

Procedures for Resigning as an Attorney or Alternate Appointed in an Enduring Power of Attorney

Who would resign from an EPA?

Attorney or alternate attorney is the name of the role given to the individual(s) or institution(s) appointed in an Enduring Power of Attorney (EPA) to act on the adult's behalf with respect to financial and legal affairs. There can be more than one attorney and/or alternate.

If an attorney finds that they are unable or unwilling to act or continue to act, then they can resign. Sometimes an alternate attorney may decide to resign even if they are not yet acting as the attorney. They may believe they are going to be unable or unwilling to act as an attorney. Formally resigning makes things more clear.

How do I resign from the EPA?

The BC Power of Attorney Act (PoA Act) was amended as of September 1, 2011. The legislation spells out procedures for resigning in section 25. The EPA document may have additional procedures for resigning.

A resignation must be communicated in writing (not by a verbal statement). This is called giving 'Notice.'

The legal procedures require that the Notice of Resignation be given to specific people. This is explained under a later heading.

If you do not follow the procedures outlined in the legislation (and any others listed in the EPA), the resignation may not be valid and the attorney may be responsible for not acting when needed.

When is resignation not required?

If the adult who made the EPA revokes (cancels) the EPA, then the entire EPA and all authorities given in it are ended. It would not be necessary for those appointed as attorney or alternate attorney to resign. See where to find more resources on page 2 if you want details on *Revoking an EPA*.

The BC PoA Act as amended September 1, 2011, says an attorney is not required to resign if that attorney never signed the original EPA and never acted on their authority.

However, the requirement for an attorney to sign the EPA only came into effect on September 1, 2011. If the EPA was made before that date, an attorney (or alternate) was not required to sign the EPA and may have a duty to act simply because they are appointed in the EPA. In such a case, it may be important for an attorney (or alternate) to complete and deliver a Notice of Resignation if they are unable or unwilling to act or continue to act.

Do I need to give a reason for resigning?

The legislation does not require you to state a reason for resigning. However, if asked, people often say 'for health reasons' or 'for personal reasons.'

What is the effect of a resignation by the attorney?

The effect of a resignation depends on the wording in the EPA and the requirements of the BC PoA Act. Generally, if another attorney or alternate is named in the EPA, the EPA may continue. If an EPA is ended due to a resignation, the adult would sign a Notice of Revocation and make a new EPA. See the heading on page 2 for where to find more resources.

What does a Notice of Resignation look like?

See the sample of a Notice of Resignation on page 3. You may use or adapt it.

Do I need a witness when I sign the Notice?

Although the law does not require it, it may be helpful if you ask someone to witness (watch) you sign and date the Notice of Resignation, and then they can sign it and print their name.

Who gets a copy of the Notice of Resignation?

In order for the resignation to be valid, you must give a signed and dated copy of the Notice of Resignation to:

1. The adult (who the EPA belongs to), and
2. All attorneys (include alternates too) named in the EPA, other than yourself, and
3. If the adult is incapable at the time you are resigning, you must also give Notice to the adult's spouse, or **near relative**, or **close friend**.

A 'near relative' is defined as an adult child, parent, grandparent, adult brother/sister, or any other adult relation by birth or adoption.

A 'close friend' is another adult who has a close, long-term relationship and frequent personal contact with the adult, as long as that person does not receive compensation for providing personal or health care to the adult.

It is a good idea to keep proof that your Notice of Resignation was given to those required.

How do I deliver the Notice of Resignation?

The BC PoA Act does not state how to deliver your Notice of Resignation to those you are required to inform. It is probably a good idea to keep proof of how you delivered the notice.

You may wish to deliver the Notice of Resignation by following the procedures outlined in the Representation Agreement Act Regulation, but this is not binding for the EPA:

- By registered mail to the person's last known address; or
- By leaving it:
 - with the person, or
 - at the person's address, or
 - with an adult who appears to reside with the person;
- If the person operates a business, at the business, with an employee of the person; or
- By transmitting it by fax to the person, using the number they provided for notification purposes.

When does the resignation take effect?

The resignation takes effect on the date when Notice **is given** to everyone required. Or, you can list a future date in the Notice for when the resignation takes effect.

Who else needs to be informed about the resignation? Some tips.

Do NOT cross out names on the original EPA document, instead keep a copy of the Notice of Resignation with the original. Changes can be made on future photocopies of the original.

Send a copy of the Notice to any third parties where the EPA document has been distributed – for example, to the bank or Credit Union or other financial service or the Land Title Office.

Keep your own copy of the the Notice of Resignation, you might need it later.

It is also a good idea to register a copy of the Notice with the Nidus Registry. One of the challenges when resigning from your role in a legal document is how to let third parties (banks, government agencies, etc.) know about it. If the adult has set up a Registry Account and registered the EPA, Notice of Resignation can be added to the record. Registering the resignation helps with communication. There is a \$10.00 fee to record a resignation in the Nidus Registry. Email a copy of the Notice to registry@nidus.ca

Where to find more resources?

Go to www.nidus.ca > Information (top menu bar) > select Enduring Power of Attorney

Thanks from the Nidus Resource Centre to donors for funds to produce this and other education resources.

**NOTICE OF RESIGNATION BY ATTORNEY/ALTERNATE
NAMED IN ENDURING POWER OF ATTORNEY**

***In accordance with Section 25 of
the Power of Attorney Act, R.S.B.C. 1996, c. 370 as amended,***

I, _____
(TYPE or PRINT full name as it appears in the Enduring Power of Attorney)

of _____
(TYPE or PRINT current address of person resigning)

phone _____
(TYPE or PRINT phone area code + number of person resigning)

hereby resign from the Enduring Power of Attorney (EPA)

Made by _____
(TYPE or PRINT full name of **adult**, as it appears on the EPA)

of _____
(TYPE or PRINT current address of adult)

phone _____
(TYPE or PRINT phone area code + number of adult)

Signed on _____
(TYPE or PRINT date adult signed the EPA - month, day, year)

I am named in the EPA as: (Check one) attorney alternate attorney

This resignation is signed by me: _____
(Your signature)

This resignation takes effect on: _____, 20____
(TYPE or PRINT current or future date - Month, Day, Year)

To be valid, the BC Power of Attorney Act section 25 says to give written notice of resignation to:

1. The adult (who the EPA belongs to), and
2. All attorneys (Nidus suggests include alternates) named in the EPA, other than yourself, and
3. If the adult is incapable at the time you are resigning, you must also give Notice to the adult's spouse, or near relative, or close friend.

A 'near relative' is defined as an adult child, parent, grandparent, adult brother/sister, or any other adult relation by birth or adoption.

A 'close friend' is another adult who has a close, long-term relationship and frequent personal contact with the adult, as long as that person does not receive compensation for providing personal or health care to the adult.