

Being an Attorney

in Alberta

This booklet is for people who have been asked to be an Attorney under someone's Enduring Power of Attorney. It explains what is involved in being an Attorney. It is divided into two sections:

- *a question and answer section touching on issues to consider before you accept the job as well as common questions and examples; and*
- *a checklist section that helps guide you when the donor—the person who gave you Power of Attorney—loses capacity.*

This booklet gives general information only, not legal advice. It is not a do-it-yourself guide. For that, you need a more detailed self-help publication or legal advice. See the last few pages of this booklet for information on where to get this help.

Contents

1. Should I agree to the job?	
Top 10 questions about what's involved in being an Attorney2
2. What happens when ...?	
Top 15 general questions about being an Attorney5
3. How can it go wrong?	
Top 5 questions about the most common problems8
4. The time has come: where do I begin?	
Checklist: 10 steps upon the incapacity of the donor9
5. What do the words mean?	
Glossary 14
6. Where can I get more help?	
Community resources 15

You should **not** rely on this booklet for legal advice. It provides general information on **Alberta law only.**



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Changes in 2009

Replacement of *Dependant Adults Act*

Before the end of 2009, the Government of Alberta will bring into force the *Adult Guardianship and Trustee Act* (AGTA). The AGTA will replace the current *Dependent Adults Act*, which is mentioned in this booklet. Once proclaimed, the AGTA will make important changes to decision-making for adults who lack capacity. As a result, some of the information in this booklet will soon be outdated. These changes, however, only affect situations where an Enduring Power of Attorney and Personal Directive have **not** been made. It is still best for a person to have these documents made before any lack of capacity occurs. This will ensure more control over future personal and financial matters and provide greater peace of mind for loved-ones.

1. Should I agree to the job?

Top 10 questions about what's involved in being an Attorney

1.1

What is an Attorney?

An Attorney is the person named in a Power of Attorney to carry out its directions. An Attorney has the right, while the donor—the person giving you Power of Attorney—is still alive, to act on behalf of the donor with respect to the donor's financial affairs, including debts. This can include paying bills, depositing and investing money, and even selling the donor's house. The Attorney is accountable to the donor. As a result, the Attorney must keep detailed financial records, and s/he may be called upon to review these records in front of a court or the donor's loved ones, so as to demonstrate that what s/he is doing is in the best interests of the donor.

An Attorney does **not** make decisions about health care – for that, one needs a separate document, called a Personal Directive.

Being named as an Attorney can be a big undertaking requiring a considerable amount of time, energy, and careful attention to detail. An Attorney can get help from friends and family members and also from a lawyer or accountant if necessary. However, the Attorney remains the person who is legally responsible.

If you agree to be an Attorney, you will be entrusted to handle the financial affairs of the donor, and you owe it to him or her to make sure you know what is required of you.

1.2

Who can be an Attorney?

Any adult can be an Attorney. An Attorney does not have to be a lawyer.

Being an Attorney, however, can be a complex, difficult job. An Attorney is responsible for such things as:

- managing the donor's assets and debt for an indefinite amount of time;
- paying the donor's bills;
- preparing and submitting the donor's taxes;
- possibly maintaining trusts for children, and
- dealing with legal and accounting matters.

Accordingly, an Attorney should:

- be honest and trustworthy;
- be capable of doing the job (s/he does not need to be an expert, but s/he should at least be someone who does a good job of managing her or his own affairs); and
- have the time and willingness to do the job.

In addition, it is convenient if the Attorney lives in the same city, or at least the same province, as the donor. This factor, however, should not overshadow the above three criteria. A person who is trustworthy, capable, and willing is more suitable than someone who is not, even if s/he lives on the other side of the country.

1.3

How difficult is it to be an Attorney?

Being named as an Attorney is a big undertaking requiring a considerable amount of time, energy, and careful attention to detail. It can also involve a significant amount of diplomacy.

The task can be fairly simple if the donor has little property and few financial obligations.

However, the job of Attorney may be considerably more complicated if:

- the donor owns a business;
- the donor has a lot of investments and debts;
- the donor has minor children;
- or
- the Power of Attorney is challenged by someone.

The amount of work involved will also depend on whether you are the sole Attorney or whether the donor has named one or more joint Attorneys with whom you will be working.

1.4

What exactly are the duties of an Attorney?

In general, if you are appointed an Attorney, your responsibilities can be described as follows.

- To act in the best interests of the donor. Under Alberta legislation, this also includes a duty to protect the donor's best interests.
- To consult with the donor, with those who take care of the donor, and with the donor's family and friends.
- To use the donor's assets first for the donor's support and care; then, if assets are available, for the support of the donor's dependants.
- In certain circumstances, an Attorney can make gifts or loans to relatives, and gifts to charity based on the donor's previous practice and intentions (but the Power of Attorney must specifically give this power).
- To obtain a copy of the donor's Will and information about the donor's assets and liabilities (others who have this information must provide it to you).
- To keep accounts and give an accounting when called upon to do so. This includes lists of:
 - assets as of the date of the Attorney's first transaction;

- assets acquired and disposed of and the date and particulars of each transaction;
 - receipts and disbursements and the date and particulars of each transaction;
 - investments bought and sold and the date and particulars of each transaction;
 - liabilities as of the date of your first transaction;
 - liabilities incurred and paid and the date and particulars of each transaction; and
 - payments taken by you and how they were calculated.
- To keep a copy of the Power of Attorney and of any court orders relating to the your authority.
 - To keep these records until:
 - you cease acting for the donor and until you receive a release from someone authorized to give it;
 - or
 - until another person acquires authority to manage the donor's property and you give the records to that person.
- If the donor dies, to give the records to the donor's Executor.
 - If required, to apply to the court for advice and direction regarding any of these matters.

1.5

I have just been asked to be an Attorney. Do I have to agree?

If someone asks you to be an Attorney and you don't want to do the job, you can simply say no. No one can force you to take on this job.

It's best to agree to act as Attorney only if you feel you can do the job well and give it your time and attention. Be sure also to consider family dynamics.

Being named as an Attorney is a big undertaking requiring a considerable amount of time, energy, and careful attention to detail. It can also involve a significant amount of diplomacy.

1.6

I have just agreed to be someone's Attorney. What information should I get right now?

Here are some kinds of information you should consider requesting:

- where the original Power of Attorney is kept and how to access it;
- a notarized copy of the Power of Attorney, so that you will have it when the time comes;
- if appropriate, details about all that the donor owns and owes (including where to find records for these matters). For example: bank accounts, RRSPs or RRIFs, insurance, real estate, and pension benefits. Note any items owned in joint tenancy or which name a specific beneficiary;
- additional details about the donor's financial and legal wishes, especially with respect to any issues that you or the donor feel might become contentious;
- details about how the donor's loss of mental capacity will be diagnosed;
- the names and contact details of any other Attorneys (appointed in a Power of Attorney), Agents (appointed in a Personal Directive) and Executors (appointed in a Will);
- whether anyone will be reviewing your decisions as Attorney (and whom you therefore need to keep explicitly informed);
- clarification as to whether or not you will be paid a fee for your services as Attorney;
- the names and contact details of any other people who have a copy of the Power of Attorney; and
- the names and contact details of any people that you are to notify when the Power of Attorney comes into effect.

1.7

I have just agreed to be someone's Attorney. Is there anything I should ask the donor to do in order to make my job easier when the time comes?

You should consider asking the donor to:

- keep an up-to-date, detailed record of all that s/he owns and owes and let you know where this updated list can be found;

- if she or he has property outside of Alberta, ensure that the Power of Attorney will be accepted in that jurisdiction (and, if not, to make another Power of Attorney that would be valid in that jurisdiction);
- explain his or her plans to family members, the beneficiaries, or anyone who may be affected by your appointment as Attorney; and
- let you know of any updates or changes to his or her Power of Attorney, Personal Directive, and Will (have him or her give you copies of any such documents).

1.8

I am receiving a gift under the donor's Will. Can I still be an Attorney?

Yes. An Attorney can also be a beneficiary under the donor's Will.

As an Attorney, however, you must not let your entitlement under the Will cloud your judgment as to the donor's best interests while the donor is still alive. For example, if you are to receive a cash bequest under the Will, you cannot choose to set aside those funds simply to ensure that you will receive them once the donor dies. If it is in the donor's best interest that the funds be used during his or her lifetime, that is what you are obliged to do as the Attorney.

1.9

Can I get paid for being an Attorney?

Often an Attorney does not accept a fee. This is common if the Attorney is a spouse, adult interdependent partner, family member, or close friend.

Any expenses the Attorney has while completing his or her duties are paid for out of the estate. Examples of expenses are photocopying, postage, and long-distance phone calls.

Sometimes the Power of Attorney states an amount that is to be paid to the Attorney as a fee. If it does, the stated amount is the maximum the Attorney can receive. If the Power of Attorney does not list any fee, the Attorney may apply to the court for "fair and reasonable" compensation. If there is more than one Attorney, the fee is split, but not necessarily equally. It depends on who does most of the work.

1.10

I agreed to be an Attorney, but now I have changed my mind. Can I get out of the duties to which I had previously agreed?

If the donor still has capacity, you can change your mind at any time. Let the donor know as soon as possible so that s/he can make a new Power of Attorney, if required.

You can also resign later, after the donor has lost capacity. The law says, however, that in order to do so, you must apply to court for permission to leave the role (this is known as “renouncing”).

You may **not** appoint someone else to act in your place. If there is a co-Attorney, s/he can take over. If there is no co-Attorney but the Power of Attorney identifies an alternate Attorney, then that person may take your place. If there is no alternate named, someone will have to apply to the courts to become a trustee (this is known as a Dependent Adult Application).

If you have any doubts about taking on the duties and responsibilities of an Attorney, you should formally hand over your responsibilities before you assume control of the estate.

2. What happens when ...?

Top 15 general questions about being an Attorney

2.1

How does an Enduring Power of Attorney come into effect? What is this Declaration of Incapacity?

There are two ways that an Enduring Power of Attorney can come into effect:

1. it can commence immediately (or at a set future date) and continue after the mental incapacitation of the donor;
or
2. it can come into effect only when the donor has been determined to be incapable of managing his or her property (this is also known as a “Springing Power of Attorney”).

A Declaration of Incapacity is required for the second kind of Enduring Power of Attorney. This declaration confirms that a donor of a Power of Attorney no longer has the mental capacity to make decisions on his or her own behalf. These forms are available from hospitals, care facilities, and doctors.

Who is to sign the Declaration of Incapacity is determined first by looking at the provisions of the Power of Attorney itself. If the Power of Attorney names one or more people who are to make the determination as to capacity, it is the named person(s) who must sign the declaration. If the Power of Attorney does not indicate who is to make the declaration, then two medical practitioners must complete the form.

2.2

How do I confirm that I was named as the Attorney?

It is best to have the original Power of Attorney. If this is not possible, you should have notarized copies of the original. Most financial institutions and agencies will ask for a notarized or certified copy of the document.

If the original Power of Attorney is not at the donor’s home, it may be in a safety deposit box or at the office of the lawyer who drafted it.

To look in the safety deposit box, phone the bank and make an appointment. Take the key, the Declaration of Incapacity, and your own identification. If the Power of Attorney is there and names you as Attorney, the bank should let you take the document.

2.3

What if I can’t find the Power of Attorney?

If you have checked in the donor’s safety deposit box(es) and lawyer’s office and you still can’t find the Power of Attorney, check with the donor’s relatives and close friends. They may know where it can be found.

Without at least a copy of the Power of Attorney, it is impossible to proceed. You must apply to the court for

what is called “trusteeship.” You become the trustee rather than the Attorney. More information can be found on the Alberta Courts website listed at the back of this booklet.

2.4

I found a Power of Attorney that is handwritten, signed, and dated, but no one else witnessed it. Is it valid?

No. In Alberta, although a Power of Attorney can be handwritten, all legal requirements must be met. This includes the signature of at least one witness.

2.5

What happens if there is more than one Power of Attorney?

Usually, there is only one valid, binding Power of Attorney. Generally, the binding Power of Attorney is the one that is both the most recent and meets all legal requirements.

Example

- A donor wrote an Enduring Power of Attorney in 1999; it met all of the legal requirements.
- The donor wrote a new Enduring Power of Attorney in 2007; it attempted to revoke the 1999 document, but not all legal requirements were met.
- The 1999 Enduring Power of Attorney is the valid one.

As Attorney, you must make the appropriate effort to ensure you are working with the correct document, as it is your job to do your best to ensure the wishes of the donor are carried out.

Sometimes, however, which document is the official one may be disputed. For example, there may be a claim that the most recent Power of Attorney was written when the donor did not have capacity. A court may have to decide.

If there is more than one Power of Attorney and they can be read together (that is, they do not conflict), a court may take into account the provisions of both, but this is extremely rare.

2.6

I was named in a Power of Attorney completed on forms provided by a bank. Does that make me an Attorney for other purposes as well?

No. A Power of Attorney completed on bank-specific forms will only apply to assets held at that bank.

2.7

As an Attorney, which property is it that I have power over?

As an Attorney, you will have power over the property that the donor has specified in the Power of Attorney.

For example, if the Power of Attorney says that you have power over the donor’s stock portfolio, that is what you will have power over. In this scenario, you would not have the power to sell the donor’s home.

If, on the other hand, the donor has given you very broad powers (for example, using words such as “everything that I may legally do”), you will have power over land, house, vehicles, bank accounts, RRSPs, pensions, stocks and bonds, business assets, life insurance policies, and so on. You would also have the right to start or defend a lawsuit with respect to any of these matters.

2.8

I have heard that even broad powers are governed by law. What does this mean?

Unless the Power of Attorney restricts the Attorney’s powers, the Attorney will be able to do almost anything that the donor could have done concerning his or her finances.

However, Attorneys are governed by the provisions of the Alberta *Trustee Act*. This Act restricts some of the kinds of actions that an Attorney can take. For example, when investing the funds of the donor, an Attorney may only choose certain kinds of investments. For more information, please consult the *Trustee Act* or a lawyer.

2.9

Are there things that an Attorney can never do?

Yes. By law, an Attorney cannot change the donor's Will, make a new Will for the donor, or give a new Power of Attorney on behalf of the donor.

In addition, Attorneys are governed by the provisions of the Alberta *Trustee Act*. This Act restricts some of the kinds of actions that an Attorney can take.

Furthermore, an Attorney must always act in the best interests of the donor and must never do anything to financially hurt the donor.

2.10

If the Power of Attorney was made in another province, is it still valid?

If a donor made a valid Power of Attorney in another province, an Attorney may be able to act under that power. The process may be more complicated, however. It is a good idea to make a new Power of Attorney when you move to another province.

2.11

The donor has property outside of Alberta. What do I do about that?

If a donor made a valid Power of Attorney in Alberta, that power should be valid in other provinces, but another province or country may choose not to accept the Alberta Power of Attorney. If that occurs, you may wish to consult an estate lawyer.

2.12

Can I get help from professionals with my duties as an Attorney?

Yes. Although many Attorneys do the work themselves, an Attorney can get help from friends and family members and also from a lawyer, accountant, or other professionals.

Even if an Attorney obtains such help, the Attorney is the person who remains legally responsible. The Attorney must make the decisions, watch over everything, and keep accurate records.

2.13

If I do get help with my duties as an Attorney, who pays for that help?

Reasonable professional fees are paid out of the estate. You should ask beforehand about costs, the amount of time involved, and the service provided.

2.14

As an Attorney, am I ever required to have an appraisal of one or more assets?

There are no situations in which the law requires that any assessments be carried out. For your peace of mind, however, you may wish to obtain an assessment when you are selling or disposing of valuable assets or things such as real estate, collectables and antiques. The cost of appraisals will be covered by the estate.

2.15

When does my responsibility as Attorney end?

An Enduring Power of Attorney generally lasts until the **first** of the following:

- the donor dies;
- the donor revokes it (if s/he has capacity);
- the donor recovers sufficiently to resume control of his or her own affairs;
- a court determines that the Power ceases to have effect;
- or
- you (the Attorney) die or quit.

Although many Attorneys do the work themselves, an Attorney can get help from friends and family members and also from a lawyer, accountant, or other professionals.

3. How can it go wrong?

Top 5 questions about the most common problems

3.1

What if I have disagreements with the other Attorneys?

If the Attorneys do not agree, it may cause problems. For example, if one Attorney wants to sell the house and the other disagrees, there will be no sale. If you have serious disagreements with other Attorneys you may need to contact a lawyer. Disputes may have to be settled in court.

If there is more than one Attorney, you are legally responsible for what the other Attorney does. For example, if the other Attorney takes funds from the estate, you have to make up the loss. You can then sue the other Attorney.

3.2

What if the donor's family members are fighting?

How you proceed within the direction of the Power of Attorney is up to you, but keeping the peace may help avoid even more problems later. Setting a plan, then sharing that strategy with all the affected loved ones at the same time, may build trust and provide a setting where they hear each other ask questions and get answers. Keeping all the affected loved ones informed also helps develop confidence in your actions. Ultimately, however, disputes may have to be settled in court.

If you are the Attorney and the donor's loved ones are not in agreement on how to proceed, you may also wish to obtain the advice of a lawyer.

Keeping all the affected loved ones informed helps develop confidence in your actions.

3.3

What if I do not exactly follow the directions in the Power of Attorney?

An Attorney **must** follow the directions of the Attorney as expressed in the Power of Attorney (as well as the provisions of the *Trustee Act*). If an Attorney fails to act reasonably, or acts in a way that is not at all consistent with the Power of Attorney or the *Trustee Act*, interested parties can take legal action to pursue a remedy. An Attorney who acts in an irresponsible manner may be liable for his or her actions.

As a result, it is best for the Attorney to keep the affected loved ones up-to-date and, where possible, ask them for input. If a dispute appears on a particular matter, it is advisable to proceed only with either the written agreement of the affected persons or a court order. (Remember, you can always ask a court for advice and direction.)

3.4

What happens if the donor's money runs out?

If it appears that funds may run out, get immediate advice from a lawyer so that you do not become personally liable for the debts.

In addition, you may wish to contact governmental and social services agencies to find out whether there is funding for which you can apply.

Take these steps well in advance of the money actually running out.

3.5

What do I do if I think that I made a mistake?

Remember that no one is perfect. That said, you are legally responsible for the financial situation of another person and the situation should be treated with great care. Consider talking to your lawyer about the issue and, if necessary, ask a court for advice and direction. This is done by a court application.

4. The time has come: where do I begin?

Checklist: 10 steps upon the incapacity of the donor

While being an Attorney does not have to be difficult, there are many details and you need to be organized. Here are the ten most common tasks that an Attorney should take when the donor loses capacity.

The sequence is not written in stone: it will depend on the situation. No two situations are exactly the same. Many of the steps occur at the same time, with much of the work required early in the process. It may seem like a lot to do in a short time, but you will find that one step leads to another. You may also wish to talk to someone you know who has been an Attorney.

You may wish to start a filing system, such as a binder, to keep track of all the matters that arise and the decisions that you make.

4.1

Locate the original Power of Attorney and read it as soon as possible.

Many people keep their original Power of Attorney in a safety deposit box. To look in the safety deposit box, phone the bank and make an appointment. Take the key, your copy of the Power of Attorney, and your own identification. Tell the manager of the financial institution that you are the Attorney and are looking for the original Power of Attorney. If you can't find the key, the box can be drilled open for a charge. If the Power of Attorney is there and names you as Attorney, the bank should let you take the document.

Some people leave the Power of Attorney with their lawyer. Problems can arise if they have not kept in touch with the lawyer or notary, who may have died, or moved, or sold the business.

Once you have the original, you may wish to have numerous notarized copies made, as most financial institutions will want to see (and often keep) a notarized or certified copy for their records.

4.2

Ensure that there is a proper Declaration of Incapacity.

When an Enduring Power of Attorney comes into effect upon the incapacitation of the donor, this incapacitation must be proven. This is done with a document known as a Declaration of Incapacity.

A Declaration of Incapacity is a written document that confirms that a donor of a Power of Attorney no longer has the mental capacity to make decisions on his or her own behalf. These forms are available from hospitals, care facilities, and doctors.

The Power of Attorney may indicate who is to sign the Declaration of Incapacity. If the Power of Attorney names one or more persons who are to make the determination of capacity, the named person(s) must sign the document. If the Power of Attorney does not designate who is to make the declaration, then two medical practitioners must complete the form.

When completing this document, ensure that all portions are clearly filled in and that both a date and the appropriate signatures are included. Also be sure that the document is consistent with the provisions of the Power of Attorney.

While being an Attorney does not have to be difficult, there are many details and you need to be organized.

4.3

Immediately inform everyone who needs to know.

When a Declaration of Incapacity is issued, inform all the people who need to be notified. Make sure that you include **all** relevant parties. The Power of Attorney may provide a list of people to inform or the donor may have told you verbally. Regardless of your source, be sure to inform these parties in writing.

Keeping everyone informed helps develop confidence in your actions and may help avoid later complications.

4.4

Find out details about any Personal Directive the donor may have made.

There are several reasons for doing this.

- If you are also the Agent appointed under a Personal Directive, you will want to know this as soon as possible, as you may have some immediate decisions to make on behalf of the donor.
- Assuming you are not the Agent and depending on the circumstances, you may have to start working immediately with this person on issues affecting the donor. For example, if the donor needs to be placed in a care facility, the personal aspects of that decision will fall to the Agent. However, since you are responsible for the finances, you will likely want input into the decision.
- Even if immediate collaboration is not required, collaboration will likely be required at some point. Start building a working relationship as soon as your responsibility begins.

The job of Attorney can be brief or it can go on for many years. Often, at the beginning of the process, it is impossible to tell which it will be. Either way, keeping organized and on top of your responsibilities will be key to your success.

4.5

Find out details about the donor's Will.

There are two main reasons for doing this.

- If you are also the Executor appointed under the Will, you will want to know if there are any potential conflict issues with respect to your roles and actions and address those immediately.
- Even if you are not the Executor appointed under the Will, the Will (and/or associated documentation) may contain information that can help you in your decision making while the donor is still alive.

Examples:

- If there are familial disputes, it is best to find out about them and start to address them as soon as possible.
- If, in his Will, a donor left a family heirloom to his sister, you can attempt to ensure that the heirloom is not sold unless and until it is absolutely necessary for the care and best interests of the donor. If you did not know the details of the Will, that heirloom might have been the first item you liquidated.

4.6

Determine the assets, payments, debts, and related issues, and start to list them.

The job of Attorney can be brief or it can go on for many years. Often, at the beginning of the process, it is impossible to tell which it will be. Either way, keeping organized and on top of your responsibilities will be key to your success.

Determine the donor's assets and liabilities by going through the donor's important documents and writing to financial institutions, insurance companies, brokers, employers, and RRSP or RRIF trustees for information. Such a list is very effective for your own organization.

Specifically, make a list of:

- real property (the person's home, other land holdings);
- personal property (cash, jewellery, furniture, pension and death benefits, etc.);
- any assets owned in joint tenancy or tenancy in common;

- all debts, including monthly payments, financial responsibilities to dependants (such as spousal support or child support), including the dates by which they must be paid;
- any business assets and debts; and
- any other responsibilities (for example: if the donor was an Attorney for someone else).

Depending on the nature of the assets, your expertise, and the requirements of the circumstances, you may need to value assets. To determine the market value of the person's home, refer to the Property Assessment Notice. You may also wish to consult a real estate agent. For other assets you may need to contact an appraiser or dealer.

Specific tasks under this heading can include:

- compiling a complete list of assets and liabilities. Ensure that you include certificate numbers, registration particulars, maturity dates, interest rates, and payment frequency;
- if the donor was a victim of workplace accident or a crime, looking into any financial compensation that may result (for example: Workers' Compensation, or victims of crime fund);
- ensuring all financial institutions and other interested parties know, and have proof, of your status as Attorney;
- contacting current or previous employers to determine any benefits or insurance proceeds that may be available (such as disability);
- reviewing tax returns from past years and complete and file any previous outstanding T1 returns;
- acquiring all title documents for property, mortgages, share certificates, bonds, debentures, and guaranteed investment certificates;
- obtaining evaluations of real estate, securities, automobiles, and any personal property;
- reviewing insurance to determine adequacy of coverage and make changes if deemed necessary; and
- making sure all legitimate debts are, or continue to be, paid.

See Section 2 for general questions about this task.

4.7

Protect the assets.

As Attorney, you are responsible for protecting the donor's assets for future use in his or her care and best interests.

For example, you may want to make sure objects are insured and safe. You may wish to place valuable papers, cash, or jewellery in a safety deposit box. If the person owned a business, you will need to arrange for its ongoing and proper management.

Common steps to protect the assets include:

- gaining access to, and list contents of, the donor's safety deposit box(es);
- arranging for safe storage of valuable items;
- collecting any monies owed to the donor;
- gaining access to the donor's motor vehicle and ensure it is stored in a safe place until you decide what to do with it;
- gaining access to the donor's residence to take care of pets, make sure appliances are off, take in mail, mow the lawn, and collect the newspapers, and related tasks;
- if the donor was in a rental unit, and if appropriate, making arrangements with the landlord for the removal of the donor's property (or terminate lease or arrange sub-lease, depending on the circumstances);
- if appropriate, canceling donor's driver's licence, magazine and newspaper subscriptions, cable television, club memberships and telephone, and request refunds if applicable;
- if applicable, obtaining Canadian Pension Plan, or other pension plan, and/or disability payments;
- if applicable, and when the time comes, obtaining Old Age Security and Canada Pension Plan cheques;
- ensuring there is adequate health insurance coverage;
- obtaining information on outstanding credit card balances and cancel cards (if appropriate);
- if applicable, contacting Canada Post to reroute the donor's mail; and
- if applicable, ensuring change of address with all pertinent parties.

4.8

Deal with the assets.

Once you are ready, you must begin to deal with the assets. Exactly what you do with the various assets will be dependent on the particular circumstances of your case. In some instances, you will want to retain and/or invest assets. In other instances, you may want to liquidate and use the proceeds for the care of the donor. For assets in joint tenancy or tenancy in common, you will have to consult and/or negotiate with the co-owner.

Everything you choose to do—or not do—with the donor's property should be the result of careful consideration and should at all times be based on a complete understanding of your responsibilities as an Attorney. These responsibilities include:

- to act in the best interests of the donor (under Alberta legislation, this includes a duty to protect the donor's best interests);
- to consult with the donor, and with the donor's caregivers, family, and friends;
- to use the donor's assets, first for the support and care of the donor and then, if assets are available, for the support of the donor's dependants;
- and
- to make gifts or loans only if the Power of Attorney specifically says so and based on the previous practice and intentions of the donor.

Remember, if you are uncertain with respect to any of these matters, you can always seek the advice of a lawyer or apply to the court for advice and direction.

Also remember that if someone else has evidence suggesting mismanagement or theft or believes that you are mentally incapable of being an Attorney, they may ask the court to review your accounts and records. This process is called a "passing of accounts". They may also report the matter to the Public Trustee. This Office investigates allegations involving a mentally incapable person who is believed to be at serious financial risk.

As Attorney, you are responsible for protecting the donor's assets for future use in his or her care and best interests.

4.9

Keep proper records.

One of your duties as Attorney is to keep complete and detailed financial records. There are numerous reasons for this.

- Under the terms of the Power of Attorney, you may have to provide a financial report to the donor on a regular basis.
- Under the terms of the Power of Attorney, you may have to provide a financial report to one or more other interested parties on a regular basis.
- Even if the Power of Attorney does not require regular reporting to anyone, the donor can ask for a financial report at any time, and, by law, you are required to provide it.
- If someone else has evidence suggesting mismanagement or theft or believes that you are mentally incapable of being an Attorney, they may ask the court to review your accounts and records. This process is called a "passing of accounts". They may also report the matter to the Public Trustee. This Office investigates allegations involving a mentally incapable person who is believed to be at serious financial risk.
- Regardless of the length or complexity of the task, keeping organized will help make your job easier. This in turn will amount to less stress on you.

Keeping complete and detailed accounts includes keeping lists of:

- the donor's assets as of the date of the Attorney's first transaction;
- assets acquired and disposed of and the date and particulars of each transaction;

- receipts and disbursements and the date and particulars of each transaction;
- investments bought and sold and the date and particulars of each transaction;
- the donor's liabilities as of the date of the Attorney's first transaction;
- liabilities incurred and paid and the date and particulars of each transaction; and
- payments taken by the Attorney and how they were calculated.

It also includes:

- keeping a copy of the Power of Attorney and of any court orders relating to the Attorney's authority;
- keeping all of these records until you cease to act for the donor and until you receive a release from someone authorized to give it, **or** until another person acquires authority to manage the donor's property and you give the records to that person; and
- if the donor dies, giving the records to the donor's Executor.

*Although you cannot keep everyone happy all of the time, and it is **not** your responsibility to do so, there are certain things you can do to help minimize the possibility of strife.*

4.10

Keep people informed.

The job of Attorney can be brief or it can go on for many years. Often, at the beginning of the process, it is impossible to tell which it will be. Over the years, you may be dealing with many of the donor's loved ones and caregivers. Everyone will have their own ideas about the best interests of the donor and what the donor would or would not have wanted. Interpersonal problems are bound to arise.

Although you cannot keep everyone happy all of the time, and it is **not** your responsibility to do so, there are certain things you can do to help minimize the possibility of strife.

- Consider providing the closest loved ones with a copy of the Power of Attorney (unless the Power itself says otherwise).
- Remain aware of any dispute between loved ones, as this may help you put a stop to issues before they arise.
- Show respect and consideration for the opinions and thoughts of others. You are ultimately responsible and you must make the decisions that your duty requires. A positive attitude towards others, however, can sometimes help with decisions that you know will be met with some disapproval.
- Keep loved ones informed of big decisions and the reasons for them. Often giving warning or an explanation of something people might disagree with can help lessen the blow (which may amount to less negative feedback to you). Also, loved ones like to feel that they know what is going on. Keeping all the affected loved ones informed also helps develop confidence in your actions. Bear in mind, however, that ultimately disputes may have to be settled in court.

5. What do the words mean?

Glossary

adult interdependent partner	a person with whom you are in an adult interdependent relationship.
adult interdependent relationship	<p>a term unique to Alberta and governed by the Alberta <i>Adult Interdependent Relationships Act</i>. A “relationship of interdependence” is a relationship outside of marriage where two people:</p> <ul style="list-style-type: none"> • share one another’s lives; • are emotionally committed to one another; and • function as an economic and domestic unit. <p>To meet these criteria, the relationship need not necessarily be conjugal (sexual). It can be platonic. There are two possible ways for such a relationship to exist:</p> <ul style="list-style-type: none"> • If you have made a formal and valid adult interdependent partner agreement with the other person (two people that are related by either blood or adoption <i>must</i> enter into such an agreement in order to be considered adult interdependent partners); or • If you are not related by either blood or adoption and if you have: <ul style="list-style-type: none"> – lived with the other person in a “relationship of interdependence” for at least three continuous years, or – lived with the other person in a “relationship of interdependence” of some permanence where there is a child of the relationship (either by birth or adoption).
assets	what a person owns. Assets can include things such as money, land, investments, and personal possessions such as jewellery and furniture.
Attorney	a person who is empowered to act on behalf of the donor under a Power of Attorney. This person does not have to be a lawyer.
beneficiary	a person or organization that you leave something to in your Will.
debts	what a person owes. These can also be called “liabilities” and may include credit card balances, loans, and mortgages.
Declaration of Incapacity	a written document that confirms that a maker of a Personal Directive and/or the donor of a Power of Attorney no longer has the mental capacity to make decisions on his or her own behalf.
donor	a person who gives a Power of Attorney.
Enduring Power of Attorney	<p>covers your financial affairs and allows the person you name to act for you even if you become mentally incapable. It can either:</p> <ul style="list-style-type: none"> • take effect immediately upon signing and continue if you become incapable of managing your financial affairs; or • take effect only upon you becoming incapable of managing your financial affairs, or some other specified event (this is also known as a “Springing” Power of Attorney).
Executor or Executrix	the person (male or female), named in a Will, who is responsible for managing the estate and for carrying out the instructions in the Will.
joint tenancy	a type of ownership where any two or more persons (related or not) may equally own property and the property passes to the survivor or survivors on the death of one (without flowing through the estate of the deceased).
liquid asset	an asset that is either cash, or easily converted to cash. Liquid assets in an estate would typically include: cash, bank accounts, Guaranteed Investment Certificates, retirement savings plans, mutual funds, stocks, or mortgages owned. Liquid assets are assets that are paper assets rather than physical or fixed assets, which would include: houses, cars, furniture, or collections.
mental capacity	the ability to understand information that is relevant to the making of a decision and the ability to appreciate the reasonably foreseeable consequences of the decision.
tenancy in common	a type of ownership where any two or more persons (related or not) may own property, but, unlike joint tenancy, the shares need not be equal, and there is no right of survivorship (on the death of an owner, the share does not flow to the other tenant in common, but rather, flows through the estate of the deceased tenant).
trust	a part of an estate that is set up to ensure ongoing income for a beneficiary, usually a dependent child.
trustee	the person or company named to manage a trust.
Will (or last Will and testament)	the properly signed, dated and witnessed legal statement of a person’s last wishes as to the disposition of his or her property after death.

6. Where can I get more help?

Community resources

Acts

For copies of the *Powers of Attorney Act* and the *Trustee Act*, contact the Queen's Printer or retrieve them electronically at www.qp.gov.ab.ca. (See the alphabetical list of Acts.)

780-427-4952 in Edmonton

403-297-6251 in Calgary

Toll-free in Alberta, dial 310-0000 followed by the 10-digit phone number of the office you wish to contact

Website: www.qp.gov.ab.ca

The *Adult Guardianship and Trustee Act* (AGTA) will come in to force in 2009. More information is available on the Alberta Seniors and Community Supports website at: www.seniors.gov.ab.ca/services_resources/opg/guardianship/index.asp.

Alberta Justice

Enduring Powers of Attorney. Public information webpage at www.justice.gov.ab.ca/dependent_adults/enduring_powers_of_attorney.aspx

Alberta Seniors and Community Supports

www.seniors.gov.ab.ca

Alberta Seniors Information Line

Monday to Friday 8:15 a.m. to 4:30 p.m.; closed statutory holidays

Toll-free in Alberta: 1-800-642-3853

Edmonton Area: 780-427-7876, Fax: 780-422-5954

Deaf or hearing impaired with TDD/TTY units:

Toll-free in Alberta: 1-800-232-7215

Edmonton area: 780-427-9999

Victims of Crime Financial Benefits Program

780-427-7217

Workers' Compensation Board

780-498-3999

Family Law Information Centre

Edmonton Law Courts Building,

1A Sir Winston Churchill Square,

Edmonton, AB T5J 0R2

780-415-0404

Alberta Law Line

A program of Legal Aid Alberta, which provides legal information and referrals to Albertans and legal advice

to eligible callers. This is a free service and is available across Alberta. Alberta Law Line does not provide legal information or legal advice via e-mail.

Toll free: 1-866-845-3425 Edmonton: 780-644-7777

Website: www.lawline.legalaid.ab.ca

Law Society of Alberta Lawyer Referral Service

A Lawyer Referral Operator will provide you with the names of three lawyers in your area that you can consult. Each lawyer will provide a half-hour consultation free of charge.

Toll free: 1-800-661-1095 Calgary: 403-228-1722

www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm

Legal Aid Society of Alberta

Provides legal services to financially eligible applicants.

780-427-7575

www.legalaid.ab.ca

Student Legal Services

A nonprofit, charitable organization of approximately 300 volunteer law students that provide year-round free legal services to those individuals who are unable to afford a lawyer. Please call in advance as student volunteers are not always available at all hours.

11011 - 88 Avenue NW, Edmonton, AB T6G 0Z3

780-492-8244

www.slsedmonton.com

Older Adult Knowledge Network

www.oak-net.org

Seniors Association of Greater Edmonton (SAGE)

100 - 102A Avenue NW

15 Sir Winston Churchill Square

Edmonton, AB T5J 2E5

Phone: 780-423-5510, Fax: 780-426-5175

E-mail: info@MySage.ca

Website: www.MySage.ca

Hours: Monday to Friday 8:30 a.m. to 4:15 p.m.

Community Groups

In many communities, seniors groups can provide information about legal issues. Ask your local seniors centre, community information centre, public library, or Royal Canadian Legion.

