

Planning for Your Future



This publication is for adults in British Columbia who want to plan for their future. It covers arrangements you can put in place now, to prepare for a time when you're unable to handle your own affairs. It explains your options for planning in four areas: health care and personal care, as well financial and legal affairs.

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About this Publication

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About People's Law School

People's Law School is a non-profit society in British Columbia, dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.



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Introduction

This publication is for capable adults in British Columbia who want to plan for their future. It describes what you can put in place now, to prepare for a time when you can't handle your affairs independently. It explains your options for planning in four areas: financial and legal affairs, as well as health care and personal care.

At People's Law School, we believe accurate, plain English information can help people take action to work out their legal problems. This publication explains in a general way the law that applies in British Columbia, Canada. **It is not intended as legal advice.** For help with a specific legal problem, contact a legal professional. Some sources of legal help are highlighted in the Where to Get Help section.

We've tried to use clear language throughout. See the Glossary section for definitions of key legal terms, which are also bolded in the text.

The information is current to May 2019.



Visit peopleslawschool.ca for in-depth coverage of your planning options, including step-by-step guides on how to prepare planning documents.

Why You Should Plan

None of us know when illness, an accident, or cognitive impairment will strike. One day, you may become unable to make decisions for yourself. In that case, someone will need to help you make decisions, or make decisions *for* you. Big ones — like where you'll live. Or small ones — like making sure the heat stays on. It's wise to consider in advance who you'd like to make those kinds of decisions for you.

There are **legal documents** and other arrangements you can put in place now to ensure that help — from someone you know and trust — is in your corner when you need it. None of these legal documents take away your right to make decisions right now. Think of them as lifeboats. They're designed to be used in the possible event of your own incapacity.

When you should plan

The best time to plan is *before* a health crisis occurs. Because life is unpredictable, the time to start planning is now.



This publication covers planning for legally capable adults. Visit peopleslawschool.ca for in-depth coverage of options for those who have limited capacity, or are incapable, including instructions on how to prepare a standard representation agreement.

Planning is for everyone

You may feel the legal tools we describe below don't quite make sense in your circumstance. The way people handle illness, make decisions, or even who they consider to be "family" may differ depending on their culture, religion and other aspects of their identity.

For example, in British Columbia, the law emphasizes individuals' rights to make decisions about their own care. This may not be how things are done in your family.

But the reality is these laws apply to you. So it's important to learn about them, whatever your background.

And because:

- If you don't make plans, the law decides for you anyway.
- Putting plans in place can ease the burden on those close to you, financially *and* emotionally.
- Learning about your options can empower you to use them to achieve what you want.
- When people think hard about their goals and values, they tend to make better choices. Planning will help you — and anyone who is called on to make a decision for you — make informed decisions in moments of crisis.

Planning Basics

Before you start planning, there are some basic concepts you'll need to be familiar with. Think of these concepts as the **building blocks** to your understanding of the laws around planning.



We cover these basic planning concepts in more depth at peopleslawschool.ca/startplanning.

First, what does it mean to be "capable"?

When we talk about planning for your future, we are asking you to consider preparing for things like:

- age-related decline, such as Alzheimer's
- a serious accident or traumatic head injury
- severe mental illness
- a stroke

These are examples of events or conditions which may impact your **mental capacity** to make decisions and to care for yourself. The term the law uses is "**capability**."

It's important to appreciate capability in two contexts:

1. **When you plan.** Planning involves signing legal documents — the law says you need to be **capable** to sign them. Generally, you must understand the **nature and consequences** of the proposed document. Do you understand what the document says and its impact on you? Do you appreciate the risks and benefits?

Capability is time and task specific. Are you capable *at the time* you sign the document? Do you understand *this specific document*? The law has different capability requirements depending on what document you want to prepare.

Tip When it comes to signing these documents, it's a *legal* standard that must be applied. A *medical* diagnosis is relevant, but not decisive. For example, someone in the early stages of Alzheimer's might be experiencing some level of cognitive decline, but still be legally capable of preparing a power of attorney, because they understand the nature and consequences of doing so.

2. **When decisions need to be made.** Now, fast forward in time. Say you're sick or you've had an accident. Are you fit to make the choices that are being presented to you? If not, someone may need to step in to help.

At this point, it's often a doctor or other health care provider making a medical assessment of capability. For example, your power of attorney document might say the authority of your attorney kicks in when two doctors certify that you're incapable.

Second, understand legal decision-making

Planning involves choosing others to help you manage your affairs. The law here groups decisions into four subject categories: financial affairs, legal matters, health care, and personal

care. The document(s) you'll need to prepare will depend on the kinds of decisions you want help making.

1. **Financial affairs.** Includes everyday decisions like paying bills, banking, applying for government benefits, paying taxes, paying off loans, and applying for insurance. It can also include more complex decisions about money such as selling or buying a home, making investments, or taking out a loan.
2. **Legal matters.** Includes dealing with legal issues, instructing a lawyer, and getting legal advice and services.
3. **Health care.** Big and small health care decisions are covered. Minor health care includes routine tests, dental and eye work, and medication. Major health care includes major surgery, chemotherapy, dialysis, complex diagnostic tests, and risky treatments.
4. **Personal care.** Includes diet, dress, social activities, exercise, where you live and work, spiritual matters, and who you spend time with.

Tip Personal care becomes especially important if you develop a chronic illness or condition (such as dementia), or you're moving into a care facility.

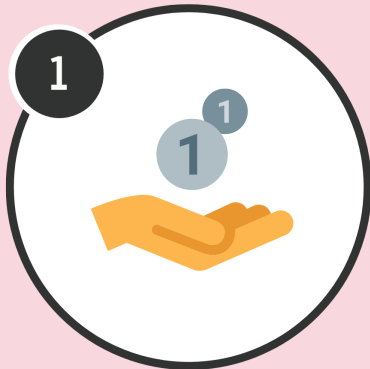
Third, learn about the legal documents you can prepare

If you are a legally capable adult in British Columbia, you should be aware of these three legal documents: an **enduring power of attorney**, an **enhanced representation agreement**, and an **advance directive**. You can use these documents to plan for a time when you aren't able to make your own decisions. The visual on the next page explains what each document is used for.

We explain each of these documents in more detail below and also explore the other arrangements you can make.

Choose someone to speak for you
when you can't speak for yourself

Enduring Power of Attorney



This document covers
legal and **financial** decisions.

Enhanced Representation Agreement



This document covers
health care and **personal care**
decisions.

Record your instructions
for future health care

Advance Directive



Covers **health care** decisions only.
Most helpful if made when someone
has a specific diagnosis.

The Alternative to Planning

Strictly speaking, no one has the automatic right to make legal, financial or even personal care decisions on another adult's behalf. **No one.** Not even a spouse or a parent.

When an adult is legally incapable, they aren't in a position to make important decisions for themselves. If you don't choose someone in advance and you become incapable of making certain decisions, the law decides who can make those decisions for you. The law doesn't know you, so the solutions it arrives at may be an imperfect fit.

The court or the government may become involved

As a last resort, a family member or friend may need to apply to court to get the authority to make decisions for you. To do this, they'll need to ask the court to appoint them as your **committee**. A committee is charged with managing the affairs of someone who can no longer do it for themselves. They have the same rights and powers over your affairs as you would if you were capable.

A committee can be a person, a number of people (though this is rare), or the **Public Guardian and Trustee**. The Public Guardian and Trustee is a public body that protects the interests of British Columbians who lack legal capacity to protect their own interests.

There are two types of committees:

- A **committee of person** becomes responsible for making decisions about an adult's health and personal matters.
- A **committee of estate** becomes responsible for making decisions about an adult's financial affairs and legal matters.



"Our daughter Helene was in a boating accident... she hasn't been the same since. Her rehab expenses are skyrocketing. We want to sell her investment property to pay for her care expenses. We've been told that because she didn't plan in advance, our only option is for one of us to apply to court to become her committee of estate. I can't believe we have to jump through all of these legal hoops just to help our child."

– Alphonse, Squamish

Going to court is rarely a desirable Plan A. It's expensive and time-consuming and can cause unnecessary stress for family and others close to you. It can take months or even years for applications to be heard in court. This can delay access to money needed for your care and degrade your quality of life.

Usually, a family member or friend applies to become committee. But there's no guarantee the court will appoint them. And the process strips you of your decision-making rights over your body and property.

The Public Guardian and Trustee can be appointed as committee when there's family conflict or no one steps forward to apply. If it appears that an adult needs help, a provincial health authority may assess them. If they're found to be incapable, the health authority will issue a **certificate of incapability**. The Public and Guardian and Trustee can then automatically be appointed.

The law says who can make health care decisions for you, if you're incapable

The general rule under the law in BC is that a doctor (or another health care provider) can treat you only if you consent to treatment. For this rule to apply, the law says you must be **capable**.

If you're incapable of consenting to medical treatment, someone else needs to make the decision for you. There's a hierarchy of authority that a health care provider must follow if a decision needs to be made and you're not able to make it. The visual on the right steps through this decision-making hierarchy. We explain each type of authority in detail below.

At the bottom of the hierarchy is a **temporary substitute decision-maker**. This person will be *temporarily* appointed to make a specific health care decision for you. They'll only be called on if you don't have another authority in place (such as a **representative**) that addresses the specific health care need.



To choose a temporary substitute decision-maker, your health care provider must choose someone from a ranked list, in the following order:

1. Your spouse. This is someone you're married to or living with in a common-law relationship. There's no minimum time period you need to have lived with someone to be considered a spouse.
2. An adult child.
3. A parent.
4. A sibling.
5. A grandparent.
6. A grandchild.
7. Another relative by birth or adoption.
8. A close friend.
9. Someone immediately related by marriage (including in-laws and step-children).
10. If there's no one who can act from the above list, or there's a disagreement about who should make the decision, then someone authorized by the **Public Guardian and Trustee** will be chosen.

Your health care provider will make their way down the list until they find someone who's available. Someone lower down on the list can only be chosen if no one above them can be found.

Tip

As long as a decision-maker is over 19, age is irrelevant. Your oldest child won't automatically be chosen over your youngest adult child. The same applies for other relatives, such as siblings.



"My husband Dave suddenly got ill. When the doctors tried speaking with him, he was groggy and incomprehensible. The hospital couldn't get through to me so they reached out to our 20 year-old daughter. She gave consent to major surgery for her dad. It was an unexpected shift in our family dynamic, for sure."

– Patrice, Richmond

Your Options for Planning: Financial and Legal Affairs

How will your money and assets be managed if you become incapable? Being able to pay for things such as food, housing and health care is critical to your **quality of life**.

Fortunately, there are tools you can put in place now to help you down the road. Each is covered in some depth in the following pages. After each, you'll be encouraged to ask yourself: Is this the right fit for me?

Not every tool will be appropriate for you. Consider your unique circumstances. Things like your physical and mental condition, family relationships, the complexity of your financial affairs, and your personal preferences all factor in. You might want to use a combination of tools.



"I want a simple and cost-effective way to plan for my economic future."

Plan ahead with an **enduring power of attorney**



"I don't own much. I want to limit the authority of my representative to routine management."

Consider a **standard representation agreement**



"**Informal tools** allow me to retain control, while making my finances easier to manage."

May be a good fit if you're capable but need help



"I trust my partner completely with my money. I know he'll take care of me."

A **joint bank account** may be a good fit



"I have trouble saying no to my kids, even though I'm perfectly capable."

A **trust** can provide a wall of protection



"I have a chronic illness and I'm struggling to manage my simple pension amounts."

You may want to appoint a **pension trustee**



"I prefer that my decision-maker be accountable to the court or government."

You can choose to nominate a **committee**

Choose someone to make decisions for you

The beginning of a sound plan is to explicitly give someone the authority to act for you, when needed. You have two legal options.

1. Prepare an enduring power of attorney



"Last year, I found my wife Paige lying on the kitchen floor. She'd had a stroke. It was so sudden. Paige was smart with our money. A lot of it was tied up in investments — in her name. I was shocked when the bank said I didn't have authority to access her money. I'm her wife — isn't that enough? I need the money to care for her. I wish we'd thought to plan ahead."

– Ramona, Oliver

A power of attorney lets you name someone you trust to manage your **financial and legal affairs**. This often includes paying bills and managing bank accounts. It can include bigger things like investing your money, insuring your car, or selling your assets. The word "**attorney**" here doesn't mean "lawyer." It simply means your financial and legal decision-maker.

With an **enduring power of attorney**, you can plan in advance for any future incapacity. This is one of the simplest and most powerful ways to plan for your financial future. Your attorney's authority to act for you can start right away and then continue — or "endure" — if you are incapable.

You needn't worry that drawing up a power of attorney will immediately strip you of the ability to run your own life. Your attorney can't override decisions you make while you're capable.

Tip

The BC Ministry of Health has an enduring power of attorney form available online at gov.bc.ca/incapacityplanning. You don't have to use this form, but it will give you an idea of how to prepare an enduring power of attorney.

Is this the right fit for me?

Enduring powers of attorney are:

- **Commonly used.** They're simple and relatively cheap to prepare.
- **Flexible.** They can be as general or specific as you like and can cover financial situations from straightforward to complicated.
- **Far better than no document at all.** If you lose your mental capacity and don't have a valid document in place, the court may need to appoint a **committee** to manage your money and property. A committee is not an ideal option.

Tip

To learn more about powers of attorney, or if you're ready to prepare one, visit peopleslawschool.ca for in-depth coverage and practical steps to get you started. You can also get a copy of our printed publication *Power of Attorney*.

2. You have the option to prepare a standard representation agreement

You may opt to prepare a **standard representation agreement** instead of an enduring power of attorney. These agreements are often called section 7 representation agreements.

Your representative can deal with the "routine management" of financial affairs and most legal matters. For example, your representative can pay your bills, deposit your income, and purchase food for you. However, there are some things they can't do. They can't buy or sell your real estate, for example, or take out a loan in your name. That makes this agreement less broad-reaching than an enduring power of attorney.

With this type of agreement, you can also give your representative power to make personal care and health care decisions for you — but it doesn't cover end-of-life matters in the same way that way an enhanced representation agreement does.

Is this the right fit for me?

Standard representation agreements are:

- **Often used as a last resort.** They're usually prepared when someone has no plans in place and is starting to show signs of incapacity.
- **Not always recognized.** Representatives may find that third parties, such as banks, question the validity of their authority under the agreement. Powers of attorney are more commonly used by capable adults and more widely accepted by third parties.

Tip

The law says you have the right to participate in making life decisions, even once you become incapable. If you appoint an attorney or representative, they must encourage you to participate in your own affairs as much as you're able to.

Other planning tools for financial and legal affairs

Other planning tools are available to you. You can start using some of these tools immediately.

There are informal tools you can put in place

There are other less formal tools that can be used. These arrangements make everyday life more convenient. You can put them in place right now, while you're healthy. You can:

- Arrange for your income to be **directly deposited** into your bank account. If you receive payments from the government (such as pension payments or income assistance), contact Service Canada and Service BC to set up direct deposits.
- Arrange **pre-authorized payments** with service providers. For example, you can tell your phone provider or your assisted-living facility to automatically withdraw what you owe them from your bank account.
- **Authorize someone** to help you deal with service providers, such as a utility company

or Canada Revenue Agency. Be sure you understand what you're authorizing.

- Get free help with your taxes at a **tax clinic**. You may be eligible to use their services if you have a modest income and a simple tax situation.
- Explore options for advice and assistance from financial planners, trust companies, accountants, or law firms. For example, there are some **discretionary investment services**. Here, you agree on the investment strategy, but experts still make the day-to-day decisions.

Are these the right fit for me?

Informal planning tools can be used at different stages of life. They work for:

- Healthy and capable adults. Routinizing your finances where you can just makes sense.
- Adults who are capable but need help managing their everyday finances. These tools can be the least intrusive option and ensure the adult retains control and independence.
- Anyone planning for future incapacity. Once incapacity sets in, these tools have limited use. Use of these as the *only* incapacity planning tools an adult has in place *may* be appropriate for those with a very simple financial situation.

You can set up a joint bank account



"I've been struggling to keep on top of expenses since my husband passed away. He'd always taken care of the household finances for us. I've set up a joint bank account with my daughter. She's better at handling money than me and I trust her completely. And she'll get the money in the account when I'm gone."
– Mabel, Golden

With a **joint bank account**, two or more people have access to the same account. This may be a good option if you have someone in mind you can trust. Joint bank accounts

are usually set up to include the “right of survivorship.” This means that if one of the account holders dies, everything that’s left in the account automatically goes to the survivor.

While these features offer convenience and flexibility, they also involve greater risk. For example, the other person can withdraw money without your consent or knowledge. Legally, it’s hard to hold a joint account holder responsible for taking money they weren’t supposed to.

Not all joint bank accounts are the same. Joint accounts can be set up so there’s no right of survivorship. The money goes into your estate when you die rather than to the joint account holder. Do your research. Make sure you know what you’re signing up to!

Is this the right fit for me?

Joint bank accounts may be helpful for **capable adults** who need support. For example, adults:

- Who find it difficult to manage their own personal banking. This could be due to health conditions, mobility issues, or age.
- With limited financial literacy or experience.

Using a joint bank account as a tool to **plan for future incapacity** may make sense if you have a simple financial situation and someone you can trust. Remember, the joint account holder will have access to all of your money when you’re most vulnerable.

A trust agreement can give you control of your assets



“My adult son lives in my basement rent-free. He works on and off, but he asks me to pay for a lot of his expenses. I feel guilty saying no to him, but I’m retired now and he’s quickly draining my money dry. I want to set up a trust so a middleman can say ‘no’ instead of me. I love him but we can’t continue like this.”

– Basil, North Vancouver

You can put all your property and income in a **trust**. In a trust agreement, you name a trustee and spell out how they should manage your property.

There are several reasons why people use trusts:

1. A trust agreement can maintain private and secure control of your assets.
2. Trusts can be especially useful in circumstances where you’re vulnerable. A trust can provide a “wall of protection” for your assets, even while you’re capable. Your trustee can say “no” on your behalf to someone who’s trying to take advantage of you. And a trust **can continue if you become incapable**.
3. A trust agreement can provide more comprehensive terms of the trustee’s duties and powers than an enduring power of attorney. This can include a framework for management of property.
4. A trust can be used to manage your property *after* you die. For example, a trust can ensure that your surviving spouse has enough money and a place to live. Once your spouse passes away, you can use the trust to pass the remaining funds to your children.

Is this the right fit for me?

A trust can be useful for a **capable adult**:

- Who is vulnerable. Some adults have family members, friends or others in their lives who are aggressively needy.
- Who recognizes they can’t say no to others.
- With limited financial literacy. People with little experience managing their own money can have a loved one set up a trust for them.

A trust can be used as a planning tool for **future incapacity**. It’s an alternative to preparing an enduring power of attorney. Be aware that it’s likely more expensive to set up than an enduring power of attorney.

Tip If you think a trust could work for you, speak with a legal professional. They can advise you on your options and help you draft the trust agreement.

A pension trusteeship is an option if you're not well

If you're mentally capable but struggling to manage your money (for example, because you're physically unwell, have a mental illness, or are homeless), you can appoint a **pension trustee**. A pension trustee can be a person you trust or an organization. They can collect and manage Old Age Security, Guaranteed Income Supplement, and Canada Pension Plan payments on your behalf. They can't manage other assets. Service Canada can assist with the process.

Tip If someone's already mentally incapable, a pension trustee can be appointed for them. It's a less expensive route than appointing a committee, if you only receive federal pensions.

Is this the right fit for me?

A pension trusteeship may be a good fit for you if *all* of the following apply:

- You have pension income only. That is, only federal income security programs such as Old Age Security and Canada Pension Plan.
- You have no other assets.
- You have simple expenses. Just the basics, such as rent, food and utilities.

You can nominate a committee of estate

If you were to become incapable and you'd neglected to put an authority in place, someone may need to apply to the court to make decisions for you. This involves asking the court to appoint them to be your **committee of estate**. This is usually necessary when a major or complex legal or financial decision or action needs to be made on someone's

behalf and a power of attorney isn't in place. A committee of estate has broad powers to make financial and legal decisions for you.

While you're still legally capable, you can nominate a particular person to be your committee. Be aware that obtaining committeeship is the most intrusive planning option. Legally, you lose your decision-making rights. It's also an expensive and time-consuming process.

Tip When you nominate a committee, you're *not* appointing someone as your committee. It's simply a way of informing the court of your preference. If it *later* becomes necessary that one be appointed, the court must honour your choice unless there's a good reason not to.

Is this the right fit for me?

This may work for you if you have **someone you trust** who you believe could represent your interests well and:

- You prefer that your decision-maker is appointed by the court. A committee of estate must provide ongoing **accounts** to the court (or the Public Guardian and Trustee).
- You think there could be **family conflict** if a committee ever needed to be appointed.

Consider using a monitor

A **monitor** is someone appointed to review other people's actions in your accounts. Think of the monitor as a watchdog. They can inform the Public Guardian and Trustee if someone's acting improperly.

Monitors are used in representation agreements if a representative deals with money. You can also consider appointing a monitor under an enduring power of attorney or if you hold a joint bank account with another person.

Your Options for Planning: Health Care and Personal Care Decisions

What will I wear today? Where will I live? We all make **personal care** choices every day.

Health care decisions also have a huge impact on our quality of life. Should I have this surgery? Is this medical treatment worth the risk? Do I want to be kept alive at all costs or allowed to die naturally?

The answers can have huge consequences. Your body is your business and it's important that you're able to control what happens to it — now and into the future.

One day you might be unable to make these kinds of decisions for yourself. It's wise to make plans before a health crisis occurs.

Advance care planning

Putting a plan in place now gives you a say in your future health care and personal care decisions. This is called **advance care planning**. It's a process where you think about and share your values, beliefs and wishes, to support informed health care and personal care decision-making. This gives you the best chance of getting care that's right for you.

Advance care planning involves:

- **Thinking** about your values and wishes.
- **Learning** about your medical and legal options. In this section of the booklet, you can learn about your *legal* options, as well as other paperwork you may encounter.
- **Deciding** who you want to make future health care and personal care decisions for you.
- **Talking** to your health care providers and those close to you to help them understand what matters most to you.
- **Recording** your instructions and wishes for care.



As long as you can still make your own decisions, your advance care plan won't be used. It only comes into play if you become incapable of caring for yourself and making your own decisions.

Medical consent

Generally, a health care provider can only treat you if they get your **informed consent**. You have the right to give or refuse consent to any medical treatment. For this rule to apply, you must be **capable**.

Your consent must be informed. Your doctor or health care provider is *legally obligated* to explain your illness or condition to you, tell you about the proposed treatment, the risks and benefits of it, and any alternative treatments (including no treatment).

The law says that when a health care provider is figuring out whether you're capable of giving consent, they must consider whether you can understand:

- the information they're legally obligated to explain to you, and
- that the information applies to you.

If you're not able to give or refuse consent, your health care provider will need to look elsewhere to get an answer. Under the law, there's a hierarchy of authority they can turn to. You may want to revisit the visual that depicts this hierarchy in the section on Alternatives to Planning on page 6 of this booklet.

Learn about your legal options

Here are the steps to learning about your *legal* options for planning. You need to be legally capable to use the options described below.

These options don't exist in a vacuum. Think about each option in the context of your own values, wishes and beliefs. Whatever combination of options you choose, it's important to understand this: Planning isn't

just about signing documents. Any legal tool you choose will be most effective if those close to you and your health care providers know what you want.

Step 1. Write down the details of all temporary substitute decision-makers

A **temporary substitute decision-maker** is someone who's asked to make a decision for you, when you have no other authority in place. The role is described in more detail in the section above on Alternatives to Planning on pages 6 and 7.

It's a good idea to write down the details of everyone who might potentially fall into this role. Give these details to your health care provider. The list should include each person's name, their relationship to you, and how to best contact them.

A temporary substitute decision-maker must be legally capable, and have no dispute with you. They must also have been in contact with you in the past 12 months. Make a note if someone who might be contacted doesn't fit the criteria, such as "I'm estranged from my mother Maya Cruz." Relevant details like "Johanna works night shifts and sleeps during the day" or "Max works as a teacher but can be called out of class for an emergency" will also be helpful.

Everyone should do this. Even if you have a representation agreement, writing these details down acts as a back-up plan. For example, your representative might be out of the country, or otherwise unavailable.

You can't indicate preferences on your list. Your health care provider can't just skip to someone at the bottom of the ranked list, and call them first. They must still work their way down the list, as set out by law. The point of writing down each person's details is to save your health care provider valuable minutes, maybe even hours, when a medical decision needs to be made on your behalf.

A temporary substitute decision-maker is required, under the law, to make decisions that respect your wishes. Share your values and wishes with anyone who could potentially make these decisions for you.



Think about *every* person in your life who could potentially be contacted — would you ever want them to make a critical health care decision for you? If the answer is "no," you should think about preparing a representation agreement.

Step 2. Choose someone to speak for you with an enhanced representation agreement

An **enhanced representation agreement** (often called a section 9 representation agreement) lets you choose someone to make legally binding **health care and personal care** decisions for you.


The person you choose is called your **"representative."** This should be someone you trust with your life — literally! You're authorizing them to make critical care decisions for you, if you ever can't make them for yourself.

The extent of your representative's authority will depend on what you say in your agreement:

1. You can give your representative **general power** to do *anything* they consider necessary in relation to your personal care or health care. This includes the ability to refuse medical treatment, even if it could prolong your life. It also includes the authority to physically restrain, manage or move you if it's necessary to do so for medical treatment — even if you object at the time.
2. Or you can give your representative **specific powers**. You might only want them to do certain things. For example, they might only be allowed to give (or refuse) consent to a **specific** health care treatment in specific circumstances.

Tip An **enhanced representation agreement** is typically appropriate for most capable adults. A **standard representation agreement** is often used as a last resort when someone already has a diminished capacity to understand. Visit peopleslawschool.ca to learn more about the two types of agreements, and the powers you can grant under each.

You can choose more than one representative. For example, you can choose two or more people (such as a group of family members) to make decisions for you. Your representation agreement might say that each of them can make decisions independently. If your agreement doesn't say how decisions should be made, they must be made unanimously.

Temporary substitute decision-maker	Representative
	
Not your choice. May be someone you'd never want to make decisions for you.	Your choice. Choose someone you trust with your life.
Can only make health care decisions.	Can make health care <i>and</i> personal care decisions.
A temporary appointment. Only called on if a decision needs to be made.	Continuity and engagement. It's their job to: advocate for you, be familiar with your history, learn your wishes for care.
Can refuse life support only if the majority of your medical team agrees.	You can give your representative the final say on life support.

Tip For more in-depth coverage of enhanced representation agreements, visit peopleslawschool.ca. Our page on enhanced representation agreements provides step-by-step instructions on how to prepare one.

Step 3. If you have a specific diagnosis, record your instructions for care with an advance directive

An **advance directive** is a legal document you can use to record your wishes around accepting or refusing *specific* health care treatments. If you're incapable of giving or refusing consent to health care, your health care provider *may* seek **consent** to treatment from your advance directive. They *must* honour the advance directive where it **refuses consent**.

There are some exceptions. Legally, your health care provider can **not** follow your advance directive if they reasonably believe:

- Your instructions are so unclear they can't be understood or applied.
- Your instructions don't address the specific treatment decision to be made.
- Your known wishes, values or beliefs in relation to the health care decision have since changed (while you were capable).
- There have since been significant medical advances that might substantially benefit you (in relation to the specific treatment). But you can expressly state in your advance directive that your instructions apply *regardless* of any such changes.

If your instructions are not **clear, specific and relevant** to the medical situation at hand, your doctor may not be able to follow them when the time comes. **Before** preparing your advance directive, speak to your doctor and learn about the particular treatments that might be offered to you.

It's a good idea to have a representation agreement as well. An advance directive is a piece of paper. It can't advocate for you,

give context to healthcare providers, or be responsive to changing situations. These are things that a well-informed representative who knows your medical history as well as your values and wishes *can* do.

Tip

By default, a representative under a representation agreement takes priority over an advance directive. When making decisions, your representative must take your instructions in the advance directive into account. You do have the choice to say, in your representation agreement, that the advance directive takes priority.

Is this the right fit for me?



"I was born with a gene that gives me a coin flip's chance of getting Huntington's Disease. It's a horrible, incurable affliction and if I get it I frankly don't want to suffer like my mom did. After consulting with both my family doctor and a lawyer, I've signed an advance directive saying that if I test positive for Huntington's, I want certain things to happen — and not happen — in the course of my end-of-life care."

– Rory, Phillips Arm, BC

If an advance directive isn't clear, specific and relevant to the medical situation at hand, it may be ineffective when needed most. For this reason, advance directives are best used when someone:

- has a specific diagnosis,
- is at end-of-life, or
- is trying to get ahead of a condition they are genetically predisposed to and have seen others close to them go through.

In all of the above cases, a doctor would be able to explain the specific medical treatments or interventions likely to be offered to you. In this way, you could make truly informed decisions.

Anyone can prepare an advance directive. But healthcare providers may have a hard time confidently acting on an advance directive that a patient wrote when they were perfectly healthy. Blanket statements about the patient's values or wishes make it difficult for a health care provider to use the document.

If you're healthy and want to prepare an advance directive (for example, because you feel strongly about not wanting certain interventions), you should do so in consultation with both legal *and* health care professionals. An alternative to preparing an advance directive in these circumstances is appointing a representative under a representation agreement.

Tip

Visit peopleslawschool.ca for in-depth coverage on advance directives. Our page on advance directives provides step-by-step instructions on how to prepare one.

Step 4. You can choose to nominate a committee of person

A **committee of person** has broad powers to make health care and personal care decisions for you. If you were to become incapable and you'd neglected to put an authority in place, someone may need to apply to court to make decisions for you. They are asking the court to appoint them to be your committee of person.

This may be necessary when:

- a major health care decision or action needs to be made on your behalf,
- there's no representation agreement or advance directive in place, and
- a temporary substitute decision-maker can't be located or there's a family disagreement.

If the court approves of the person who applied, they'll appoint them as your committee.

While you're still legally capable, you can nominate a particular person to be your committee. You can't actually appoint

someone — a nomination is simply a way of communicating your preference to the court. As with nominating a committee of estate, be aware that obtaining committeehip is the most intrusive planning option. Legally, you lose your decision-making rights.

Learn about other paperwork you may encounter

MOST forms

A MOST — **Medical Order for Scope of Treatment** — form is a document that translates your wishes into “doctor’s orders.” The form facilitates a conversation about major medical decisions that need to be made when you’re chronically ill or near end-of-life. Together, you and your doctor focus on what kind of care is right for you. You discuss your values and wishes in the context of your medical situation. Your doctor will complete and sign your MOST.

Legally, MOST forms do not substitute for consent. There’s no law in BC that governs the creation and use of MOST forms, so they should be used as a guide only. Even if you have a MOST, a health care provider must ask you directly for your consent any time you need medical treatment. Your doctor can remind you about your earlier conversations. Maybe you’ve changed your mind about what you want — and that’s okay, too. If you’re incapable of giving consent, it must be obtained from another authority, such as your **representative**.

MOSTs are used in hospitals, residential care and community care settings. Refer to your local health authority for more information on the use of MOSTs in your area. There may be differences in when and how each form is used, depending on where you receive your care. It’s a good idea to get on the same page as your doctor or care providers. Ask them to clearly explain to you how the form will be used if a MOST is created for you.

No CPR form

If your heart or lungs suddenly stop working, cardiopulmonary resuscitation (CPR) or other emergency medical procedures are usually performed straight away. A **No CPR form** can be used to tell first responders that you don’t want so-called “heroic measures” undertaken.

The form was created by BC Ministry of Health. Instructions for how to create a No CPR form can found on HealthLinkBC. Like MOST forms, there’s no law in BC that governs the use and creation of No CPR forms. The reality is that these forms are used in the BC healthcare system and honoured by health care providers.

Signing a No CPR form isn’t a decision to be made lightly. Talk to close family and friends and your doctor to see if it’s a good option for you.



A MOST and No CPR form will be honoured by BC Ambulance Services in an emergency situation. If you have either form, you should post a copy on your fridge. To enable quick verification of your wishes, you can obtain a free No CPR bracelet or necklet, by calling 1-800-668-1507 or visiting medicalert.ca.

Values, preferences and conversations

Your health care decisions may be influenced by your values, beliefs, lifestyle, culture and personal ethics. Advance care planning can help others make care decisions that align with your wishes and values. When someone makes a medical decision for you, they should try to figure out **what you would do**. So, it’s helpful if they know:

- your *current* wishes,
- any specific instructions you left, and
- the values and preferences expressed when you were capable.

If they’re not aware of your wishes, values or preferences, they’ll need to make a decision that’s in your best interests.

Planning as a healthy and capable adult

None of us can know precisely what health challenges we'll face down the road. This is especially true for **healthy adults** with no red flags in their family history. This makes conversations about general values ("I'm most concerned about losing quality of life") and preferences ("I do *not* want to be hooked up to machines") useful for healthy adults. Have these conversations with:

- your family and those who are close to you,
- anyone who might be asked to make a decision for you, and
- your health care providers.

Be clear about what these kinds of statements really mean to you. To do this, learn as much as you can about the possible health care treatments that might be offered to you at end-of-life.

Tip

If your circumstances change, you should revisit your plan. Your conversations can now focus on what you want in the context of your condition. Visit peopleslawschool.ca to learn more about how to plan for serious and chronic illness and end-of-life planning.

Advance care planning workbooks or values guide

You may believe those close to you know what matters to you most — but they may not. Resources are listed in the Where to Get Help section below that you can use to help think about your values and start conversations about them.

Writing down your values and wishes in a planning guide or workbook is the ideal way to start planning. The process will help you to clarify, in your own mind, what's important to you. The information will be helpful to someone who has to make a decision for you because of a sudden accident or illness. The next step is to prepare any legal documents that are appropriate for your situation.

Tip

Thinking about your values and wishes is a crucial part of planning. Be aware, though, that a completed values guide *cannot* substitute for your consent if you're incapable. On the other hand, if you prepare legal documents, your health care provider *can* get consent from your advance directive or representative.

Common Questions About Planning

I've already written my will.

How are these tools different?

A will can only be used after you die. The planning tools we describe here are ways you can handle your affairs while you are alive.

I don't have any dependents.

Should I still plan?

You should. Planning for your future is about having a say in what happens in your life. It's not just about taking care about the people in your life.

I want my family to make my health care decisions for me, when I can't do it myself. Can't I just leave it up to them?

If you leave it to chance, there's no guarantee that the family member(s) you'd want to speak for you will have the legal right to do so. If you don't make plans, by default, your health care provider would need to contact a **temporary substitute decision-maker** to make the decision for you.

What if I change my mind after I've already put plans in place?

You can always change your plans. In fact, it's a good idea to review your plan every couple of years and whenever your circumstances change. And remember, any authority you put in place now can **not** override your decisions as long as you're still capable of making those decisions. This means you're still in control.

Where to Get Help

Access Pro Bono

Provides free legal advice to qualifying persons who cannot obtain legal aid or afford a lawyer.

Toll-free: 1-877-762-6664

accessprobono.ca

Alzheimer Society of BC

A non-profit organization that provides information and support to families, individuals and caregivers to alleviate the personal and social consequences of Alzheimer's disease and other dementias.

alzheimerbc.org

BC Centre for Palliative Care

A centre of leadership in the health care system for best practices, research and education in advance care planning and serious illness conversations.

bc-cpc.ca

Law Students' Legal Advice Program Clinics

Law students from the University of British Columbia offer free legal help with some legal matters, including powers of attorney and representation agreements for people with low incomes.

604-822-5791

lslap.bc.ca

Ministry of Health

Provides information about planning for incapacity, including forms for legal planning documents, and an advance care planning guide *My Voice: Expressing My Wishes for Future Health Care Treatment*.

gov.bc.ca/incapacityplanning

MyLawBC

An online resource that asks you a series of questions and, based on your answers, provides an action plan of what personal planning documents you need and how to get them.

mylawbc.com/paths/wills

Nidus Personal Planning Resource Centre and Registry

A non-profit organization that provides detailed information and assistance to get you started on enduring powers of attorney, representation agreements, and advance directives. Provides a "Values and Beliefs Discussion Guide" that can help you to think about your values and wishes, and to start conversations about them.

info@nidus.ca

nidus.ca

Public Guardian and Trustee of BC

A public body that can investigate the misuse of a power of attorney or a representation agreement where the adult has become incapable. It also provides financial management and legal decision-making for vulnerable adults.

604-660-4444

trustee.bc.ca

Self-Counsel Press

Publishes do-it-yourself guides on legal topics for BC, including a *Power of Attorney Kit*.

self-counsel.com

Seniors First BC

A non-profit that offers monthly legal clinics where low-income seniors can get help with powers of attorneys and other planning documents.

604-688-1927

seniorsfirstbc.ca

Speak Up BC

A campaign that is part of a larger initiative on advance care planning in Canada. Provides an online advance care planning workbook.

advancecareplanning.ca/making-your-plan

Glossary

Advance care planning: A process where someone thinks about and shares their values, beliefs and wishes, to support informed health care and personal care decision-making.

Advance directive: A legal document with written instructions about what health care a person wants or does not want in the future if a decision needs to be made and they're incapable of making it.

Attorney: A person legally appointed or empowered to act on behalf of another under a power of attorney.

Certificate of incapability: A certificate issued by a provincial health authority after a medical and functional assessment that finds an adult is incapable.

Committee of estate: A person or body (such as the Public Guardian and Trustee) appointed to make financial and legal decisions for someone who is incapable and cannot manage their own affairs.

Committee of person: A person or body (such as the Public Guardian and Trustee) appointed to make health care and personal care decisions for someone who is incapable and cannot manage their own affairs.

Enduring power of attorney: A legal document that enables an adult to appoint another person to make financial and legal decisions for them, and specifies that the appointment continues — or “endures” — in the event the adult becomes incapable.

Enhanced representation agreement: A legal document used to authorize someone to assist an adult, or to act on the adult's behalf, for health care and personal care matters. This type of agreement is often called a section 9 representation agreement. It must be made by a legally capable adult.

Medical Order for Scope of Treatment

(MOST): A form used in hospitals, residential care and community care settings that translates a patient's wishes into “doctor's orders.” A MOST form is completed in consultation with a physician. It's only signed by the physician, and not by the patient.

Pension trustee: A person or organization that collects, manages and holds federal pension amounts in trust for the benefit of another person.

Power of attorney: A legal document that enables an adult to give another person (or more than one person) the authority to make financial and legal decisions for them.

Public Guardian and Trustee: A public body established by law to protect the interests of British Columbians who lack legal capacity to protect their own interests.

Representative: A person appointed under a representation agreement to help an adult make decisions, or to make decisions on the adult's behalf.

Standard representation agreement: A legal document used to authorize someone to assist an adult, or to act on the adult's behalf for routine financial affairs, as well as legal, health care, and personal care matters. This type of agreement is often called a section 7 representation agreement.

Temporary substitute decision-maker: A person selected by a health care provider from a ranked list to make health care decisions on behalf of someone else. Will only be called on if the person doesn't have another authority in place that addresses the specific health care need.

Trust: A form of possession of property in which a person (the trustee) holds property for the benefit of another person.



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Which publication did you read? _____

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
The information presented increased my understanding of the legal topic	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am confident that the information provided is reliable	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The information helped me identify the next steps to take with my legal issue	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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