

## Introduction

It is important for everyone to have an enduring power of attorney, as it protects you and your finances when you can no longer make decisions for yourself. We can lose our mental capacity slowly, through Alzheimer's or dementia, or very suddenly, such as following a car accident or head injury, and so it is important to create an enduring power of attorney as soon possible.

Many people assume that their spouse or children can simply take over their bank accounts, pay their bills or manage their property should something happen but that is rarely the case. Preparing an enduring power of attorney gives you a voice in what happens to your money and property. It will also guide those who will have to make financial decisions for you when the time comes.

Discussing finances or thinking about what happens as we get older can be very difficult. It may provoke strong emotions or feel overwhelming. It is important to talk about these issues with the people you trust, including your family, friends and financial advisors.

An enduring power of attorney can take effect immediately or on a date of your choosing. It can also be designed to take effect when something specific happens, such as losing mental capacity or entering a supportive care facility.

An enduring power of attorney is the best way to make your financial wishes known and to empower the person or people of your choosing to act on your behalf. This user guide and the accompanying form will help you create your own enduring power of attorney without the need to hire a lawyer.

Please note that this enduring power of attorney form and user guide only cover financial decisions while you are alive. You will need to create a Will to determine what happens to your money and property after you have passed. If you want to create similar instructions for someone to make health care decisions on your behalf, you can complete an advanced directive under the *Care Consent Act*. The forms and information needed to draft an advanced directive free of charge and without the need for a lawyer, can be found at: <https://yukon.ca/en/advance-directives>.

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## USER GUIDE TO ENDURING POWER OF ATTORNEY

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## User guide

This user guide was prepared by the Yukon Government's Department of Justice to help you in completing the enduring power of attorney form.

The use of the enduring power of attorney form is optional but recommended if you want to create an enduring power of attorney without the help of a lawyer.

The form and the user guide may not address every person's unique situation, but they will cover common choices for typical circumstances. If your situation is more complex, you will need to seek legal advice.

This user guide is not legal advice. Please talk to a lawyer if you still have questions after reviewing it.

## Yukon's enduring power of attorney legislation

To be valid, an enduring power of attorney must comply with the Yukon's *Enduring Power of Attorney Act*.

Once your attorney begins acting on your behalf, they must comply with both the *Enduring Power of Attorney Act* and with its Regulations.

Should you or your attorney have any questions, up to date copies of the Act and Regulations can be found online at <https://laws.yukon.ca/cms/legislation-by-title.html>.

## How to complete the enduring power of attorney form

### Section 1 – Donor

A **donor** is a person who gives a power of attorney.

When completing the enduring power of attorney form, you are known as the **donor**. Please add your name and contact information on the enduring power of attorney form under the section marked "donor." Remember to check all boxes to confirm the statements about you are true. For your enduring power of attorney to be valid, all statements must be true, and all boxes must be checked.

### Section 2 – Revocation of any previous enduring power of attorney

Creating this enduring power of attorney cancels (revokes) any previous ones you may have made.

If you made an enduring power of attorney previously and are changing who you want to be your attorney, please contact that person and tell them of the change to avoid any confusion.

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### Section 3 – Appointment of attorney(s)

The **attorney** is the person you want to make financial decisions for you, now or in the future.

You must name at least one attorney, although you may appoint one or more additional attorneys if you wish. You do not need to appoint more than one attorney.

Fill in the information boxes for each attorney you are appointing.

You must use the full legal name of any person you are appointing. Many people use nicknames. For example, “Carrie” can be a proper name but can be short for “Caroline”. Your attorney’s name on the form must match their name on their identification. If it does not, they will have trouble dealing with banks and government offices.

The form has space for one primary attorney and two additional attorneys but if you wish to appoint more attorneys, you can attach additional pages to the form.

#### **Eligibility**

To be eligible to act as your attorney, each person you appoint:

- (a) must be aged 19 years or older;
- (b) must be able to understand the enduring power of attorney and what it means to serve as your attorney;
- (c) must not have a bankruptcy that has not yet been fully resolved;
- (d) must not, within the last 10 years, have been convicted of a crime relating to theft, fraud or breach of trust unless they have been formally pardoned by the court; and
- (e) must not be providing paid personal care services to you in the place where you live (for example, be a staff person in a care facility where you are living). Former care givers can serve as your attorney if they are no longer being paid to care for you at the time they sign the acknowledgement by attorney.

#### **Additional attorneys**

If you want to appoint more than one attorney, you will need to decide if you want them to act as an “alternate attorney” or to work with any other attorneys you may name (known as “joint” or “joint and several” attorneys). These three terms are defined as:

**Alternate attorney**

An alternate attorney is a substitute who steps in if your primary attorney dies, becomes incapacitated or cannot continue for any other reason. The alternate attorney only takes over if your primary attorney can no longer act on your behalf.

**Joint authority**

Joint authority requires all attorneys to act together and to make decisions unanimously. If one attorney becomes unable to act, the other attorney(s) continue to act on your behalf. Unless you state otherwise in your enduring power of attorney, if one attorney becomes unable to act, the other attorney(s) may continue to do so.

**Joint and several authority**

Joint and several authority lets attorneys act together or separately. This may be practical for sharing duties and responsibilities. Unless you state otherwise in your enduring power of attorney, if one attorney becomes unable to act, the other attorney(s) may continue to do so.

**Section 4 – Authority of attorney(s) and alternate attorney(s)****Limitations on authority**

When you make an enduring power of attorney, the person you name will have the ability to access your bank accounts and control your property. You can, however, put limits on the power you give your attorney.

Your enduring power of attorney decides what your attorney can and cannot do on your behalf. A common limitation is for the attorney's authority to begin only if you become mentally incapacitated. You can choose this option in section 5 of the form.

You can also limit your attorney's authority by giving specific instructions in section 10 of the form.

**Termination of authority**

The authority of your attorney(s) will end (terminate) when:

- (a) you cancel (revoke) their appointment in writing but only if you are still mentally capable of making that decision;
- (b) the person you named as your attorney decides they are unable or unwilling to act on your behalf, but only if they decide this before they begin acting as your attorney;

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- (c) a judge issues a court order ending (terminating) the enduring power of attorney or allowing your attorney to stop acting on your behalf;
  - (d) you have a guardian appointed for you under the *Adult Protection and Decision-Making Act*;
  - (e) your attorney has a guardian appointed for them under the *Adult Protection and Decision-Making Act*;
  - (f) your attorney dies; or
  - (g) you die.

Because your enduring power of attorney ends when you die, it cannot take the place of a Will. Your attorney cannot make any further decisions or take any actions regarding your property or financial affairs after your death.

### Section 5 – Effective date

In this section, you indicate when your enduring power of attorney is to take effect. This is an important decision.

If you want your enduring power of attorney to **take effect immediately**, check the first box. This may be the best option if your health makes it difficult for you to look after your own affairs, or if you have a medical condition that will get worse over time, especially if it will affect your mental wellbeing.

If you want your enduring power of attorney to take effect on a **specified future date**, check the second box and write in the date you want your attorney to begin acting for you. This may be a good option for you if you want your attorney to take over your financial affairs when you retire or reach a certain age.

If you want your enduring power of attorney to take effect when something specific happens, check the third box and at least one of the boxes following. Choosing this option allows your enduring power of attorney to start when a **specified contingency** occurs. This is the most commonly chosen option because most people want their enduring power of attorney to take effect only if they become unable to manage their property and financial affairs themselves.

Whichever option you choose, you can change your mind and bring your enduring power of attorney into effect sooner, provided you make that decision while you are still mentally competent. You can do this by declaring that you want your enduring power of attorney to take effect immediately. Instructions for making this declaration are provided in section 5 of the form.

## **Specified contingency**

A **contingency** is anything that can happen in the future. A **specified contingency** is a contingency that you name. The form lists two contingencies, but you can also choose your own; for example, you might choose “I have moved into a long-term care facility”.

Choose contingencies that are easily defined and observable by the person(s) you will name in section 6.

You may choose multiple future contingencies. If you do, any of them occurring will bring your enduring power of attorney into effect.

### **Section 6 – Specified contingency**

Complete this section if you chose to have your enduring power of attorney take effect when any specified contingencies happen. It is optional but strongly recommended that you name one or more people who will decide whether a specified contingency has occurred.

The person(s) you name in this section should be someone whose judgement you trust, who knows you well and will be in the best position to observe you and know when a specified contingency (such as mental impairment) has occurred. If you wish, you can name your attorney(s) for this purpose.

If you do not name anyone, or if those named cannot decide, your mental impairment will be determined when two doctors (or one doctor and one nurse practitioner) declare it in writing.

### **Section 7 – Notice by attorney to other person(s)**

You should complete this section if you chose for your enduring power of attorney to take effect based on a specified contingency. It is optional but strongly recommended that you name one or more people who will be notified when your enduring power of attorney has taken effect because of a specified contingency, and your attorney begins to act.

For example, you might name one or more family members or close friends. Naming people to receive notice helps protect you. It means someone will be paying attention to your attorney’s actions, increasing transparency and helping prevent financial abuse or neglect.

### **Notice of attorney acting**

If you named anyone to receive notice in section 7, your attorney would need to provide formal written notice when they begin acting on your behalf. A notice of attorney acting

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form is included in this package. For more information, see the “Notice of attorney acting” section at the end of this user guide.

### **Section 8 – Financial records**

Complete this section if you want to name one or more people who can request copies of your financial records from your attorney. Completing this section is not mandatory but is strongly recommended.

You have the option of allowing anyone you name to request copies of your financial records from your attorney once they begin acting on your behalf. This is another safeguard against potential abuse or neglect by your attorney, as it permits others to monitor your attorney’s transactions.

The form has space for two names but if you want to name more people, you may attach additional pages to the form.

For each person you name in this section, you must indicate whether they are entitled to request copies of your financial records: (1) only if you have mental capacity (2) only if you do not have mental capacity, or (3) whether or not you have mental capacity. In deciding, consider:

- (a) if you have mental capacity at the time your financial records are requested, you will be able to decide for yourself at the time whether you want the records shared;
- (b) if you do not have mental capacity at the time your financial records are requested, you may benefit from having someone else keeping an eye on your finances.

Your instructions in this section only take effect after your enduring power of attorney comes into effect.

#### **Requirement for attorney to maintain financial records**

Your attorney is required to maintain detailed financial records of any transactions they make on your behalf.

Once your enduring power of attorney comes into effect, your attorney must create and maintain detailed financial records of your property and financial affairs. The attorney must identify and prepare an initial list of all your property, money and debts as of the date the attorney begins to act.

**Property** means anything owned by you, including your home if you own it, the contents of your home and any other real estate and vehicles you own. **Funds** include bank accounts,

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cash and other financial assets. **Debts** include credit card balances, car loans and mortgages.

Once your attorney is acting under the enduring power of attorney, he or she must maintain the following records:

- (a) a current list of your property, funds and debts; and
- (b) written records with enough detail to provide a complete account of the attorney's activities under the enduring power of attorney (the **financial records**).

These financial records must be provided upon request to any person named in section 8 of your enduring power of attorney.

Your attorney must maintain the list and the records while the attorney is acting on your behalf and must retain those records for six years after the attorney ceases to act. Retaining the records for six years is required under Canadian tax law.

Once your attorney begins to act, they must provide copies of the financial records, upon request, to:

- (a) you, if you have mental capacity;
- (b) any person you named in section 8;
- (c) to any other attorney or alternate attorney you appointed;
- (d) if you are deceased, to the executor or administrator of your estate.

### **Section 9 – Remuneration of attorney(s)**

You have the option of paying your attorney to act on your behalf. If you do not complete this section, your attorney will not be paid if you become incapacitated.

You are not required to pay any attorney acting on your behalf; however, there are good reasons to do so in many cases. Acting as an attorney can be time-consuming and carries significant responsibilities, often lasting many years. Payment for those services recognizes this effort. Offering some compensation is especially recommended if your attorney is not your spouse or an immediate family member.

There is no standard payment for attorneys. When deciding, you might consider such things as:

- (a) your relationship with the attorney;
- (b) your financial means;
- (c) the complexity of your financial affairs and the time it will take to manage them;

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- (d) the time required for your attorney to become familiar with your property and financial affairs;
  - (e) the time needed for your attorney to establish their authority with banks and other organizations such as insurance companies or government offices;
  - (f) the time needed for special events, such as clearing and preparing your home for sale;
  - (g) the time required to create and maintain financial records;
  - (h) the time the attorney may spend keeping others informed.

Note: even if you choose not to pay your attorney, they will still be entitled to reimbursement for all reasonable expenses they incur when carrying out their responsibilities as attorney.

### Section 10 – Duties and instructions

In this section, you can determine what your attorney’s duties are and provide specific instructions.

Check the box for each type of authority and responsibility you want your attorney to have.

It is important that your attorney be authorized to do everything you will need and want them to do if your enduring power of attorney comes into effect. Be cautious when limiting your attorney’s authority, as you will not be able to add or change those authorities once you are mentally incapacitated.

The list of attorney responsibilities in this section includes the most common duties. You may add additional duties in the section marked “Other”.

Space is also provided for you to give additional instructions to your attorney. For example, you might instruct your attorney to sell your home if you are admitted to a continuing care facility, pay school tuition for any grandchild enrolled in a post-secondary educational program, or find a home for your pets. This space may also be used to list anything you want your attorney to **not** do, or to do only in a certain way. For example, you could instruct your attorney to ask the approval of immediate family members before selling your home.

### Explanatory notes

To be valid, any enduring power of attorney made in the Yukon **must include the explanatory notes**. Do not remove or delete them from the form.

Please read the explanatory notes before signing your enduring power of attorney. If you are unsure of their meaning, seek legal advice.

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## Section 11 – Signatures of donor and witness(es)

To be valid, your enduring power of attorney must be signed by you in the presence of two witnesses, or in the presence of a lawyer who is providing a Certificate of Legal Advice.

Each witness must be:

- (a) aged 19 years or older;
- (b) not your spouse;
- (c) not your attorney or alternate attorney;
- (d) not the spouse of your attorney or alternate attorney;
- (e) not the person who signed the enduring power of attorney on your behalf if you are physically unable; and
- (f) not the spouse of the person who signed the enduring power of attorney on your behalf.

Complete the information boxes in this section in full then sign your name where indicated in the presence of your two witnesses or a lawyer who is providing a Certificate of Legal Advice.

Each witness must confirm their eligibility to be a witness by checking the box in the witness signature area. The witness must then sign where indicated.

### **If you are unable to sign the enduring power of attorney**

If you are physically unable to sign your enduring power of attorney, someone else may sign it on your behalf, at your direction, in your presence and in the presence of a lawyer or two witnesses.

The person who signs on your behalf must **not** be:

- (a) your attorney or any of your attorneys;
- (b) the lawyer or other person witnessing your signature;
- (c) the spouse of your attorney or any of your attorneys; or
- (d) the spouse of the lawyer or other person witnessing your signature.

### **Certificates to be attached**

To be valid, your enduring power of attorney must have attached either:

- (a) a Certificate of Witness signed by one of your two witnesses; or

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(b) a Certificate of Legal Advice signed by a lawyer who witnessed your signature.

### **Section 12 – Acknowledgement by attorney(s)**

Anyone you appoint as an attorney must sign the acknowledgement by attorney(s).

The attorney must check the boxes indicating that each statement is true. For your enduring power of attorney to be valid, all the boxes must be checked.

The attorney then prints their name, adding the date and signing where indicated. Each attorney's printed name in this section must match their legal name in section 3 (no nicknames, abbreviations or initials only).

### **Certificate of Witness**

This page needs to be completed and signed by one of the two witnesses unless your signature was witnessed by a lawyer who is providing a Certificate of Legal Advice.

The witness signing the Certificate of Witness should fill in their name, occupation and address, then check the box for each statement that is true. All the boxes must be checked and the signed Certificate of Witness must be attached to the enduring power of attorney for it to be valid.

### **Notifying banks and institutions that you have made an enduring power of attorney**

After making your enduring power of attorney, please provide a copy to your bank(s) and other financial institution(s) to ensure they will recognize it. Financial institutions must protect their clients' accounts, and a bank will refuse to recognize your attorney's authority if they have any doubts as to the enduring power of attorney's validity.

The best way to ensure a smooth transition is to notify your financial institutions yourself, while you are competent, to confirm that the enduring power of attorney will be recognized. This will also help you to know whether the enduring power of attorney needs to be registered with the bank and whether the institution has any additional paperwork for you to complete, such as an attorney signature card.

If you have empowered your attorney to sell or transfer your real estate, your enduring power of attorney will need to comply with section 152 of the *Land Titles Act* and section 8 of the *Land Titles General Regulations*. If your attorney will be expected to deal with your home or land holdings, please contact the Land Titles office to ensure that your instructions are accurate and that your enduring power of attorney can be registered properly at the Land Titles office. You can contact Land Titles at [ltoenquiries@yukon.ca](mailto:ltoenquiries@yukon.ca) or phone 867-667-5612; toll free in the Yukon 1-800-661-0408 extension 5612.

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Make several certified copies of your enduring power of attorney to distribute to your bank and the Land Titles office, if needed. A Notary Public can make certified copies of the original document for you.

You should also notify close family members and friends, in particular anyone you have named in section 7 or section 8, that you have made an enduring power of attorney and tell them who your attorney(s) will be. Consider giving them copies.

### **Notice of attorney acting**

Once your attorney begins acting following a specified contingency, they are required to give notice to any person named in section 7.

For example, if you chose to have your enduring power of attorney take effect when “I am unable to manage my property and financial affairs” and the person(s) you chose in section 6 has declared that you are unable to manage your property and financial affairs, your attorney will need to provide notice to anyone you named in section 7. Your attorney can use the notice of attorney acting form to provide that notice.

Use of the notice of attorney acting form is optional but providing notice to any person named in section 7 is mandatory.

### **Notice requirements**

The notice to a person named in section 7 must include the following information:

- (a) the attorney’s full name, postal address, email address and telephone number;
- (b) your (the donor’s) full name, postal address, email address and telephone number;
- (c) the date that the enduring power of attorney came into effect and the specified contingency that caused it to come into effect;
- (d) a copy of sections 8 through 9.02 of the *Enduring Power of Attorney Act*;
- (e) a list of the duties and functions that the attorney assumes under the enduring power of attorney.

### **Delivery of notice of attorney acting**

The notice of attorney acting must be sent by your attorney immediately after the enduring power of attorney comes into effect.

The notice must be sent by registered mail or by electronic means such as email or fax, which creates a record confirming that the notice was provided. The attorney must preserve that record.

Notice sent by registered mail is considered sent when the receipt and tracking number is given by the mail service provider.

Notice sent by electronic means such as email is considered sent once it has been sent.

The attorney must maintain records regarding notices for as long as the attorney is acting. This includes copies of each notice of attorney acting and the record of how the attorney provided those notices.

**No authority until notice(s) sent**

An attorney who is required to provide notice does not have the authority to act on your behalf until notice has been provided to each person named in section 7.

The notice must inform the recipient that failure to acknowledge receipt of the notice does not prevent the attorney from acting.