

Enduring Power of Attorney and Personal Directives in Alberta

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When thinking about estate planning, most people have a general idea about Wills. There are two additional tools that you can use to ensure that your wishes are known and met during your lifetime if you are no longer able to make your own decisions. These are:

- The **Enduring Power of Attorney (EPA)** appoints an individual to manage your *property* when you are incapable.
- The **Personal Directive (PD)** appoints an agent to make decisions about your *person* when you are incapable.

What is an Enduring Power of Attorney?

An EPA appoints a person (i.e. attorney”) to manage your property if you become incapacitated. The document allows the attorney to make legal and financial decisions on your behalf. In your EPA, you specify the powers that the attorney has, which may be general and/or specific. Examples of the general and the specific are: “My attorney may do anything that I may lawfully do”, or “my attorney may only use property for myself, my spouse and my dependent children”.

There are two types of EPA:

- An *Immediate EPA* is effective when it’s signed and will continue if you become incapable.
- A *Springing EPA* comes into effect only if you become mentally incapable of making reasonable judgments about your property.

Planning your EPA

In your EPA, you appoint an *attorney* to manage your property. This can be your spouse, adult child, another relative or a trusted friend. Your attorney can live anywhere, and must be over the age of 18, but geographic location is usually a consideration. Alternatively, you can choose to appoint a trust company.

Why do you need an EPA?

Without it, the *Adult Guardianship and Trusteeship Act* applies. Your family may need to get a Court Order of Trusteeship which can be costly and time consuming to manage your affairs for you,. If a Court Order is needed to name a trustee, that person must be a resident of Alberta.

What is a Personal Directive?

With a PD, you choose an agent to make personal (non-financial) decisions for you. A PD is most often associated with healthcare, but it can also cover accommodation, decisions about with whom

you live, participation in social, education and employment activities, and other legal matters not related to assets. A PD is effective only when you are considered incapacitated and unable to act for yourself.

An example of an instruction that may be included in your PD is: “I do not wish my life to be prolonged by artificial means when I am in a coma or persistent vegetative state and, in the opinion of my physician and other consultants, have no known hope of regaining awareness and higher mental functions, no matter what is reasonably done.”

Without a PD, the *Adult Guardianship & Trusteeship Act* applies. A Court order may be required for decisions, which can be costly and times consuming to obtain. It can also be difficult for family members to decide who applies and this route is not private.

Myths about Personal Directives

There are some myths surrounding PDs that we encounter in our practice. Here are some of them:

1. Personal Directives can be used to demand euthanasia or assisted suicide.
2. A family member or friend can write a Personal Directive on behalf of an individual who has lost capacity.
3. A Personal Directive can “require” the provision of medically futile treatment. This is **possible**, but not always the case.
4. Directives of a family member can override the directives of an appointed Agent who is not a member of the patient’s family.

Supplemental to the PD is *Supported Decision-Making Authorization*. This allows a person to *assist* in some or all decisions on personal matters for elderly, infirm, brain injured, or people with developmental disabilities even though the person remains competent.

Both Enduring Powers of Attorney Personal Directives may be sensitive and often technically challenging to prepare. We recommend that you work with an [experienced wills and estates lawyer](#) to create an EPA and PD for yourself or a loved one. We would be happy to assist you.

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