

Representation Agreement with Section 7 Standard Powers



“My mom may make a Representation Agreement even though she has dementia and cannot make a Power of Attorney.”

Please also read the fact sheet *Representation Agreement Overview*.

This fact sheet is about a Representation Agreement with Section 7 standard powers made on or after September 1, 2011. For information on documents made before this date, see the Nidus fact sheet on *Amendments and Representation Agreements made before Sept. 1st*.



Legal affairs, which include obtaining legal services and instructing a lawyer, settling an insurance claim, going to small claims court.



Routine management of financial affairs, such as banking, government benefits, Revenue Canada, managing investments.

What is a Representation Agreement with Section 7 standard powers?

A Representation Agreement with Section 7 standard powers is a legal document for personal planning that is available to adults who need help today because their mental capability/competency may be in question.

This type of Agreement is also a document of choice for other situations. For example, adults who:

- Need immediate help with their financial affairs and/or health matters due to ‘physical’ incapability.
- Want to use a Representation Agreement to cover financial and legal affairs instead of an Enduring Power of Attorney to plan for their future.
- Want to apply to the Choice in Supports for Independent Living (CSIL) Program (and need to cover at least financial affairs and personal care).

Having a Representation Agreement does not remove decision making rights from the adult. A Representation Agreement also does not replace the informal support that families and friends provide; it gives legal status to the adult’s personal supporters when informal help is not enough.

What areas of authority can be included under Section 7 standard powers?

There are four areas of authority that you can include in a Representation Agreement with Section 7 standard powers. These four areas are



Minor and major health care, which includes medications, tests, surgery, any treatment requiring a general anaesthetic, dental care, end-of-life comfort care.



Personal care, such as, living arrangements, diet, exercise, taking part in activities, personal safety issues.

Who may make an Agreement under Section 7?

To make a Representation Agreement with Section 7 standard powers you must be an adult, 19 years of age or older. As previously mentioned, this type of Agreement can apply to many situations. The examples in this fact sheet focus on adults who need help today.

The Representation Agreement Act says that an adult may make a Representation Agreement with Section 7 standard powers even if they cannot manage their own affairs or make decisions independently or sign a traditional contract.

For example, Mei is a senior who has been diagnosed with dementia. She needs help with most daily living activities and is being assessed for facility care. Her sons help her with meals, taking her medications, and following directions from her physiotherapist. Mei’s sons can provide her with informal support but, they require legal authority to help Mei for certain situations. For instance, they noticed that Mei was forgetting to pay her bills; the bank would not speak to Mei’s sons about setting up direct bill payment from her account unless they had legal authority.

The bank mentioned the Enduring Power of Attorney as a legal document that gives authority for financial affairs. Mei had made an Enduring Power of Attorney with the help of a notary public 10 years ago, naming only her husband, but he died last year. When Mei’s sons brought her to the same notary public, they were told that he did not find that she could meet the capability requirements for making an Enduring Power of Attorney.

Fortunately, the Representation Agreement Act looks at capability differently than the Power of Attorney Act does (for the Enduring Power of Attorney).

Before the Representation Agreement Act was in place, the only way Mei's sons could get legal authority to help her was to apply to court to become Mei's committee/guardian. In some cases, the Public Trustee—a government official—would become the committee.

If someone became committee for Mei, she would lose her civil rights and be considered a non-person under the law. With a Representation Agreement, Mei maintains her rights and her person-hood status, while receiving the help she needs. A Representation Agreement is a legal alternative to adult guardianship.

The Representation Agreement Act also says the way an adult communicates is not a factor in determining whether the adult may make a Representation Agreement. The law recognizes that some people do not communicate in a traditional way. Some adults communicate non-verbally using gestures, body language, and/or behaviours.

Who IS making a Representation Agreement with Section 7 standard powers?

Some other common examples of people who make Representation Agreements with Section 7 standard powers include: Shaun, a young adult with a developmental disability who communicates by vocalizing and gesturing. Shaun's parents want to help Shaun set up a bank account and a Registered Disability Savings Plan but they will need legal authority to do this. Shaun could make a Representation Agreement and appoint his parents as representatives, who would then have the legal authority to assist him when he needs it.

Cherry, a woman whose speech and memory has been affected by a brain injury, has the Public Guardian and Trustee managing her financial and legal affairs but nothing in place for health and personal care. Cherry may make a Representation Agreement and appoint her sister to help her with health care and personal care decisions, such as decisions about rehabilitation, occupational therapy, and where to live.

Kam recently suffered a stroke and has no legal documents in place. He needs someone to arrange payment of the care facility bills from his bank account. With his nephew's help, Kam may make a Representation Agreement that includes authority for routine management of financial affairs, which would give Kam's nephew the authority to pay Kam's bills from his bank account.

What makes a Representation Agreement with Section 7 standard powers unique?

As you have learned, the Representation Agreement Act supports a different view of capability compared to the capability requirements of the Power of Attorney Act or Wills Act. This means Mei, Shaun, Kam and Cherry may be considered incapable of making a Will or a Power of Attorney, yet be capable of making a Representation Agreement with standard powers.

In addition, unless your representative is also your spouse, an extra safeguard is required if the Agreement includes authority for the routine management of financial affairs. The safeguard requirement can be met by either appointing two or more representatives to act jointly for finances or by appointing someone as a monitor. The monitor is a particularly special role. The monitor is there to ensure your representative is following their duties. The law says that no one can prevent the monitor from having contact with the adult. See the Nidus fact sheet on the *Role of the Monitor*.

What is not covered under Section 7?

An Agreement under Section 7 does not include certain financial authorities such as dealing with real estate, arranging for the temporary financial care of minor children, or acting on the adult's behalf as a director or officer of a company. These can be covered using an Enduring Power of Attorney; see the Nidus fact sheet on *Enduring Power of Attorney*.

There are certain non-standard broader health and personal care powers not covered under Section 7. For example, the absolute authority to refuse life support. Instead, under standard powers, refusing life support would require the consensus of the medical team and your family members.

Examples of other broader powers are: consent to treatments with no known benefit, consent to physical restraints, and making arrangements for the temporary care and education of your minor children. Non-standard broader powers can be covered using a Representation Agreement with Section 9 broader powers. For details see the Nidus fact sheet on *Section 9 Broader Powers*.

How do I make an Agreement under Section 7?

You are not required to consult a legal professional to make a Representation Agreement. Nidus has produced basic forms for a Representation Agreement Section 7. Nidus can also provide a customized form if the basic forms do not fit. See *Making RA7*