

## SIGNING YOUR POWER OF ATTORNEY

You must sign (“execute”) your Power of Attorney according to the strict requirements established by the British Columbia *Power of Attorney Act*. The following is the correct procedure:

- Carefully review the Power of Attorney before signing it. Notify us immediately if there are any changes to be made.
- You and two witnesses must all be present in the same room at the same time and watch one another sign the Power of Attorney as described below. [For remote witnessing during the COVID-19 pandemic, see below.]
- Only one witness is required if the witness is a lawyer or a notary.
- Some advise that a lawyer or notary should be used as the sole witness, to avoid any problems with banks accepting the document - these institutions are used to seeing EPOAs witnessed by lawyers or notaries.
- The following persons may not be a witness:
  - i. A person named in the enduring power of attorney as an attorney;
  - ii. A spouse, child or parent of a person named in the enduring power of attorney as an attorney;
  - iii. An employee or agent of a person named in the enduring power of attorney as an attorney, unless the person named as an attorney is a lawyer, a notary, the Public Guardian and Trustee of British Columbia, or a licensed Trust Company;
  - iv. A person who is under 19 years of age;
  - v. A person who does not understand the type of communication used by the adult unless the person receives interpretive assistance to understand that type of communication.
- A witness should not witness the Enduring Power of Attorney, and should report their concerns to the Public Guardian and Trustee of British Columbia, if they have reason to believe that:
  - i. the adult is incapable of making, changing or revoking an enduring power of attorney, or

ii. fraud, undue pressure or some other form of abuse or neglect was used to induce the adult to make the enduring power of attorney, or to change or revoke a previous enduring power of attorney.

- Insert the date in the space provided in the box at the bottom of the Power of Attorney.
- Sign your normal signature in the box provided at the end of the Power of Attorney.
- Each witness must then sign the box provided at the end of the Power of Attorney and print his or her name and address in the spaces provided.
- Execute only the one original of the Power of Attorney (no multiple signed copies).
- You can (and should) make photocopies for your records. You can also provide copies for your Attorney/alternate(s), caseworker and bank. Write or stamp "COPY" on the top.
- You can always change your mind and revoke or change your power of attorney, if you are still capable. If you wish to revoke your Power of Attorney, notify your Attorney/alternate(s) immediately in writing. You should also advise anyone else who should know, such as your bank. Contact us for more information or see the Nidus material on revocation of a power of attorney.

## SIGNING BY ATTORNEY

- Before any attorney(ies) or alternates can act, they must at some point sign the Power of Attorney document before two witnesses in the presence of each other. This does not need to be in the presence of the Adult, or any other attorney.
- The requirements for witnesses are the same as above - e.g. only one required if lawyer or notary. A named attorney who has not signed is not required to give notice of any kind that the person is unwilling or unable to act as an attorney.
- If a named attorney does not sign, the authority of any other attorney is not affected, unless the enduring power of attorney states otherwise.
- Any alternate(s) must also sign with two witnesses present with each other before the alternate can act.

## STORING YOUR POWER OF ATTORNEY

Once you have correctly executed the Power of Attorney, keep it safe and accessible by your Attorney, especially if she has not signed it yet.

- Ideal locations are a safety-deposit box at a bank, a safe in your own home, or a metal filing cabinet.

- If you keep it in a safety-deposit box, you should have your Attorney co-sign for the box. This will allow them to easily access the box when necessary.
- If you keep it in a locked location, provide your Attorney with a key or the combination.
- Inform your Attorney/alternate(s) of the location of the Power of Attorney and any other important documents.

## REGISTER WITH NIDUS

If you wish, you can register your Power of Attorney with the **Nidus Registry** (<https://www.nidus.ca/new-registry-users-steps-to-register/>).

Nidus is a BC non-profit that acts as a personal-planning resource centre and registry. The fee is \$25 for the first registration and \$10 for subsequent registrations of all types (including Representation Agreements).

## HELPING YOUR ATTORNEY

- We are providing a link to a document called “Managing Someone Else’s Money” from the People’s Law School (a BC non-profit that provides the public with legal information). You may want to share this with your Attorney, so they are familiar with the process.  
[https://wiki.clicklaw.bc.ca/index.php?title=Managing\\_Someone\\_Else%27s\\_Money](https://wiki.clicklaw.bc.ca/index.php?title=Managing_Someone_Else%27s_Money)
- You may want to create a “digital inventory” with important usernames/passwords for online social media, photo albums, cloud storage, and other websites.
- You may also want to create an inventory of your physical possessions, and your financial affairs, to make it easier for your attorney when the time comes for them to take over your affairs.

## COVID 19 PROCEDURES

Signing and witnessing a Power of Attorney could be a challenge when practicing physical distancing and isolation. The Power of Attorney might have to be signed with everyone masked and 6 feet apart and sliding the documents around a big table to each other (and all washing hands afterward). Witnessing through a window or glass door might also qualify as witnessing ‘in the presence of’ the others, with the adult signing on one side of the window or door, and then passing the document along. There is no maximum distance specified in the law for being “in the presence of” the other signers.

## Proper Witnesses Not Available or No Witnesses

For adults unable to get out for a signing, this can be a problem if the only ones available around the house to act as witnesses are also the named attorney, alternate, and/or a spouse, child or parent of a person named in the enduring power of attorney. In these circumstances the adult might consider going ahead and using them as witnesses. Or alternatively, or if there is no one available to sign as witnesses, to have the Adult sign the Power of Attorney with no witnesses at all.

The *Power of Attorney Act* has a provision for curing deficiencies in the signing of the Power of Attorney:

*"s. 36 (3) - On application by the Public Guardian and Trustee or an attorney, the court may make an order that an enduring power of attorney is valid despite a defect in the signing of the enduring power of attorney"*

Until such a court application, whether an EPOA with improper witnesses or no witnesses at all would be acceptable would arguably be up to the relevant 3<sup>rd</sup> party (bank, trust company, government officials, etc.). The Adult might want to check with relevant 3<sup>rd</sup> parties ahead of time, to see if this would be acceptable.

## Skype/Zoom or Other Electronic Witnessing

### **Remote Witness is Lawyer or Notary**

During the State of Emergency in BC, there is a special Order regarding witnessing an EPOA document remotely (adult and witness in two different locations, "electronically present" with each other). This applies both to witnessing of the signature of the Adult, and also to witnessing the signature of the Attorney and/or the Alternate Attorney. "Electronically present" is defined in the Order as being able through electronic means to "communicate simultaneously to an extent that is similar to communication that would occur if all the individuals were physically present in the same location." An enduring power of attorney may be signed by signing complete and identical copies of the enduring power of attorney (called signing in counterpart). The copies of an enduring power of attorney are identical even if there are non-substantive differences *in the format* (but not the substance) between the copies. A remote witness in this situation must be a lawyer or notary public. You could also have a second witness (not necessary when a lawyer or notary is a witness), but that other witness would have to be physically present with the Adult. An enduring power of attorney made in accordance with this order must include a statement that it was signed and witnessed in accordance with this Order.

### **Others As Remote Witnesses**

You may not be able to, or be able to afford to, have a lawyer or notary witness your EPOA signing remotely. While not provided for in the Order under the State of Emergency, another possibility would be a signing of the Power of Attorney over Skype or Zoom with others acting as remote witnesses. The adult and the two witnesses (or attorney/alternate and their witnesses) would each have a copy of the power of attorney document in front of them to sign. The clause below the witnesses' signatures should set out the special circumstances of the remote witnessing and signing in counterpart:

**<Witness1>**, **<Witness2>** and **<Donor>**, at the request of **<Donor>**, were all connected via videoconferencing, and **<Witness1>** and **<Witness2>** were both 19 years of age or older, when this Enduring Power of Attorney ('EPOA') was signed by **<Donor>**. We remained connected via videoconferencing while **<Donor>** signed this EPOA. **<Witness1>**, **<Witness2>** then each signed the EPOA in counterpart while remaining connected with each other and **<Donor>** via videoconferencing

Whether an EPOA where everyone signs in counterpart would be acceptable would again arguably be up to the 3<sup>rd</sup> party (bank, etc.). But perhaps in an emergency situation an EPOA could be signed with remote witnessing, and the court could cure this defect if necessary when needed, especially if the donor is then lacking in capacity. A new EPOA could be done with proper witnessing after the COVID-19 distancing has been lifted or eased and the donor still has capacity.

### **Letter from Adult (Donor)**

For any of these special circumstances another than that allowed by the Order under the State of Emergency (e.g. - no witnesses, improper witnesses, remote witnesses signing in counterpart), it is recommended that there be a letter like the following for the adult to sign and include with their EPOA, in support of any subsequent court application for curing deficiencies (and to share with any bank, etc.):

**<NAME>**  
**<ADDRESS>**

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<date>

TO: Whom it may concern

**RE: The Execution of My Enduring Power of Attorney**

My Enduring Power of Attorney dated <date> (my "EPOA") was signed by me during a global coronavirus pandemic. In response to extraordinary measures recommended to be taken during this time, and out of an abundance of caution for the health of myself and those around me, I have chosen to execute my Enduring Power of Attorney by <describe procedure of execution>. I am advised by my Lawyer and acknowledge that my Power of Attorney has not been executed in accordance with the formal requirements as set out in the *Power of Attorney Act* (British Columbia) (the "Act").

I am further advised by my lawyer that sub-section 36(3) of the Act permits an application by my attorney or the Public Guardian and Trustee to the Supreme Court of British Columbia to make an order that my EPOA is valid despite a defect in signing. I make this letter in support of any such court application after any subsequent mental incapacity on my part.

Sincerely,  
**<Name>**

### Land Titles Office

If an EPOA is going to be used in Land Title Office, there are specific provisions for using video conferencing to remotely swear an affidavit with the appropriate jurat (see below), and an affidavit of execution for the notary or lawyer (the 'officer') who is not physically present during the signing. Note that such an affidavit of execution could be used in support of any application under sub-section 36(3) to cure a defect in signing of the EPOA.

AFFIDAVIT OF EXECUTION

CANADA  
PROVINCE OF BRITISH COLUMBIA  
TO WIT:

I, \_\_\_\_\_, of \_\_\_\_\_, British Columbia,  
MAKE OATH AND SAY AS FOLLOWS:

1. I am 16 years of age or older and am acquainted with the person named in the Power of Attorney dated <date> as the Donor of the power (the "Donor").
2. I am acquainted with the signature of the Donor and believe that the signature subscribed to the Power of Attorney is the signature of the Donor.
3. The signature of the Donor was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because <it is medically unsafe for the officer to meet the Donor in person due to Covid-19>.

**Sworn before me** at \_\_\_\_\_ )  
 \_\_\_\_\_, British Columbia )  
 this \_\_\_\_\_ day of \_\_\_\_\_, 2020 )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) \_\_\_\_\_ )  
 ) PRINT NAME:  
 A Commissioner for taking Affidavits in )  
 the Province of British Columbia )

**JURAT FOR REMOTE SWEARING OF AFFIDAVIT FOR LAND TITLES**

**Sworn before me** at )  
\_\_\_\_\_, British Columbia )  
this \_\_\_\_\_ day of \_\_\_\_\_, 2020. )

)  
The deponent was not physically )  
present before me because <it is )  
*medically unsafe to meet* )  
*in person due to Covid-19*> but was )  
linked with me using video technology. )

)  
I followed the process described in )  
Practice Bulletin 01-20 *Process for* )  
*Remote Witnessing of Affidavits for* )  
*use in Land Title Applications* and )  
complied with the Law Society of )  
British Columbia best practices for )  
using videoconferencing when )  
providing legal advice or services. )

\_\_\_\_\_  
PRINT NAME:

)  
\_\_\_\_\_  
A Commissioner for taking Affidavits in )  
the Province of British Columbia )

*This handout includes 'work-arounds' suggested by the law firms of Clark Wilson LLP;  
Heritage Law; and, DLA Piper.*