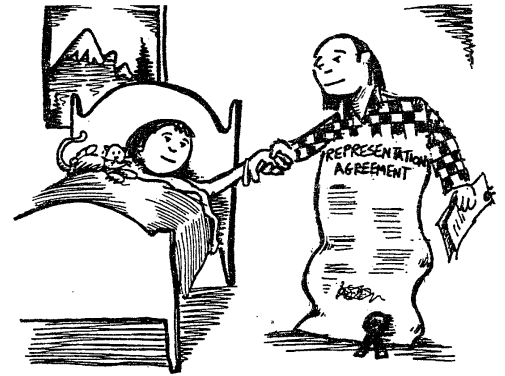
Who has legal authority to help you:

- Manage your finances
- Give or refuse consent for medical care
- Make living arrangements

If you become ill...

If you are in an accident...

If you need assistance now...



Introduction

This fact sheet provides information about making and registering a legal plan in case you need someone to act on your behalf due to an illness, accident or disability.

While a Will only takes effect after your death, a Representation Agreement and an Enduring Power of Attorney are legal tools for when you are alive and need help to make decisions and manage your affairs.

What is a Representation Agreement?

A Representation Agreement is a legal document and the ONLY way to appoint someone to act on your behalf for health and personal care matters. It can also cover routine financial and legal affairs.

Why make a Representation Agreement?

The reasons for making a Representation Agreement are the same as for making a Will:

- You stay in control.
- You decide who will carry out your wishes.
- It makes things easier on family and friends.
- It avoids the need for other authorities, such as the government, to be involved in your personal and private affairs.

© December 2008. This fact sheet provides information only; it is not legal advice. The laws affecting this area are to be updated. Keep in touch with Nidus for news.

Thank you to the Law Foundation of BC and the United Way of the Lower Mainland for financial support of this fact sheet.

Due to limited space, only a few examples are discussed. Contact Nidus about others.

When is an Agreement needed?

....John had a serious fall. He is in hospital with broken bones, internal injuries and is having more tests. Who will pay the bills and renew the car insurance? Who will help his wife Mary who has memory problems and relies on John for support on a daily basis?

....Jas was in a car accident. She is confused and has trouble concentrating. The doctor does not know if her difficulties are temporary or long term. Who will help her deal with ICBC? Who will hire a lawyer, if needed, to settle the claim?

....Marco is in hospital following a ski accident. His condition is stable and the doctor needs to get consent to do surgery. Marco is unconscious and cannot say yes or no. Who would Marco trust to consent on his behalf?

....Aimee had a stroke. She is paralyzed on one side and has very limited verbal communication. Who can make arrangements for Aimee's rehabilitation at home or at a facility?

Who should make an Agreement?

Everyone needs a plan; BEFORE a crisis happens. As the examples above show, a plan may have to cover more than end-of-life situations. Accidents can happen to anyone, at any age. You may need help for a short time or for longer term.

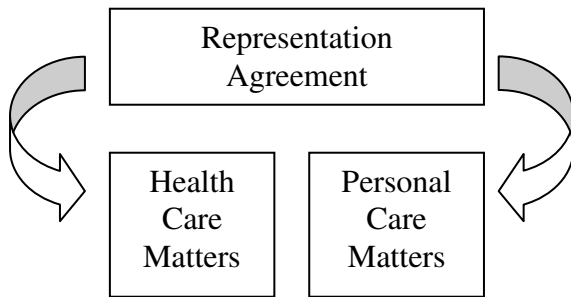
In British Columbia, if you are an adult (19 years or older), no one has automatic right to manage your affairs if you need help due to an illness, accident or disability.

Making a plan allows you to stay in control. If you do not have a plan in place, other laws and policies, involving the court, government or other authorities will decide for you.

How do I make a plan for health and personal care?

A Representation Agreement is the only way to appoint someone to act on your behalf for health and personal care matters.

The law that governs Representation Agreements is called the *Representation Agreement Act*.



Who can make an Agreement?

To make a Representation Agreement, you must be 19 years or older and a resident of BC.

Who do I appoint in my Representation Agreement?

People choose a spouse, a family member or a friend as their representative. It is a good idea to also name an alternate representative so you have a back-up in case something happens to the representative.

Your representative can live in another city, province or country. The Nidus Registry (see page 4) makes it easy and quick for them to be contacted.

There are many factors to consider when choosing someone to be your representative, such as your trust in them, their knowledge of you, their skills and their health.

You can also appoint a monitor in your Agreement. The monitor can check up and make sure your representative is following his or her duties. The monitor can help solve problems and be a resource to the representative to talk things over with.

What are the duties of a representative?

The first duty of a representative is to help you make your own decisions.

The law requires a representative to act honestly and in good faith. They must keep a record of decisions they make on your behalf.

Your representative makes decisions according to *your* wishes, preferences and beliefs, not their own opinion.

Your representative has the same right as you have to access information and documents about you, including medical records and test results. They must keep your personal information confidential. However, they can release information to others (e.g. specialists, medical services plan, insurance agencies) as necessary in order to carry out their duties.

When does a representative act?

The law says that a doctor must get consent before giving you health care treatment. If the doctor determines you are incapable of understanding the treatment being offered, and its risks and benefits, then the doctor must get consent from someone who can legally act for you. Making a Representation Agreement is the only way for YOU to choose the person who may consent on your behalf.

What about a living will?

Living will is a term and idea from the United States. Sometimes people use a living will or advance directive to express wishes in writing about refusing treatment at end-of-life. Some Health Authorities have developed advance care planning forms.

The living will and other forms are not valid for appointing someone to act on your behalf. A Representation Agreement is the only way to appoint someone to speak on your behalf for health care and personal care matters.

Discuss your wishes with your representative; give them a copy of any forms you signed related to your wishes to receive or refuse treatment.

What health and personal care powers does the Agreement cover?

The powers you can give your representative are in two sections of the *Representation Agreement Act*. Standard powers are listed in Section 7. Additional powers are listed in Section 9. The two sections have different requirements.

STANDARD HEALTH CARE AND PERSONAL CARE POWERS

Everyone starts with standard powers. Standard powers cover major and minor health care and personal care matters including:

- immunizations, tests, medications;
- dental work, physiotherapy;
- where you live;
- arranging support services;
- diet, exercise, grooming, personal safety;
- taking part in activities;
- end-of-life comfort care.



There is no up-front test of capability for standard powers. The law says that even if someone needs help now with decisions they may make this kind of Agreement. This might be the case for Mary, Jas or Aimee (examples on front page) as well as adults with a developmental disability. There is no requirement to go to a lawyer or notary public for an Agreement with only standard powers. Contact Nidus for help.

ADDITIONAL POWERS

You can add powers to your Agreement for broader coverage. Additional powers you can give your representative are:

- the final say to refuse life support on your behalf (in the event your wishes conflict with medical opinion or family members);
- making temporary arrangements for the care and education needs of your minor children;
- allowing your representative to override your objections for treatment or facility placement you wanted when well but object to when ill (e.g. your episodic mental illness which makes you object);
- consenting to experimental treatments that have no known benefit and are not approved by governing authorities.

For Agreements with any additional powers you must consult a lawyer and you must be capable of understanding what you are signing. The lawyer draws up the forms.

The law will be changing to remove the requirement to consult a lawyer. Contact Nidus for more information.

What if I don't have a Representation Agreement for health care?

If you are found incapable of making a specific health care decision and there is no Representation Agreement, the doctor or other health care provider must select someone to be your Temporary Substitute Decision Maker (TSDM).

The law lists who can be selected as the TSDM starting with 1) spouse; 2) an adult child; 3) a parent; 4) a brother or sister; 5) any other relative by birth or adoption. If you have no family, the doctor must contact the Public Guardian & Trustee (government official). Only the PGT can authorize a friend or in-law. If no one else is available, the PGT staff will decide for you.

Although the doctor has to follow the list in order, this is not always straightforward. If Marco (example on front page) has no spouse but more than one adult child, the law doesn't tell the doctor which one to select as the TSDM. The doctor also has to determine if the TSDM meets certain qualifications set out in the law.

A TSDM only has temporary authority for the immediate decision at hand. It is possible you might have a different person acting as your TSDM in a future situation. TSDMs often feel unprepared because they are only selected when there is a health crisis.

You can take charge by making and registering a Representation Agreement in advance of a crisis. Having a representative ensures continuity and certainty for you. It avoids potential conflict and confusion for family and friends because they know who has authority to act. It saves time for health professionals and frees up health system resources for primary care.

How do I make a plan for financial and legal matters?

Both the Representation Agreement and the Enduring Power of Attorney cover financial and legal matters. There are some important differences between them with respect to capability requirements, safeguards and the powers involved.

Most people will use the Enduring Power of Attorney to cover their financial and legal matters and a Representation Agreement to cover health and personal care.

When would I use an Enduring Power of Attorney for finances?

An Enduring Power of Attorney (EPA) covers all financial and legal powers, including dealing with real estate. The Enduring Power of Attorney is governed by the *Power of Attorney Act*.

You must be capable of understanding what you are signing in order to make an EPA.

The person you appoint is called your attorney. This does not mean lawyer. Most people name a spouse, family member or friend. You may also appoint a Trust Company or Credit Union. These institutions will charge fees to act on your behalf.

BANK POWER OF ATTORNEY

A Power of Attorney made at your Bank or Credit Union applies only to that specific institution. It will not work for dealing with Revenue Canada, pension benefits or various other financial and legal matters.

THE ENDURING CLAUSE

You will not find the word 'enduring' in your Power of Attorney document. Instead, check for the following or similar wording, which means the Power of Attorney will continue to be effective (endure) even if you become incapable:

In accordance with the Power of Attorney Act I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

JOINT OWNERSHIP

Even if you own real estate property jointly, an EPA can be crucial. If you become incapable, the co-owner would have to go to court to get authority to sell the house, unless you made an EPA in advance.

When would I use a Representation Agreement for finances?

The law says an adult may make a Representation Agreement to cover routine finances even if the adult is incapable of managing their own affairs. This provides an alternative to guardianship.

Mary, Jas and Aimee (examples on front page) may use the Representation Agreement to get

help with financial affairs such as banking, renewing car insurance, paying facility or home care fees, applying for benefits or managing investments. Without the Representation Agreement, someone might have to apply to court for guardianship in order to help with these matters.

Guardianship involves hiring a lawyer and applying to court. The judge will first determine the person is incapable. The judge then decides if the person applying would be a suitable guardian (called Committee [Kaw-mi-tay] of Estate). This process costs \$5,000 or more, it takes away the person's civil rights and is difficult to reverse. The guardian must submit their accounts to the Public Guardian and Trustee (government official) who charges fees to review them.

With the Representation Agreement, there is no need to label the person incapable so they can get help from those they trust and who know them.

The Representation Agreement has built-in safeguards for finances. The powers do not include dealing with real estate. The law requires that someone be named as a monitor or two or more representatives must act jointly for finances. (If the representative is the spouse, a monitor is not required.)

Where can I register my documents?

Nidus operates the only centralized Registry for Representation Agreements and Enduring Powers of Attorney. The

Registry is private and secure. It ensures your information is available to those you authorize (such as hospitals). The Registry is a safeguard for your wishes.

Registration is optional. It assists with communication. Contact Nidus.

What are the next steps?

See the enclosed worksheet *Ready—Set—Plan!*

