

Power of Attorney Use and Abuse

a guide for seniors and their attorneys

What is a power of attorney?

A power of attorney is a legal document that gives someone (the “attorney”) the power to make financial and legal decisions on behalf of another person according to their instructions. ***It is an inexpensive way to protect your assets!***

Why use it?

advanced planning: appoint someone to make decisions for you when you want them to, or in case you lose your capacity to make decisions.

peace of mind: knowing someone you trust will manage your affairs if you are sick, away, or incapacitated.

convenience: you can appoint an attorney so you don't have to deal with managing finances. You choose what your attorney can or can't do!

Be careful!

An attorney can ***abuse their power***. They must be someone you trust; ***anyone can take advantage of you*** - even your own children.

Power of attorney abuse can take on any form, such as ***improper spending, stealing money***, or ***taking your CPP or OAS benefits***.

You can change or revoke a power of attorney at any time! You share decision-making authority, but you are still in charge!

Lee's Story

Lee would like to sell some property he owns for some extra money, but travels too much to meet with lawyers and realtors. He wants his son to help in his place, so he finds a power of attorney form online and fills it out himself.

Lee believes the power of attorney gives his son the power to sell property on his behalf, but he is wrong: in BC, a power of attorney can only be used to buy and sell property if it is prepared by a lawyer or notary.

Lee finds out about this one day, after his son called to tell him the sale of the property failed at the last minute because of the flawed power of attorney. Lee is upset, and regrets not meeting with a lawyer or notary to make sure he used the right documents.

To care for yourself, look out for yourself.

Power of attorney abuse is a crime, and can be very difficult to talk about. Do not be ashamed or afraid to talk with someone you trust about your concerns. For more information, talk to a lawyer or notary, or contact the following resources:

UBC Law Students Legal
Advice Program
604 822 5791
www.lslap.bc.ca

BC Centre for Elder Advocacy and
Support
604 437 1940 (sun-sat: 8am-8pm)
www.bcceas.ca

Nidus Personal Planning Resource
Centre and Registry
1 877 267 5552
www.nidus.ca

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Yong's Story

Yong was chosen by her father to be his attorney. Yong's father is elderly, and is often too tired, sick, or preoccupied to manage his day-to-day finances.

Yong receives and deposits her father's pension and Old Age Security cheques, and uses the money to pay his bills and other expenses.

One day, Yong hears about a high-risk investment opportunity. She is excited: she can make a lot of money investing her father's money and keeping the profits for herself.

She invests the money and, after a few weeks, discovers that it was a scam! Her father finds out about the loss and is so upset he calls the police. The police then charge Yong for abusing her father's power of attorney.

Being an attorney is not a privilege, ***it is a responsibility!***

Who can be an attorney?

Any one or more persons who are:

- o adults over the age of 19
- o mentally capable of acting for the senior
- o able to understand and fulfil their duties
- o able and willing to act as per the senior's wishes, instructions, values, and beliefs

Duties of an attorney

- o act ***honestly*** and in ***good faith***
- o act in the ***senior's best interests***
- o exercise ***care, diligence, and skill*** when acting for the senior
- o keep records of ***everything!***

Facts to know!

- o ***decision-making authority is not given away***, it is shared between attorney and senior
- o the attorney ***cannot override*** a decision made by the senior
- o powers of attorney ***do not apply to health decisions***, only financial and legal decisions
- o ***multiple attorneys may be appointed*** to make sure the senior's wishes are respected
- o a power of attorney is ***not*** a way for an attorney to get their inheritance early!

Power of attorney abuse is a crime!

If you are appointed as an attorney by a loved one, make sure you are aware of your duties and responsibilities. Protect the dignity and honour of your loved one by following these rules. If you neglect your responsibilities, you may be punished for your actions!

a project in cooperation with:



Canadian Centre for Elder Law
1822 East Mall, Vancouver, BC
(604) 822 0633



Volunteer
Richmond
Information
Services

Volunteer Richmond Information Services
190 - 7000 Minoru Blvd, Richmond, BC
(604) 279 7020

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