



Province of Alberta

POWERS OF ATTORNEY ACT

Revised Statutes of Alberta 2000
Chapter P-20

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Powers of Attorney Act* that are filed as Alberta Regulations under the Regulations Act

Alta. Reg.	<i>Amendments</i>
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Powers of Attorney Act

Remote Signing and Witnessing

(Effective Period) 141/2020

POWERS OF ATTORNEY ACT

Chapter P-20

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “attorney” means a person who is empowered to act on behalf of the donor under a power of attorney;
- (b) repealed 2008 cA-4.2 s148;

- (c) “Court” means the Court of Queen’s Bench;
- (d) “donor” means a person who gives a power of attorney;
- (e) “enduring power of attorney” means a power of attorney provided for under section 2;
- (e.1) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (f) “trustee” means a trustee as defined in the *Adult Guardianship and Trusteeship Act*;
- (g) “trusteeship order” means a trusteeship order as defined in the *Adult Guardianship and Trusteeship Act*.

RSA 2000 cP-20 s1;RSA 2000 c16(Supp) s56;
2008 cA-4.2 s148;2020 c13 s10

Enduring power of attorney

2(1) A power of attorney is an enduring power of attorney if

- (a) the donor is an individual who is an adult at the time of executing the power of attorney, and
- (b) the power of attorney meets at least the following requirements:
 - (i) it is in writing, is dated and is signed
 - (A) by the donor in the presence of a witness, or
 - (B) if the donor is physically unable to sign an enduring power of attorney, by another person on behalf of the donor, at the donor’s direction and in the presence of both the donor and a witness;
 - (ii) it is signed by the witness in the presence of the donor;
 - (iii) it contains a statement indicating that it either
 - (A) is to continue notwithstanding any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney, or
 - (B) is to take effect on the mental incapacity or infirmity of the donor.

(2) An individual is not eligible to be an attorney under an enduring power of attorney unless that individual is an adult at the time that the donor executes the enduring power of attorney.

(3) The following persons may not sign an enduring power of attorney on behalf of the donor:

- (a) a person designated in the enduring power of attorney as the attorney;
- (b) the spouse or adult interdependent partner of a person designated in the enduring power of attorney as the attorney.

(4) The following persons may not witness the signing of an enduring power of attorney:

- (a) a person designated in the enduring power of attorney as the attorney;
- (b) the spouse or adult interdependent partner of a person designated in the enduring power of attorney as the attorney;
- (c) the spouse or adult interdependent partner of the donor;
- (d) a person who signs the enduring power of attorney on behalf of the donor;
- (e) the spouse or adult interdependent partner of a person who signs the enduring power of attorney on behalf of the donor.

(5) Notwithstanding subsection (1), a power of attorney is an enduring power of attorney if, according to the law of the place where it is executed,

- (a) it is a valid power of attorney, and
- (b) the attorney's authority under it is not terminated by the mental incapacity or infirmity of the donor that may occur after the execution of the power of attorney.

(6) This section applies notwithstanding any agreement or waiver to the contrary.

RSA 2000 cP-20 s2;2002 cA-4.5 s64

Deemed presence

2.1(1) Subject to subsection (2), during a period prescribed by the regulations, persons are deemed to be in each other's presence for the purposes of section 2(1)(b)(i) and (ii) while the persons are connected to each other by an electronic method of communication

in which they are able to see, hear and communicate with each other in real time.

(2) Subsection (1) applies only if a lawyer who is an active member as defined in the *Legal Profession Act* is providing the donor of an enduring power of attorney with legal advice and services respecting the making, signing and witnessing of the enduring power of attorney.

(3) If an enduring power of attorney is executed by an electronic method of communication in which the persons are deemed by subsection (1) or by order of the Minister of Justice and Solicitor General numbered M.O. 39/2020 to be in each other's presence, the requirements of this Act may be fulfilled by the persons signing or initialling complete, identical copies of the enduring power of attorney in counterpart, which together constitute the enduring power of attorney.

(4) For the purposes of subsection (3), copies of the enduring power of attorney are identical even if there are minor, non-substantive differences in format or layout between the copies.

2020 c13 s10

Incapacity at execution

3 An enduring power of attorney is void if, at the date of its execution, the donor is mentally incapable of understanding the nature and effect of the enduring power of attorney.

1991 cP-13.5 s3

Effect of subsequent incapacity

4 An enduring power of attorney is not terminated by any mental incapacity or infirmity of the donor that occurs after the execution of the enduring power of attorney.

1991 cP-13.5 s4

Coming into effect

5(1) An enduring power of attorney may provide that it comes into effect at a specified future time or on the occurrence of a specified contingency, including, but not limited to, the mental incapacity or infirmity of the donor.

(2) An enduring power of attorney referred to in subsection (1) may name one or more persons on whose written declaration the specified contingency is conclusively deemed to have occurred for the purpose of bringing the enduring power of attorney into effect.

(3) A person referred to in subsection (2) may be the attorney appointed under the enduring power of attorney.

- (4) Where the specified contingency referred to in subsection (1) relates to the mental incapacity or infirmity of the donor and
- (a) the enduring power of attorney does not name a person for the purpose of bringing the enduring power of attorney into effect, or
 - (b) the person named for the purpose of bringing the power of attorney into effect
 - (i) dies before the enduring power of attorney comes into effect, or
 - (ii) is unable or is incapable of determining whether the specified contingency has occurred,

the specified contingency shall be conclusively deemed to have occurred, for the purpose of bringing the enduring power of attorney into effect, when 2 medical practitioners declare in writing that the specified contingency has occurred.

1991 cP-13.5 s5

Release of confidential information

6 Notwithstanding any restriction, statutory or otherwise, relating to the disclosure of confidential health care information, where an enduring power of attorney is to come into effect on the occurrence of a specified contingency that is the mental incapacity or infirmity of the donor, information concerning the donor's mental and physical health may be disclosed to the extent necessary for the purposes of confirming whether the specified contingency has occurred.

1991 cP-13.5 s6

Authority of attorney

- 7** Subject to this Act and any terms contained in an enduring power of attorney, an attorney
- (a) has authority to do anything on behalf of the donor that the donor may lawfully do by an attorney, and
 - (b) may exercise the attorney's authority for the maintenance, education, benefit and advancement of the donor's spouse, adult interdependent partner and dependent children, including the attorney if the attorney is the donor's spouse, adult interdependent partner or dependent child.

RSA 2000 cP-20 s7;2002 cA-4.5 s64

Application of Trustee Act

7.1 Sections 2 to 8 of the *Trustee Act* apply to an attorney exercising a power of investment under an enduring power of attorney.

2001 c28 s16

Duty to act

8 Where

- (a) an attorney has acted in pursuance of an enduring power of attorney or has otherwise indicated acceptance of the appointment, and
- (b) the enduring power of attorney has not been terminated,

the attorney has, unless the enduring power of attorney provides otherwise, a duty to exercise the attorney's powers to protect the donor's interests during any period in which the attorney knows, or reasonably ought to know, that the donor is unable to make reasonable judgments in respect of matters relating to all or part of the donor's estate.

1991 cP-13.5 s8

Application to Court for advice

9(1) An attorney under an enduring power of attorney may apply for the opinion, advice or direction of the Court on any matter respecting the management or administration of the donor's property.

(2) An attorney who is acting on the opinion, advice or direction given by the Court is deemed, so far as regards the attorney's own responsibility, to have discharged the attorney's duty in respect of the matter that was the subject of the opinion, advice or direction.

(3) Subsection (2) does not extend to indemnify an attorney in respect of any act done in accordance with the opinion, advice or direction of the Court if the attorney has been guilty of any fraud, wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

RSA 2000 cP-20 s9;2009 c53 s139

Accounting

10(1) An application may be made to the Court for an order directing an attorney to bring in and pass accounts in respect of any or all transactions entered into in pursuance of the enduring power of attorney.

(2) The application under this section may be made

- (a) by the donor, the donor's personal representative or a trustee of the donor's estate, or
 - (b) if the donor is unable to make reasonable judgments in respect of matters relating to all or part of the donor's estate, by any interested person.
- (3) A copy of the application and any order granted in respect of the application shall, unless the Court provides otherwise, be served on the donor and the attorney.
- (4) On hearing an application under subsection (1), the Court may grant whatever order for accounting it considers appropriate in the circumstances.
- (5) This section applies notwithstanding any agreement or waiver to the contrary.

RSA 2000 cP-20 s10;2009 c53 s139

Termination order

- 11(1)** Any interested person may apply to the Court for an order terminating the enduring power of attorney.
- (2) A copy of the application and any order granted in respect of the application shall, unless the Court provides otherwise, be served on the donor and the attorney.
- (3) On hearing an application under subsection (1), the Court may grant an order terminating the enduring power of attorney if the Court considers that this would be in the best interests of the donor.
- (4) On granting an order terminating an enduring power of attorney, the Court shall not appoint a substitute attorney but may do one or both of the following:
- (a) direct that the applicant bring an application forthwith for a trusteeship order in respect of the donor's estate;
 - (b) pending the application referred to in clause (a), appoint an interim trustee of the donor's estate with such powers as the Court considers appropriate.

RSA 2000 cP-20 s11;2009 c53 s139

Renunciation

- 12(1)** Except with the permission of the Court, an attorney shall not, during any period in which the attorney is required to exercise the attorney's duty imposed under section 8, renounce the appointment as the attorney.
- (2) An application for permission to renounce shall

- (a) be considered to be an application by the attorney to terminate the enduring power of attorney, and
- (b) be treated in the same manner as an application made under section 11.

(3) Notwithstanding subsection (2), where there is more than one attorney under an enduring power of attorney, an attorney may apply to the Court for permission to renounce that attorney's appointment.

(4) A copy of the application made under subsection (3) and any order granted in respect of the application shall, unless the Court provides otherwise, be served on the donor and any other attorney.

(5) On hearing an application under subsection (2), the Court may grant an order granting the attorney permission to renounce the attorney's appointment if the Court

- (a) considers that this would be in the best interests of the donor, and
- (b) is satisfied that any remaining attorney is prepared to carry out the attorney's duties.

RSA 2000 cP-20 s12;2009 c53 s139;2014 c13 s37

Termination of enduring power of attorney

13(1) Except in the case of an irrevocable power of attorney, and notwithstanding any agreement or waiver to the contrary, an enduring power of attorney terminates

- (a) subject to section 11, if it is revoked in writing by the donor at a time when the donor is mentally capable of understanding the nature and effect of the revocation;
- (b) subject to section 12, if the attorney renounces the appointment and gives notice of the renunciation to the donor;
- (c) on the granting of a termination order pursuant to section 11;
- (d) on the granting of a trusteeship order in respect of the donor;
- (e) on the death of the donor or the attorney;
- (f) on the granting of a trusteeship order in respect of the attorney.

(2) Where an enduring power of attorney

- (a) appoints more than one attorney, each with joint and several authority, or
- (b) provides for alternate attorneys, the appointment of one being conditional on the cessation of the appointment of another,

references in subsection (1) to the attorney are deemed to be references to the last remaining attorney.

RSA 2000 cP-20 s13;2008 cA-4.2 s148

Exercise of power after termination

14(1) An attorney shall not incur any liability to the donor or to any other person for having acted in pursuance of a power of attorney that has been terminated or that is void by reason of the donor's mental incapacity or infirmity if the attorney did not know, and had no reasonable grounds for believing, that the attorney's authority had terminated or been lost.

(2) Where a power of attorney is terminated or is void by reason of the donor's mental incapacity or infirmity, any exercise of the power by the attorney is valid and binding in favour of any person who did not know, and had no reasonable grounds for believing, that the attorney's authority had terminated or been lost.

1991 cP-13.5 s14

Report for the Court

15 Where an application is made under this Act, the Court may appoint a person to prepare a report for the Court respecting the matter before the Court.

1991 cP-13.5 s15

Exception re service

16 Nothing in this Act shall be construed so as to require an applicant to an application before the Court to serve the applicant with the application or any order or other document relating to the application.

1991 cP-13.5 s16

Regulations

17 The Minister may make regulations prescribing periods for the purposes of section 2.1(1).

2020 c13 s10



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