

It's Your Choice

Personal Planning Tools

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A. Introduction

Personal planning is important to ensure that your wishes will be respected should a time come when you need assistance or must rely on someone else to make decisions for you. On September 1, 2011 some new options for personal planning for future mental incapacity became available and other existing options were amended. These personal planning options are often referred to as preplanning options.

Most of us hope and expect to be able to make our own decisions throughout our lives, choosing where we live, managing our money, and making decisions about our health care. Yet, life is unpredictable. A sudden accident or illness can change everything. Sometimes, our ability to make decisions changes slowly, especially as we age. The best that we can do for ourselves and for those who care about us is to plan ahead. Many people plan ahead by making a will so that they can say who will look after their estate when they die and who should receive their assets. However, we don't always think about or know how to plan for the possibility that we may need someone to assist or make decisions for us or help to ensure our wishes are carried out.

In BC, adults have a choice of legal personal planning options you can use to ensure your wishes are known and can be followed if the need arises. If you have someone you trust, there are ways to give that person legal authority to represent you and ensure your wishes are communicated. These planning options are part of adult guardianship laws, designed to ensure that the voice of adults in BC will be heard if the adults are no longer able to speak for themselves.

The fundamental principles embedded in the adult guardianship legislation include:

- There is a presumption that all adults are capable of making decisions until the contrary is demonstrated
- An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions
- All adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters
- All adults should receive the most effective, but the least intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs
- The court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as support and assistance, have been tried or carefully considered

This guide will discuss the following personal planning options:

- Enduring power of attorney (EPOA)
- Representation agreement for financial affairs (Financial RA7)
- Representation agreement for personal and health care decisions (Personal/Health Care RA9)
- Representation agreement with standard provisions for personal and health care decisions (Personal/Health Care Standard RA7)
- Advance directive for health care (Advance Directive)
- Nomination of a committee of estate and/or person (Nomination of Committee)

This guide has been prepared to help you understand these planning options, when you might use them, and things to think about before you make them. It is based on the law that came into force on September 1, 2011. You may already have legal planning documents in place and wonder if you need to remake them because of the new laws. You are encouraged to review this guide. You may need further information. See the Helpful Links section at the end of this guide. Ultimately, you may wish to obtain legal advice to ensure that your documents

will do what you expect them to do and that the person you choose to make decisions will have the powers needed in the document to carry out your wishes.

These planning tools are options you may wish to consider. You are not required to make any planning arrangements for yourself. Remember, IT'S YOUR CHOICE.

Summary of personal planning options

The following chart gives a general overview of the areas of decision making covered by the various planning options. However, the scope of decision making may vary depending on the option used. For example, a broader range of financial decisions can be covered in an enduring power of attorney (EPOA) than in a representation agreement for financial matters (Financial RA7).

Decision Area	Financial Affairs	Legal Affairs	Personal Care	Health Care	Facility Admission
Enduring Power of Attorney (EPOA)	YES	YES	NO	NO	NO
Representation Agreement for Routine Management of Financial Affairs (Financial RA7)	YES*	YES*	NO	NO	NO
Representation Agreement for Personal and Health Care Decisions (Personal/Health Care RA9)	NO	NO	YES	YES	YES
Representation Agreement for Personal and Health Care Decisions (Personal/Health Care RA7)	NO	NO	YES**	YES**	NO
Advance Directive for Health Care (Advance Directive)	NO	NO	NO	YES	NO
Nomination of a Committee of Estate	YES	YES	NO	NO	NO
Nomination of a Committee of Person	NO	NO	YES	YES	YES

* Note that a Financial RA7 is more limited than an EPOA

** Note that a Personal/Health Care RA7 is more limited than an RA9

B. Enduring Power of Attorney (EPOA)

In BC, we have two kinds of power of attorney. These are created under the *Power of Attorney Act*.

A **general power of attorney (POA)** is a legal document that allows you to appoint a trusted person to look after your financial matters at your direction or on your behalf when you are not available. The POA might be limited to one account or asset, or it may cover all of your financial and legal affairs for a period of time. A general power of attorney ends if you become incapable.

An **enduring power of attorney (EPOA)** is a legal document that allows you to give legal authority to a trusted person to manage your legal and financial affairs if you are not capable and cannot make your own decisions or need help with decision making. The person you name is called your attorney.

This section describes an enduring power of attorney. You do not have to make an EPOA. It's your choice. An EPOA is one tool that you can use to plan for your future. There are a number of rules about how an EPOA is made and how it can be used. Some of the key points are highlighted below.

Adults could make an EPOA prior to September 1, 2011. However, the rules regarding the making and use of an EPOA have changed significantly. For example, there are now restrictions on the attorney such as restrictions on making gifts, loans and donations, unless the EPOA gives specific authorization to the attorney. Existing valid EPOAs remain valid and can still be used. However, your attorney may not be able to carry out all of your wishes. You may want to review any existing documents and seek legal advice if you think you should make a new one.

Summary – Enduring Power of Attorney (EPOA)

Who can make an EPOA?

Any adult (someone 19 or older in BC) can make an EPOA unless incapable of understanding the nature and consequences of the document.

The *Power of Attorney Act* says an adult is incapable of understanding the nature and consequences of the document, if the adult cannot understand all of the following:

- (a) the property the adult has and its approximate value;
 - (b) the obligations the adult owes to his or her dependents;
 - (c) that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney;
 - (d) that, unless the attorney manages the adult's business and property prudently, their value may decline;
 - (e) that the attorney might misuse the attorney's authority; and
 - (f) that the adult may, if capable, revoke the enduring power of attorney.
-

What does an EPOA cover?

An EPOA can only deal with your legal and financial affairs.

Financial affairs can include paying your bills, doing your banking, managing your investments, selling your assets and paying your taxes.

Financial affairs may also include looking after financial responsibilities to your dependents. Legal affairs can include hiring a lawyer to start or defend a legal action.

You can make an EPOA that is specific, or it can be broad. Many EPOAs are broad so that the attorney has the authority to deal with anything that may need attention.

An EPOA does not cover decisions about your personal and health care. A representation agreement must be used if you want to choose someone to make your personal and health care decisions.

When does an EPOA start?

An EPOA can be effective as soon as it is signed by you and your attorney unless you specify when it is to take effect (see below). If you do not indicate when it is to take effect, you may want to discuss when and how your attorney should start to assist you.

Can the date the EPOA starts be changed?

You can decide when your attorney has authority to act if you clearly outline this in your EPOA. For example, you might want it to be effective if your family doctor signs a letter saying you are incapable.

While this ensures the attorney cannot act unless you are incapable, it also means they have no authority to speak for you or assist you while you are capable. Assistance could include helping deal with complex financial matters, dealing with investment advisors, or talking to the Canada Revenue Agency about your tax return.

Can you still make decisions?

Under the law, you are presumed to be capable. You can continue to make decisions until you are incapable of making those decisions.

When does an EPOA end?

The EPOA will continue until you revoke it or die. Certain events will also cause your EPOA to end. Some of the more common ones are:

- your attorney and any alternates are no longer available or qualified to act
- your marriage or marriage like relationship ends and your attorney is your spouse, unless your EPOA says it continues
- a condition you put in your EPOA occurs
- a court order ends it

Your EPOA is suspended, and your attorney cannot act if, the Public Guardian and Trustee (PGT) is appointed Committee of Estate under a Certificate of Incapability pursuant to the *Patients Property Act*.

Can an EPOA be changed or revoked?

You can change or revoke your EPOA if you are capable. It is your responsibility to ensure that the attorney and third parties such as your bank are properly notified of the change or revocation.

Caution: Making a new EPOA does not automatically revoke a previous POA or EPOA. You need to follow the revocation rules.

How is an EPOA made?

An EPOA must be in writing and there are legal requirements to ensure it is properly signed. Legal advice from your lawyer or notary, or a community legal clinic is recommended.

The Ministry of Justice has published a form that may be used to make an EPOA. It may or may not cover your circumstances or needs. It alerts you to some of the rules that must be followed for an EPOA to be valid. You can find the link at the end of this guide.

Some of the rules to be aware of include:

- both you and your attorney must sign in front of witnesses
- if you cannot sign, you may instruct someone to sign on your behalf
- two witnesses are required unless the witness is a lawyer or notary in BC
- your attorney cannot be a witness and a witness cannot be the attorney's spouse, child or parent
- if your EPOA covers real estate (e.g., a house or condo, a lawyer or notary must be the witness

Choosing an attorney for an EPOA

Choosing an attorney can be a difficult decision. You do not need to make an EPOA if it is not right for you. Here are some considerations:

Who can be an attorney?

You can name anyone you trust to be your attorney. You may choose your spouse, a family member or a close friend. If the person is not an adult, that person cannot act until he or she turns 19.

You may also name a trust company, or a credit union authorized to provide these services.

It is important to know that you cannot name someone who is paid to provide personal care or health care services to you. This includes employees working at a facility where you live that provides these services. There is an exception if the attorney you choose is your spouse, child or parent.

In determining who would be a good attorney for you, consider their ability to be available as well as their knowledge and skills.

Caution: Talk to the attorney before proceeding. The attorney you name is not obliged to accept the role. There may be requirements that need to be included in your EPOA. For example, a trust company or credit union will need to ensure the EPOA provides for compensation.

Duties and responsibilities

Being an attorney carries many responsibilities. Not only are there duties to you, but there are expectations and legal requirements. Your attorney will be expected to comply with these rules. That means they need to agree to take on the responsibility, and that they have the skills, abilities and time to do what is expected. This becomes especially important if you are no longer capable and cannot oversee what your attorney is doing.

Duties of an attorney include:

- acting honestly and in good faith
- exercising the care, skill and diligence of a reasonably prudent person
- only making decisions the attorney is authorized to make
- investing assets according to rules in the Trustee Act
- keeping your assets separate from the attorney's assets
- keeping records of your assets and their value, as well as transactions so that an accounting can be created

Other rules for an attorney include:

- your attorney cannot make or change a will
- there are restrictions on making or changing beneficiary designations
- your attorney can hire agents but cannot delegate decision making to others except to qualified investment specialists

Caution: if you appoint two or more attorneys and one is no longer able to act for any reason, the other attorney can continue to act. This may or may not be what you want. If you want more than one attorney at all times, your EPOA must address this.

Things to discuss with your attorney

Even if you trust someone to comply with the duties and responsibilities, it is always a good idea to discuss your plans with the attorney. If they agree to take on the role should it become necessary, you may want to discuss what is important to you so they know your values and wishes that should guide their decision making if they cannot discuss them with you. You may also want to explain some of the important aspects of your financial affairs and where to locate the information.

How many attorneys?

You may appoint more than one attorney. They must act together unless your EPOA says otherwise or they have different areas of authority. Each situation is different. It is your choice to decide what arrangement is practical to carry out your wishes while minimizing the risks to you.

Can I name an alternate Attorney?

There is always a possibility that an attorney may no longer be able or qualified to act or may want to resign. If there is someone else you trust to take over, you may want to name this person as an alternate so that your EPOA can continue. Your EPOA must describe the circumstances when your alternate can start to act.

Other Considerations for an EPOA

There are a number of things to consider when making an EPOA. Two matters that may require special attention are gifts, loans and donations, and paying your attorney. If any of these situations apply to you, you may wish to seek legal advice to ensure your wishes can be carried out.

Can the attorney make gifts, loans or donations?

Although the attorney's primary responsibility is to you, you may have family or dependents you want to help, gifts you like to make each year or a favourite charity you want to support for as long as your finances can manage it. The law permits some gifts, loans and donations, but they are subject to strict limits.

If you want your attorney to be able to continue to make gifts and donations, or to make loans to certain family members, you may want to consider whether or not specific guidelines should be included in your EPOA. Your attorney may also want to have a better understanding of what your wishes are and how to carry out the powers you put in the EPOA.

Will the attorney be paid?

While many attorneys will not want to be paid, if you want to pay your attorney, it must be stated in the EPOA. However, all attorneys are entitled to be reimbursed from your assets for their validated and reasonable expenses.

SCENARIO

Terry and Phil have lived together for more than 20 years.

Phil is the primary wage earner. Their house is in joint names.

They recently updated their wills and at the same time they made EPOAs appointing each other attorney to look after the financial affairs of the other and the lawyer ensured the EPOAs were prepared so that they could be used in the Land Title Office.

A car crash sends Phil to hospital with head injuries. Doctors tell Terry that Phil has brain damage and will probably not work again. He will likely require care for the rest of his life and is currently incapable of making financial decisions.

Terry needs to make some critical financial decisions. For example, Terry needs to deal with the insurance claim and make arrangements to move to a home that is adapted to meet Phil's needs. Although the house is owned jointly, Terry cannot sell the house without Phil's signature. However, because Phil has made a broad EPOA granting Terry authority over all of Phil's financial affairs, Terry can sell the house and buy another one in joint names.

Without the EPOA, Terry would have had to go to court to become Committee of Phil's estate. This would have been time consuming and costly and would have been difficult to end if Phil regained capability.

C. Representation Agreement (RA)

A representation agreement (RA) is a legal planning document that allows you to give someone you trust the legal authority to help you make decisions or to represent you and make decisions for you if you are incapable of making decisions independently. An RA can cover your personal and/or health care decisions. It can also cover management of your routine financial affairs. RAs are created under the *Representation Agreement Act*.

RAs have been available as a legal planning tool since February 2000. The rules that govern how RAs are made and used were amended on September 1, 2011. The changed rules do not affect an existing valid RA. The most significant change is that now an RA for financial affairs can only be made for routine management of financial affairs as described below. If you made an RA with broad powers to manage your financial and legal affairs under section 9 of the *Representation Agreement Act* it will be deemed to be an EPOA. After September 1, 2011, your representative will be subject

to some of the restrictions for attorneys unless the agreement covers the restrictions. This could mean your representative may not be able to carry out all of your wishes. You may want to review any existing representation agreements and seek legal advice to determine if you should make a new planning document.

You do not have to make an RA. It's your choice. An RA is one tool that you can use to plan for your future. A service provider is prohibited by law from requiring you to make an RA as a condition of receiving goods or services.

Representation agreements can be made for different types of decision making and different rules apply to each type. This section is in three parts. The first describes rules that apply generally to RAs. The second part explains a Financial RA7. The remaining parts describe a Personal/Health Care RA9 and a Personal/Health Care RA7.

Summary – Representation Agreement (RA) General Information

Who can make an RA?	Any adult (someone 19 or older in BC) can make an RA unless incapable of making the agreement. See the specific types of RAs for more information.
When does an RA start?	An RA can be effective as soon as it is signed by you and your representative unless you specify when it is to take effect (see below). If you do not indicate when it is to take effect, you may want to discuss when and how your representative should start to assist you.
Can the date the RA starts be changed?	You can say when the RA will take effect as long as the RA says what the circumstances are and who will confirm that the event occurred. For example, the RA might state that it is effective when your family doctor signs a letter saying you are incapable.
Can you still make decisions?	Under the law, you are presumed to be capable. You can continue to make decisions until you are incapable of making those decisions.

When does an RA end? The RA will continue until you revoke it or die. Other events that might end it include:

- your representative and any alternates are no longer available or qualified to act
- your marriage or marriage like relationship ends and your representative is your spouse unless your RA says it continues
- a condition you put in your RA occurs
- a court order ends it

Your RA may be suspended and your representative cannot act if:

- a monitor is required and the monitor is no longer able or willing to act.
If your RA does not provide for an alternate monitor the PGT may be able to appoint one so the representative can continue to act.
- the RA is with respect to managing your routine financial affairs and the PGT is appointed committee of your estate under a Certificate of Incapability

Caution: Making a new RA does not automatically revoke a previous RA. If you intend to revoke an existing RA, you need to follow the revocation rules.

Can an RA be changed or revoked? You can change or revoke your RA if you are capable. It is your responsibility to ensure that the representative and third parties such as your bank are properly notified of the change or revocation.

How is an RA made? An RA must be in writing and there are legal requirements to ensure it is properly signed and witnessed. Legal advice from your lawyer or notary, or a community legal clinic is recommended.

The Ministry of Justice has published forms for making representation agreements. They may or may not cover your circumstances or needs. They alert you to some of the rules that must be followed for RAs to be valid. You can find the link in the Helpful Links section at the end of this guide.

Some of the rules to be aware of include:

- you must sign in front of witnesses
- if you cannot sign, you may instruct someone to sign on your behalf
- two witnesses are required unless the witness is a lawyer or notary in BC
- your representative cannot be a witness and a witness cannot be the representative's spouse, child or parent
- your representative must sign the agreement before it can be used

Caution: If the RA is a Financial RA7 or Personal/Health Care RA7, there are additional certificates that must also be signed.

Can more than one RA be made with different representatives?

Yes, you may want to make more than one RA if you want to keep your instructions and wishes for financial and personal matters separate. Or, you may want to give different people authority to make different decisions. For example, you may want to give authority over your routine financial affairs to someone who is good with financial matters but give someone else authority to make your personal and health care decisions because they are in close contact with you and know your values and wishes.

Caution: Making a new RA for the same area of decision making does not automatically revoke a previous RA. You need to follow the revocation rules.

What is a monitor?

A monitor is someone who can be appointed in the RA and who has the power to review the representative's activities to see if the representative is complying with his or her duties. If the monitor has reason to believe that the representative is not complying with the duties and it cannot be resolved, the monitor is expected to inform the PGT.

Choosing a representative

Choosing a representative can be a difficult decision. You do not need to make an RA if it is not right for you. Here are some considerations:

Who can be a representative?

You can name any adult (someone 19 or older in BC) you trust to be your representative. You may choose your spouse, a family member or a close friend.

It is important to know that you cannot name someone who is paid to provide personal care or health care services to you. This includes employees working at a facility in which you live and which provides personal and health care services. There is an exception if the representative is your spouse, child or parent.

In determining who would be a good representative for you, consider the person's ability to be available as well as their knowledge and skills.

Caution: Talk to the representative before proceeding. The representative you name is not obliged to accept the role and there may be requirements that need to be included in your RA.

Duties and responsibilities

Does the person understand and agree to take on the duties and responsibilities that will be expected of them if a time comes when they must act? These duties include:

- acting honestly and in good faith
 - exercising the care, skill and diligence of a reasonably prudent person
 - only making decisions that the representative is authorized to make
 - consulting with you to determine your current wishes
 - keeping records of the decisions made and related information
-

**How many
representatives?**

You may appoint more than one representative in an RA. Unless they have different areas of authority, your representatives must act together unless your RA says otherwise. Each situation is different. It's your choice to decide what arrangement is practical to carry out your wishes while minimizing the risks to you.

Caution: If you appoint two or more representatives in an RA and one is no longer able to act for any reason, the remaining representative cannot continue to act unless the RA says otherwise. This may or may not be what you want. If you want one representative to be able to continue, your RA must address this.

**Can I name
an alternate
representative?**

There is always a possibility that a representative may no longer be able to act or may want to resign. If there is someone else you trust to take over, you may want to name this person as an alternate to act under your RA. Your RA must describe the circumstances when your alternate can start to act.

D. Representation Agreement for Financial Affairs (Financial RA7)

A representation agreement for routine management of financial affairs is a representation agreement that is limited to a list of permitted activities and subject to any restrictions you might include. The governing legislation is the Representation Agreement Act and section 7 of the legislation sets out the rules. This is why some people refer to this type of RA as a section 7 RA or RA7. Sometimes it is referred to as an RA with standard powers.

The management of your financial affairs is an important area of decision making. Therefore, in addition to the rules described above, there are some specific rules about how a Financial RA7 is made and how your representative must carry out his or her duties. This section highlights these rules.

Summary – Representation Agreement for Routine Management of Financial Affairs (Financial RA7)

Why does an adult make a Financial RA7?

- If you are having difficulty managing your financial affairs and are not able to make an enduring power of attorney, you may still be able to make a Financial RA7.
- If you want your representative to make both your financial as well as your personal and health care decisions and you only want to make one document, you might want to include powers for the routine management of financial affairs with your RA for personal and health care.

Who can make a Financial RA7?

If capable, an adult (someone who is 19 or older in BC) may make an RA with standard provisions. The *Representation Agreement Act* says that in order to decide if someone is incapable of making an RA7, all relevant factors should be considered including whether:

- the adult communicates a desire to have a representative make decisions
 - the adult demonstrates choices and preferences and can express feelings of approval or disapproval of others
 - the adult is aware that making the RA means that the representative may make decisions or choices that affect the adult
 - the adult has a relationship with the representative that is characterized by trust
-

What does a Financial RA7 cover?

Some examples of “routine” financial management include:

- paying bills
- receiving and depositing income and pensions
- purchasing food, accommodation and other services for your personal care
- making investments according to the Trustee Act
- opening bank accounts
- establishing an RRSP and making contributions
- converting an RRSP to a RRIF or an annuity
- applying for benefits you are entitled to
- making payments on loans that you have
- purchasing insurance for your home or motor vehicle
- charitable donations (subject to limits)
- preparing and filing income tax returns
- obtaining legal services and instructing counsel to start proceedings (except divorce) or to continue, settle or defend legal proceedings

The *Representation Agreement Act* regulation sets out a more detailed list.

What does a Financial RA7 not cover?

A representative under a Financial RA7 is not permitted to:

- use or renew credit cards or a line of credit
- take out a mortgage on your home
- purchase or sell real estate for you
- guarantee a loan
- lend your personal property or give it away
- revoke or amend a beneficiary designation
- act as a director of a company on your behalf

How is a Financial RA7 made?

See the general information on how to make an RA.

Caution: In addition to the general requirements for making an RA, a Financial RA7 requires the representative and witnesses to sign prescribed certificates.

Is a monitor required?

You must appoint a monitor unless you appoint two representatives who must act together or your representative is your spouse, a trust company, credit union or the PGT.

Choosing a representative for a Financial RA7

Choosing a representative can be a difficult decision. You do not need to make an RA7 if it is not right for you. Here are some considerations:

Who can be a representative?

See the general information on who can be a representative. When choosing someone for a Financial RA7, it is important to select someone with the skills and abilities to handle your financial affairs. You may want to discuss what may be involved so the representative can confirm he or she is comfortable with the responsibilities.

Duties and responsibilities:

In addition to the duties described in the general information, your representative must consult with you to the extent reasonable to determine your wishes and comply with those wishes if reasonable to do so.

What records must be kept?

The records include:

- a current list of your assets and liabilities
- accounts and other records
- invoices, bank statements and tax returns required to create a full accounting of the receipts and disbursements

Things to discuss with your representative or monitor

If you are naming a representative and a monitor, it is important that they understand and are willing to undertake their roles and responsibilities.

If you are naming two representatives who must act together, it is also important that they understand that they must act together and that they agree to do so.

In either case, you may want to discuss your wishes with your representative and monitor so that if they cannot consult with you, they know what you would want.

Other considerations for a Financial RA7

Can the representative or monitor be paid?

Representatives and monitors cannot be paid for acting unless:

- the Financial RA7 expressly provides that they can be paid; and
- the court authorizes the payment

However, a representative and a monitor in a Financial RA7 are entitled to be reimbursed for reasonable expenses.

Can the representative make gifts or donations?

A representative under a Financial RA7 cannot make gifts with your personal property.

Donations are permitted to registered charities in the following circumstances:

- the donation is consistent with your past practices and your financial means; and
- the total donated in a year does not exceed 3% of your taxable income

E. Representation Agreement for Personal and Health Care Decisions (Personal/Health Care RA9)

A representation agreement for personal and health care decisions is a representation agreement that deals with personal and health care decisions when you are not capable of making the decisions by yourself. You can make an RA that covers all personal and health care decisions, including refusing health care that would preserve life (Personal/Health Care RA9). The governing legislation is the Representation Agreement Act and section 9 of the legislation sets out the rules. This is why some people refer to this kind of RA as a section 9 RA or RA9. Sometimes a Personal/Health Care RA9 is referred to as an RA with non standard powers.

You can also make an RA that is limited (i.e. one that does not include routine financial management) to personal care, as well as major and minor health care decisions (Personal/Health Care RA7). Sometimes a Personal/Health Care RA7 is called an RA with standard powers. Like Financial RA7s, a Personal/Health Care RA7 is an RA that is limited by the legislation.

There are some specific rules about how RAs are made and how your representative must carry out his or her duties in addition to what is described in the general information about RAs. This section highlights the rules relating to a Personal/Health Care RA9.

Summary – Representation Agreement for Personal & Health Care (Personal/Health Care RA9)

Who can make a Personal/Health Care RA9?

An adult (age 19 or older in BC) can make an RA9 unless incapable of understanding the nature and consequences of the proposed agreement

What personal care decisions may be included under a Personal/Health Care RA9?

In a Personal/Health Care RA9, you may give your representative authority over anything the representative considers necessary for your personal care or you can specify what decisions are covered.

Some areas of decision making may include:

- living arrangements (including admission to a care facility)
- diet and dress
- participation in educational or vocational activities
- access to personal information
- restraint issues

What is not covered under personal care in a Personal/Health Care RA9?

Unless the Personal/Health Care RA9 provides for it, a representative may not:

- make arrangements for the temporary care and education of your minor children or someone supported by you
 - interfere with your religious practices
-

What health care decisions may be included under a Personal/Health Care RA9?

Health care is anything done for therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health, and includes:

- a series or sequence of similar treatments or care administered to an adult over a period of time for a particular health problem,
- a plan for minor health care that can last for up to a year developed by health care providers that deals with one or more of the health problems that an adult has and may, in addition, deal with one or more of the health problems that an adult is likely to have in the future given the adult's current health condition, and
- participation in a medical research program approved by an ethics committee

Health care is categorized as major or minor.

What are major and minor health care decisions?

A Personal/Health Care RA9 can also cover major and minor health care. The *Health Care (Consent) and Care Facility (Admission) Act* defines major and minor health care decisions.

Major health care is defined to include:

- major surgery and any treatment that involves a general anaesthetic
- major diagnostic or investigative procedures
- radiation therapy
- intravenous chemotherapy
- kidney dialysis
- electroconvulsive therapy
- laser surgery

Minor health care includes:

- routine medical tests
- routine dental treatment such as cavity fillings and extractions that do not require a general anesthetic, and dental care

What other than health care can be covered under a Personal/Health Care RA9?

If you give your representative authority to refuse or consent to health care, with no further instructions, your representative can give or refuse consent to health care necessary to preserve life.

Your representative can decide where you will live and with whom, including admitting you to a care facility if it becomes necessary.

You may also authorize someone to physically restrain or move you, despite your objections, if necessary to provide you with health care.

What is not covered under non standard powers for health care (RA9)?

Unless you provide for it in your RA9, your representative cannot consent to a number of invasive and controversial treatments and therapies.

Is a monitor required? A monitor is not required for a Personal/Health Care RA9. If you do choose to name a monitor, your RA should give instructions on whether or not the monitor needs to be replaced if he or she can no longer act.

Can a representative or monitor be paid? Representatives and monitors may not be paid for making decisions regarding personal or health care. However, representatives and monitors may be reimbursed for reasonable expenses.

Choosing a representative for a Personal/Health Care RA9

Choosing a representative can be a difficult decision. You do not need to make a Personal/Health Care RA9 if it is not right for you. Here are some considerations:

Who can be a representative under a Personal/Health Care RA9? You can name anyone you trust who is an adult (age 19 or older). You may choose your spouse, a family member or a close friend.

It is important to know that you cannot name someone who is paid to provide personal care or health care services. This includes employees working at a facility where you live that provides these services. There is an exception if the representative you choose is your spouse, child or parent.

What are the duties and responsibilities of a representative under a Personal/Health Care RA9? In addition to the duties described earlier, your representative must consult with you to the extent reasonable to determine your wishes.

Caution: It is important that any wishes are clear or your representative may not be able to follow them. Or, it may be necessary to go to court for direction.

What records must be kept? Unless the RA says otherwise, the records that must be kept include:

- copies of any record of your instructions, wishes, beliefs and values
- records of material changes in residence or personal or health care needs and related decisions
- descriptions of health care decisions or admission to a care facility and date
- descriptions of nature and reasons for restricting contact with anyone
- descriptions about any decision to physically restrain or move you, despite objections, and why

Things to discuss with your representative If you are naming a representative and a monitor, it is important that they understand and are willing to undertake their roles and responsibilities.

If you are naming two representatives who must act together, it is important that they understand that they must act together and that they agree to do so.

In either case, you may want to discuss your wishes so that if they cannot consult with you, they know what you would want.

Other Considerations for a Personal/Health Care RA9

Advance directive (AD) for health care and a Personal/Health Care RA9

If you want to make an advance directive (AD) or have one already and you want your doctor to follow the instructions in the AD without getting consent from your representative, you must say this in the Personal/Health Care RA9.

Summary – Representation Agreement with Standard Provisions for Personal and Health Care (Personal/Health Care RA7)

Why does an adult make a Personal/Health Care RA7?

If you are having difficulty managing your personal and health care decisions and are not able to make a Personal/Health Care RA9, you may still be able to make a Personal/Health Care RA7. See Financial RA7 for the considerations to decide if you are incapable of making a Personal/Health Care RA7.

What do personal care decisions include under a Personal/Health Care RA7?

Personal care as defined in the *Representation Agreement Act* includes things like:

- your diet and dress
 - social activities
 - visits with family and friends
 - where you live including a family care home, group home, or mental health boarding home
-

What does health care include under a Personal/Health Care RA7?

Health care under a Personal/Health Care RA7 includes major and minor health care. See definitions above. It cannot include the following:

- authority to consent to facility admission
 - invasive and controversial treatment or therapies
 - refusing treatment that would preserve life
-

SCENARIO

Moe is an 84 year old widower who rarely hears from his only child, a married daughter who lives in another province.

He has lived in the same house for 40 years and over the past decade has become close friends with Sarah, a neighbour. They know each other well and over the years have discussed the care they would hope to receive if they were unable to make their own decisions. Sarah knows it would be Moe's wish to live out his days in his house even if that meant paying for in home care.

A short while ago, Moe and Sarah each decided to make a Financial RA7 and a Personal/Health Care RA7 naming the other as representative.

Recently, Moe has been getting forgetful. On several occasions he has locked himself out of his house and left a pot on the stove which set his house on fire. Following this event, Moe was hospitalized. As his closest family member, Moe's daughter was contacted by hospital staff.

Moe was assessed and found to be suffering from the early stages of Alzheimer's disease. His daughter flew home to see Moe and tried to make arrangements for him to be admitted to a long term care facility.

Sarah knows Moe wants to stay in his home. As Moe's representative, Sarah cannot sell his house but she does have legal authority to make the financial arrangements necessary to allow for Moe to receive care in home for as long as he is able to stay at home and/or afford it. Moe's daughter and Sarah discussed this support at home option and agreed to this alternative.

F. Advance Directive

In BC, on September 1st, 2011, it became possible to make a new legal document called an advance directive.

An advance directive is a written instruction that gives or refuses consent to health care treatment at a time when the health care is needed and the adult who makes it is not capable of giving or refusing consent to treatment.

You do not have to make an advance directive. It's your choice. It is one tool that you can use to plan for your future. A service provider may not require you to make one as a condition of receiving goods or services.

There are a number of rules about how an advance directive is made and how it is used. This guide only provides a few highlights to consider.

Summary – Advance Directive (AD)

Why make an advance directive?

The reasons why you might want to make an advance directive include:

- you do not have anyone you want to name as a representative who can make health care decisions for you
- you may have strong feelings about certain medical treatments and interventions and want your instructions regarding their use or non-use for your health care to be legally binding
- you have a representative, but you do not want the representative to have to make certain decisions

Who can make it?

An adult (someone age 19 or older in BC) who is capable of understanding the nature and consequences of the document can make an advance directive. It can be changed or cancelled as long as you are capable of making the change.

What are considerations in making an advance directive?

At the time that consent or refusal to treatment is required, if you have an advance directive and a representative with authority to make your health care decisions (Personal/Health Care RA9), the doctor or other health care providers will seek a decision from your representative who will follow your instructions and which reflect your wishes when capable. If you do not want your representative to have to make the decisions covered in the advance directive, your representation agreement will need to say this.

Advance directives cannot cover other decisions such as facility admission decisions; they can only cover health care.

Other documents with your wishes

You may have written wishes in other documents such as a living will. These documents are not ADs under BC law since they do not meet the requirements for making an AD, but they will serve as a reflection of your wishes made when capable and will guide the person who has legal authority to make your health care decisions if applicable to the situation.

How is an advance directive made?

In order for an advance directive to be legally binding in BC, it must be made in accordance with the legal requirements. It must be signed and witnessed. Two witnesses are required. Only one witness is required if it is a lawyer or notary in BC. Some people may not be witnesses, including anyone under 19 and people who are paid to provide you personal or health care services, or financial services.

Before making an advance directive, you may wish to read more and seek legal advice. The Ministry of Health has prepared materials on advance care planning and how advance directives might fit within your overall planning for future health care decisions. At the time of writing there are no standard forms for making an advance directive. However, the Ministry of Health's *Advance Care Planning Guide* provides a form that may or may not cover your circumstances. See the Helpful Links section at the end of this guide.

Caution: If the requirements are not met, the document will not be legally binding. However, it will be respected as your wishes made while capable, and the person with legal authority to make your health care decisions will follow your instructions.

G. Nomination of a Committee

If a court finds that an adult is incapable of managing his or her affairs, and/or his or her person, the court may appoint a person to become committee of estate responsible for the adult's financial affairs. If necessary, the same person or someone else might be appointed as committee of person to make personal and health care decisions.

A committee has broad powers to make decisions for the adult. In some jurisdictions, a committee is called a guardian and some of BC's legislation uses this term to describe a committee.

The PGT has prepared a *Private Committee Handbook* and a number of information sheets that explain more about the role of a committee. These materials are available on the PGT website (www.trustee.bc.ca) in the **Reports and Publications** section.

You do not have to make a Nomination of Committee. It's your choice. It is one tool that you can use to plan for your future.

This section explains how you can have a say in who would be chosen to be your committee if one is required.

Summary – Nomination of a Committee

How is a committee chosen?

If there is a need for you to have a committee, someone may apply to the court to declare that you are incapable and ask to be named as your committee.

The applicant is usually someone from the adult's family. They need to demonstrate that they are willing and appropriate for the responsibilities involved. Sometimes a trust company or the PGT may be appointed.

What is a nomination?

A nomination is a legal document in which a capable adult nominates a person or persons to be appointed committee for the adult by the court if required in the future. A nomination is signed and witnessed in the same manner as a will.

Why might you do a nomination?

The court must follow the direction in the nomination unless there is a good reason not to do so. Some reasons to nominate a committee include:

- there is a possibility of conflict between family members if there was a need for a committee
 - there is a particular family member or friend that you feel would represent you best
 - you do not want a power of attorney or representation agreement and would prefer that, if needed, your substitute be appointed through the court and be required to provide regular accounting to the court or the PGT
-

Who can make a nomination?

Any adult who is capable may make a nomination. Just like a will or other planning tools, a nomination can be changed or revoked by you while you are capable.

Where should a nomination be stored?

A person nominated is not obliged to accept the nomination so you may wish to discuss this matter with the person you wish to nominate in advance. You may also want to discuss where you will store the nomination and where your other important papers can be found.

You may also notify the PGT that you have made a committee nomination but the PGT does not store original documents.

H. Other Personal Planning Considerations

Reviewing documents

As with your will, it is important to review your documents when life circumstances change, or the law changes as it did in 2011. There are a number of reasons you may need to update your documents. These include:

- the person you have named to make decisions may no longer be available or qualified
- someone else may be closer to you and be more familiar with your current wishes
- relationships may have changed
- someone else in your life may have more time and/or have more skills to manage financial matters
- your instructions have changed or are out of date

Making a will

When you are making one or more personal planning documents, consider making or updating your will at the same time.

Notifying others

It is important that your personal planning documents be accessible if needed. You may wish to also discuss your personal planning and health care wishes with your doctor and other involved parties. You might want to keep a wallet card that indicates what documents you have made, where they are located and who you have named to make decisions. You may also register documents with Nidus Personal Planning Resource Centre and Registry (see the Helpful Links section at the end of this document)

Documents from other jurisdictions

If you made a personal planning document in another jurisdiction and do not want to make a new one, or are not capable of making a new one, you or the person you appointed should seek legal advice to determine whether or not your document can be recognized in BC and if so, what steps must be taken. For example, many documents made in Canada or the United States and certain other countries, may be recognized and treated as EPOAs or Personal/Health Care RA9s if certain steps are taken and requirements are met.

Helpful Links

Ministry of Attorney General

<https://www2.gov.bc.ca/gov/content/health/managing-your-health/incapacity-planning>

Ministry of Health

<https://www2.gov.bc.ca/gov/content/family-social-supports/seniors/health-safety/advance-care-planning>

Nidus Personal Planning Resource Centre and Registry

<http://www.nidus.ca>

Watch the PGT website for updates to this document and other related resources

www.trustee.bc.ca

Contact the Public Guardian and Trustee

Assessment and Investigation Services

700–808 West Hastings Street
Vancouver, BC V6C 3L3

LOCAL PHONE **604 660 4507**
TOLL FREE PHONE **1 877 511 4111**
LOCAL FAX **604 660 9479**
TOLL FREE FAX **1 855 660 9479**
EMAIL **AIS-PDS@trustee.bc.ca**

Toll free calling

Toll free calling is available through Service BC. After dialling the appropriate number for your area (see below) request to be transferred to the Public Guardian and Trustee.

VANCOUVER **604 660 2421**
VICTORIA **250 387 6121**
OTHER AREAS IN BC **1 800 663 7867**
EMAIL **mail@trustee.bc.ca**
WEBSITE **www.trustee.bc.ca**

PGT Hours of operation Monday to Friday 8:30am to 4:30pm