

# Making a Personal Directive

in Alberta

*This booklet is for people who are wondering if they should write a Personal Directive. It is about putting your affairs in order and planning for the future. It explains what is involved in making a Personal Directive and how a Personal Directive can help you to look after your future personal (non-financial) needs. It describes some common examples. 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.*

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



#201 10350 – 124 Street  
Edmonton, AB T5N 3V9  
Phone: 780.451.8764  
Fax: 780.451.2341

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FREE

# Changes in 2009

## Replacement of the *Dependent 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 As a result, some of the information in this booklet will soon be outdated.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

## 1. What is it?

### Top 5 General Information Questions about Personal Directives

#### 1.1

#### **What is a Personal Directive?**

A Personal Directive is a written, signed, dated and witnessed document that appoints someone else to look after your personal, non-financial matters (such as health). It allows *you* to determine in advance who will make personal (non-financial) decisions on your behalf if, due to illness or injury, you ever lose the mental ability to make these decisions for yourself. This can include decisions related to health care, housing and treatment.

It only applies while you are alive and ceases to be effective upon your death.

You are called the “maker” and the person you name to make your personal decisions is known as your “Agent”.

A Personal Directive does not give authority to make decisions about your financial matters – for that, you need a separate document, called a Power of Attorney.

In some jurisdictions, such a document is known as a “Living Will” – in Alberta, however, the correct legal term is “Personal Directive”.

#### 1.2

#### **Do I have to make a Personal Directive?**

No. You do not have to make a Personal Directive – it is optional and voluntary. While there are good reasons to make one, you don't have to, and no one can make you sign one if you do not want to.

Even service providers (such as doctors or care facilities) cannot require clients to have a Personal Directive.

For example, the *Personal Directives Act* makes it an offence to require a Personal Directive as a condition of obtaining residence or continuing as a resident in a care facility.

#### 1.3

#### **Why should I make a Personal Directive?**

The law in Alberta does not allow for another person to automatically make decisions for you – not even your spouse, adult interdependent partner or a close relative has this legal authority. As a result, simply speaking to others about your wishes is not enough to give them the legal right to handle your non-financial affairs once you cannot handle them yourself.

By making a Personal Directive, you can gain greater control over your future personal matters. It allows you to specify the person(s) you choose to be legally entitled to make decisions on your behalf in the event that you become mentally incompetent in the future.

Also, the people who care about you can feel confident that the decisions made on your behalf are what you want. Caregivers, such as doctors, nurses, lawyers and residential care and other service providers will feel more confident relying on the instructions of your Agent. This can all help to ease stress in difficult times.

The need for a Personal Directive may only be short-term. However, in the event of a serious brain injury or a disease such as Alzheimer's, a Personal Directive may be required for the remainder of your life.

## 1.4

### What happens if I don't make a Personal Directive?

If you do not prepare a Personal Directive that can take effect when you become mentally incapacitated, family members or other interested parties will have to make a Dependant Adult Application to become the “guardian” of your person. This court process can be lengthy (it can take several months) and costly, can result in disagreements and bad feelings among your family members and friends, and may result in authority being given to someone whom you yourself might not have chosen.

The government does not generally help in this regard. The government acts *only* in situations where no other suitable person is available, able and willing.

## 1.5

### If I don't make a Personal Directive, will a doctor automatically step in if I cannot make decisions about my personal care?

In a medical emergency, a health care provider can give medical services without consent and without waiting to see a Personal Directive. If this happens, the health care practitioner must inform the Agent (if there is one) of the circumstances as soon as possible. In non-emergency situations, doctors and other health care providers cannot continue to make such choices on your behalf.

## 2. How do I make one?

### Top 10 Questions about Creating a Personal Directive

## 2.1

### Who can make a Personal Directive?

Anyone over the age of 18 can complete a Personal Directive. In addition, you must, at the time of signing, understand the nature and effect of a Personal Directive. If, at the time of signing, you were not mentally capable of understanding this, the document will be void.

## 2.2

### How do I make a Personal Directive?

There are numerous ways. A Personal Directive can be handwritten or typed. Although a lawyer is not required, it is recommended. Regardless of whether you engage a lawyer, you can start the process of creating your Personal Directive by visiting the Alberta Government information website at: <http://www.seniors.alberta.ca/opg/personaldirectives>. From this site, you can link to both a template for a voluntary standard form and an instruction sheet for creating a Personal Directive.

For your document to be legal you must have sufficient mental capacity at the time you sign your Personal Directive, and it must be dated, signed by you in

the presence of one witness, and signed by that witness in your presence.

If you cannot sign it for yourself, your Personal Directive can be signed *for* you – but not by the person you are appointing as your Agent, or by your Agent's spouse or adult interdependent partner.

Similarly, a Personal Directive cannot be witnessed by:

- the person being named as the Agent;
- the spouse or adult interdependent partner of the person being named as the Agent;
- the spouse or adult interdependent partner of the maker;
- a person who signed the Personal Directive on the maker's behalf; or
- the spouse or adult interdependent partner of the person who signed the Personal Directive on the maker's behalf.

In order to be valid, your Personal Directive must comply with all of the requirements of the *Personal Directives Act*. If you have a living will or an advanced directive made before that date, or a similar document from out of province, verify that it meets the requirements of the Personal Directives Act to ensure it is legally binding.

## 2.3

### **Do I have to use a lawyer to make my Personal Directive?**

The law does not require you to use a lawyer's services, but you may wish to consider this, especially if you anticipate a lengthy illness. Similarly, if you anticipate that someone may challenge your Personal Directive by saying, for example, that you were not mentally capable at the time it was made, it would be advisable to consult with a lawyer. You may also want to ask your doctor for a medical report confirming your capacity.

## 2.4

### **What is the cost of preparing a Personal Directive with a lawyer?**

There is no exact answer to this question. If you consult a lawyer, the cost will vary depending on the lawyer, the complexity of the Personal Directive, and the expertise needed to draft it. Often, lawyers will quote a single price for separate Personal Directives done for spouses at the same time, or a single price for a package of Powers of Attorney, Personal Directives and Wills for spouses at the same time

## 2.5

### **What level of mental capacity is needed to make a Personal Directive, and who decides if I have that capacity?**

The term "mental capacity" means different things for different types of decisions and actions. In general, however, it refers to a person's ability to understand the information that is relevant to the particular decision and to appreciate what could happen as a result of making a certain decision (or not making a decision) about the matter.

In terms of making a Personal Directive, having mental capacity means that you understand:

- the kinds of personal matters over which you are giving power;
- the authority that you are giving your Agent;
- whether the person you name as your Agent is truly concerned with your well-being;

- that you may need this person to make decisions for you;
- that, as long as you are mentally capable, you can revoke (cancel) this Personal Directive; and
- that there is always a chance that your Agent could misuse his or her authority.

If you see a lawyer to make a Personal Directive, the lawyer will conduct tests to ensure that you have the required capacity. If, however, you are found incapable, you have the right to request a capacity review hearing and be represented by counsel at that hearing. No one has the right to prevent you from contacting a lawyer or asking for a review hearing.

Regardless of whether or not you see a lawyer to make your Personal Directive, after the fact any interested party can question your capacity when you made it. This is done by applying to a court.

## 2.6

### **Can anyone be a witness to my Personal Directive and what are my witnesses' responsibilities?**

No. There are some restrictions. The following people cannot act as witnesses:

- anyone under the age of 18;
- anyone who is themselves mentally incapacitated;
- the person being named as the Agent;
- the spouse or adult interdependent partner of the person named as the Agent;
- the spouse or adult interdependent partner of the maker;
- a person who signed the Personal Directive on behalf of the maker; and
- the spouse or adult interdependent partner of the person who signed the Personal Directive on behalf of the maker.

Witnesses are required to act in good faith and should refuse to witness the Personal Directive if they have reason to question the mental capacity of the person who is signing it. As long as they meet these standards, they will not be held responsible even if the Personal Directive is later challenged.

## 2.7

### What should I do with my Personal Directive after I have completed it?

It depends on your situation. Many people choose to put their original Personal Directive in a safe place that their Agent knows about and can access quickly if needed. Others choose to leave it with a trusted third party such as their lawyer, with specific instructions about when to release it.

If you do this, however, it is important to remember that it may be many years, if ever, before your Personal Directive is needed, and the person you have left it with may have moved away or even died in the meantime.

You may wish to leave a copy with your family doctor. You may also wish to register a copy with the Alberta Personal Directives Registry (the Registry). This can be done online at: [www.seniors.alberta.ca/opg/registry](http://www.seniors.alberta.ca/opg/registry). If you register your Personal Directive in this manner, health care professionals will be able to access it more quickly in emergency situations. For more information on the Registry, please see [www.seniors.alberta.ca/opg/personaldirectives/faq.asp](http://www.seniors.alberta.ca/opg/personaldirectives/faq.asp).

## 2.8

### Do I have to register my Personal Directive with the Alberta government?

No. There is no *requirement* that these documents be registered. However, the government of Alberta does have a voluntary Personal Directives Registry. If you register your Personal Directive in this registry, health care professionals will be able to access it more quickly in emergency situations. You can register your Personal Directive online at [www.seniors.alberta.ca/opg/registry](http://www.seniors.alberta.ca/opg/registry) or by mailing a Registration Form to the Office of the Public Guardian, who will enter the information. To request a Registration Form call the Office of the Public Guardian toll free at 1-877-427-4525. For more information on the Registry, please see [www.seniors.alberta.ca/opg/personaldirectives/faq.asp](http://www.seniors.alberta.ca/opg/personaldirectives/faq.asp).

It also makes sense to ensure that the people in your life who need to know about this document – especially your Agent – have a copy or know where to get one if needed.

You may wish to include instructions that additional family members, friends or service providers are informed when the Personal Directive comes into effect. If you do not wish your nearest relative (as defined in the Act) to be informed, you must indicate this in your Personal Directive. See question 3.10 for more information.

## 2.9

### Whom should I advise about my Personal Directive?

In order to prevent confusion when the time comes, you may wish to advise your doctor and other care/service providers, family members, your lawyer and, if applicable, your minister.

It is advisable to make a list of the people you inform or give a copy to, so that you can advise them of any future changes as well.

## 2.10

### What can I do to prevent misuse of my Personal Directive?

Before you make a Personal Directive you may want to talk to a friend, family member, or lawyer. You may also insist that your Agent get legal advice about his or her responsibilities.

Be sure you choose someone you trust. You may wish to name more than one person. Talk to these people before you appoint them and make sure they understand what you expect from them, and when you expect them to act.

Remember that, technically, a Personal Directive takes effect when you lack capacity. You may want to give the Personal Directive to someone else you trust, and tell him or her when to give it to the Agent. You can put limits on the power you give to your Agent.

Misusing a Personal Directive is a crime. If your Agent abuses his or her power, you or someone else can call the Office of the Public Guardian and report the situation. They will investigate.

## 3. What goes in it?

### Top 10 Questions about the Content of Personal Directives

#### 3.1

#### In general, what should I consider in making a Personal Directive?

You should carefully consider both who your Agent will be and exactly what powers and instructions you will give them. Will they be limited or general?

Your instructions can be about any or all personal matters that are non-financial, such as:

- medical treatments you would or would not want;
- where you would like to live;
- whom you would like to live with;
- choices about other personal activities (recreation, employment or education); and
- any other personal and legal decisions (for example: the continued care and education of a minor for whom you are the guardian).

#### 3.2

#### Who can I appoint as my Agent?

The person you appoint must be at least 18 years of age and must have the mental capacity to make personal decisions on your behalf. The person must also be willing to act as your Agent. You can name someone who lives outside Alberta, although this may not prove very practical.

Give your choice very careful consideration. If the need arises, your Agent will be making profoundly important decisions about your health and quality of life.

If you do not know someone who can be your Agent, you can appoint a person who is your service provider as your Agent *if* you provide the given name of the person you are appointing. You cannot appoint by only stating an office or position. For example, if you are a resident at a nursing home, you can appoint the executive director, *by name*, (e.g.: Jane Doe) but you cannot simply state “the Executive Director of XYZ Home”. You must name a specific person, not a role.

In addition, it is possible to appoint the Public Guardian as your Agent; however this can only be done if:

- the Public Guardian is the only Agent designated in the Personal Directive;
- the maker satisfies the Public Guardian that no other person is able and willing to act as Agent;
- the Public Guardian consents to being designated as Agent; and
- the maker registers the Personal Directive with the Public Guardian.

#### 3.3

#### What should I think about in choosing an Agent?

The *Personal Directives Act* permits an Agent to refuse your appointment at *any* time. Therefore it is important that you ask in advance if a person would be willing to act on your behalf.

The choice of Agent is a very important decision and needs careful thought. Remember, your Agent will have full access to your personal affairs. Consider whether the person is willing to take on this job, if needed. There is a lot of work involved and the law expects your Agent to meet very high standards. Consider whether the person is trustworthy, responsible and knows you well enough to understand and interpret your instructions. Will s/he make sure you have all the things you need? Will your privacy be respected? Can you trust the person?

You should also thoroughly inform your Agent(s) about your wishes, beliefs and values so that they can represent you fully if you can no longer express yourself coherently.

You should also take the precaution of naming someone to replace, or substitute for, an Agent who cannot act, or continue to act, for you, (an “alternate” Agent).

## 3.4

### What if I want more than one person to be involved in making decisions about my personal care?

You can name one Agent or more than one. You can require that they act together (“jointly”) or you can have them act separately as well as together (“severally and jointly”). If you include this phrase, either of your Agents will be able to act alone on your behalf. If one is away or sick, for example, the other would still be able to give instructions on your behalf. If you do not include indicate that they can act severally, they will have to do everything together.

If you designate more than one, you should include some form of disagreement resolution. If your Personal Directive does not provide instructions about how to resolve disagreements, the *Personal Directives Act* states that the decision of the majority of Agents must be followed. Agents may also apply to a court for advice and direction.

Also, be aware that naming multiple Agents can make things more complicated if difficult decisions need to be made quickly, and, even though you have named two, you should still take the precaution of an “alternate” Agent, in case neither of them can act for you.

## 3.5

### I want to name a specific family member but I'm worried that this will cause conflict. Is there anything I can do to prevent this?

Conflict can often be avoided by telling your family in advance and explaining the reasons for your choice. Sometimes conflict is created because the rest of the family does not know what your Agent is deciding on your behalf. To avoid this, some people name more than one family member and require that all decisions be approved by both of them. This can reduce distrust but it can also create conflict if they disagree about matters. Other people simply choose to specify that all the family must be kept informed about decisions and provided with full information. Another way to avoid family conflict is to name someone else such as a close friend, or a service provider.

## 3.6

### What powers *can* I give my Agent, and are there any powers my Agent *cannot* have?

Unless you restrict your Agent's powers s/he will be able to make almost any decision of a personal nature that you could make yourself if you were capable, such as decisions about medical treatment, housing, food, hygiene, clothing and safety. Personal decisions include the giving of consent, the refusal to give consent, or the withdrawal of consent regarding any personal matter.

Your instructions can be about any or all personal matters that are non-financial, such as:

- medical treatments you would or would not want, (e.g.: chiropractors, naturopaths, massage therapists, immunization issues, chemotherapy);
- where you would like to live;
- whom you would like to live with;
- choices about other personal activities (recreation, employment or education);
- any other personal and legal decisions; and
- any other personal and legal decisions (for example: the continued care and education of a minor for whom you are the guardian).

In addition, since the *Personal Directives Act* does not provide any formal means by which the actions of Agents are reviewed, you may wish to include such provisions in your Personal Directive.

There are a few powers that your Agent *cannot* have unless your Personal Directive explicitly provides for these powers. They are:

- psychosurgery as defined in the *Mental Health Act*;
- sterilization that is not medically necessary to protect the maker's health;
- removal of tissue from the maker's living body for implantation in the body of another living person pursuant to Part 1 of the *Human Tissue Gift Act*, or for medical education or research purposes; and
- participation by the maker in research or experimental activities, if the participation offers little or no potential benefit to the maker.

In addition, a Personal Directive can never be used to request illegal actions, such as assisted suicide.

### 3.7

#### **In there anything else I need to include about my Agent?**

Your Agent is only entitled to be paid if you specifically say so in your Personal Directive. You may wish to discuss this issue with your Agent in advance. You should also consider the amount of effort that your Agent would have to expend.

Your Agent is required to provide you with a list of decisions s/he made whenever you ask for one, but, if you wish, you can include a requirement that s/he must provide such a list at set intervals. Or you could require reporting to someone else.

Your Agent needs to disclose enough information to carry out his or her duties or to abide by the law. In terms of any additional information, your privacy must be respected *unless* you specifically authorize your Agent to disclose information by writing this in your Personal Directive.

### 3.8

#### **Can I include an instruction to “pull the plug”?**

A Personal Directive can include instructions such as not prolonging life with heroic measures, but a Personal Directive *cannot* be used to request illegal actions, such as assisted suicide.

*A Personal Directive can include instructions such as not prolonging life with heroic measures, but [it] cannot be used to request illegal actions, such as assisted suicide.*

### 3.9

#### **What do I include about when and how my Personal Directive is to take effect?**

In your Personal Directive, you can decide *who* will determine that you are mentally incapable of handling your personal decisions. If you name someone, the determination will be made by that person, after that person has consulted with a physician or psychologist. If you do *not* name someone, the determination will be made by two service providers, at least one of whom is a physician or psychologist. Either way, the parties must make a written declaration that you lack capacity. This written record must be kept by the physician or psychologist. A copy of the Declaration of Incapacity must be given to you, your Agent and any other persons named in your Personal Directive as being entitled to receive a copy. Your Agent must then inform your nearest relative, any other legal representatives, and any other persons named in your Personal Directive as being entitled to notice, that the Personal Directive is in effect.

Your Agent will only be able to make those personal care decisions that you cannot make yourself (service providers must make reasonable efforts to determine whether you continue to lack capacity). You might, for example, be incapable of making a serious health care decision but still be able to make your own choices about routine day-to-day matters.

### 3.10

#### **Is there anything else that I should include?**

After a determination of lack of capacity is made, your Agent must notify your nearest relative and everyone that is listed in your Personal Directive as designated to be notified. Therefore, you may wish to include instructions that family members, friends and service providers (including individuals such as your lawyer and minister) be advised. You should include these individuals' names and contact information.

If you do not wish your nearest relative to be notified, you must say so in your Personal Directive.

## 4. When does it get reviewed?

### Top 5 Questions about Updating a Personal Directive

4.1

#### **How often should I review my Personal Directive?**

You should review your Personal Directive every few years, and upon important occurrences such as divorce, remarriage, or death of anyone close to you. Remember that life circumstances can change quickly.

4.2

#### **I just got married, does that void my Personal Directive?**

No. Unlike a Will, a Personal Directive is not automatically invalidated by a marriage. At such times, it is important to review your Personal Directive to ensure that it still meets all of your needs. In cases of re-marriage and blended families, you may wish to be especially attentive to family relationships and family dynamics.

4.3

#### **I just got separated/divorced, does that void my Personal Directive?**

No. A Personal Directive is not automatically invalidated by a separation or a divorce. At such times, it is very important to review your Personal Directive to ensure that it still meets all of your needs.

4.4

#### **What is the effect of the start or end of an adult interdependent relationship on my Personal Directive?**

The start or end of an adult interdependent relationship does not automatically invalidate a Personal Directive. At such times, it is very important to review your Personal Directive to ensure that it still meets all of your needs.

4.5

#### **If, after I review my Personal Directive, I decide to make a new one, does it automatically cancel the old one?**

Not necessarily. More than one Personal Directive can be in effect at the same time. Naturally, if more than one Personal Directive provides the same powers to different people, this can cause great confusion.

To be certain that you have only one Personal Directive in effect, ensure that each new Personal Directive includes a phrase indicating that you revoke all Personal Directives previously made.

*You should review your Personal Directive every few years, and upon important occurrences such as divorce, remarriage, or death of anyone close to you.*

## 5. What happens with it?

### Top 10 Questions about the Administration of Personal Directives

#### 5.1

#### **When and how will my Personal Directive take effect and who will say that I am incapable?**

A Personal Directive cannot be used until you have been declared mentally incapacitated and it may only continue to be used during a time that you are mentally incapable of making your own personal care decisions.

Your Personal Directive can include a provision about who will determine that you are mentally incapable of making your own personal care decisions. If you included such a provision when you made your Personal Directive, the decision will be made by that person, after that person has consulted with a physician or psychologist.

If your Personal Directive does not include such a provision, the law requires that the determination be made by two service providers, at least one of whom is a physician or psychologist.

Either way, the parties must make a written declaration that you lack capacity (this is called the Declaration of Incapacity Form). This written record must be kept by the physician or psychologist. A copy of the Declaration of Incapacity must be given to you, your Agent and any other persons named in your Personal Directive. Your Agent must then inform your nearest relative (unless your Personal Directive says not to), as well as your legal representative, that the Personal Directive is in effect. In this notification, your Agent must indicate both that a determination of incapacity has been made and that you, the maker, may make an application to the Court for a review of this determination.

Your Agent will only be able to make those personal care decisions that you cannot make yourself (service providers must make reasonable efforts to determine whether you continue to lack capacity). You might, for example, be incapable of making a serious health care decision but still be able to make your own choices about routine day-to-day matters.

Immediately after a determination of mental incapacity is made, the person making the determination must notify your Agent and anyone else designated to be notified (as per your instructions in your Personal

Directive). Within a reasonable period of time thereafter, your Agent must notify your nearest relative and legal representative(s), if any.

#### 5.2

#### **After my Personal Directive takes effect, what will be my Agent's responsibilities?**

When making a decision on your behalf, your Agent must:

- confirm that the Personal Directive is in effect (that you have signed it and it is valid);
- consult with you;
- follow any clear instructions provided by you in your Personal Directive;
- if there are no clear instructions relevant to a particular situation, make the decision that s/he feels you would have made in the same circumstances. It must be based on knowledge of your wishes, beliefs and values;
- if your Agent does not know your wishes, beliefs or values, make a decision based on your best interests;
- keep a record of personal decisions s/he made, which must be retained for the entire duration of your incapacity and for two years thereafter; and
- on request, provide a copy of your Personal Directive and the record of decisions to you, and, in the case of a particular matter to your lawyer, or other representative of yours (including any other Agent) that has authority with respect to that particular matter.

Agents are also encouraged to consult with people who are knowledgeable in the area of concern, as well as those who may be affected by the decision, such as your family and friends.

If it appears to your Agent that there has been a significant change in your capacity, the agent must:

- consult with the service provider who provides health care services and assess your capacity, and
- if the agent and service provider agree that you have regained capacity to make decisions with respect to that or other personal matters, make a determination in the prescribed form (this is known as the "Determination of Regained Capacity Form"). If you do not agree, your Agent must then have two service providers, at least

one of whom is a physician or psychologist, assess your capacity.

In the *Personal Directives Act* the term “significant change” is defined as “an observable and sustained improvement that does not appear to be temporary”.

When an Agent acts with reasonable efforts and in good faith while carrying out his or her authority, there is no liability. However, if an Agent willfully destroys, conceals or alters a Personal Directive, or a document revoking the Personal Directive, s/he can be fined. The terms “reasonable effort” and “good faith” depend on the individual circumstances of the situation. It is not possible to define these terms without first considering the particular case.

### 5.3

#### **How long does a Personal Directive last?**

A Personal Directive generally lasts until:

- you die;
- you revoke it;
- you regain capacity;
- a court determines that it ceases to have effect; or
- your Agent dies or quits.

Your Personal Directive can also indicate a date or circumstance in which it will be revoked or changed. For example, you can indicate that your sister is your Agent until your child turns 21, at which point your child will become your Agent.

If you feel that someone is using your Personal Directive to make decisions for you when you are still capable of making them, or have recovered, you can ask for a court hearing to review your situation.

### 5.4

#### **Is a Personal Directive effective outside of Alberta?**

It depends on the law of the particular place where you want to use the Personal Directive. If you are going to move or be out of the province for some time you may want to check with a local lawyer to see if you need to make new documents.

### 5.5

#### **If there is more than one Personal Directive, which one is valid?**

More than one Personal Directive can be valid at the same time (for example: different documents for different purposes).

Naturally, if more than one Personal Directive provides the same powers to different people, this can cause great confusion. To be sure that you have only one Personal Directive in effect, ensure that each new Personal Directive includes a phrase indicating that you revoke all Personal Directives previously made.

### 5.6

#### **What happens if the person I appoint as my Agent cannot act for me for some reason?**

You can avoid this problem by naming one or more people as your “alternate” Agent. The alternate can act if your Agent is unable to assume the role or chooses not to. If you have not named an alternate you should consider making a new Personal Directive.

If all of the possible Agents named in your Personal Directive are unable or unwilling to act, your Personal Directive will cease to have effect.

### 5.7

#### **Can a Personal Directive be challenged?**

Yes. However, the choices for challenging depend on the particular issue.

Any interested person may apply to the Court of Queens’ Bench to question the capacity of the maker at the time the Personal Directive was made or question the validity of a Personal Directive, or part of it. Only a court has the final say about such issues.

Until July 2008, any complaints about the actions or inactions of one or more Agents also had to be brought forward through a court application. Although an interested party can still proceed in this manner, the Alberta Office of the Public Guardian now has the authority to investigate such complaints. Only complaints involving an Agent failing to comply with the Personal Directive or the duties of an

Agent in a way that is causing physical or mental harm to the maker will be investigated. All other complaints must still be resolved through a court application.

Complaints must be made, in writing, to the Office of the Public Guardian. Any interested party can send a written complaint about the Agent to the Office of the Public Guardian. You can download the form from [www.seniors.gov.ab.ca/opg](http://www.seniors.gov.ab.ca/opg) or obtain a copy by calling 1-877-427-4525 toll-free.

All complaints will be reviewed and an investigation will be conducted if there is an indication that an Agent is not following instructions or complying with the duties of an Agent, and, as a result, there is either physical or mental harm to the maker. The investigation can include interviews and accessing relevant records. If a complaint warrants an investigation, the Office of the Public Guardian will formally notify the Agent and provide the Agent with the opportunity to present his/her side.

If the investigation shows the complaint has merit, the Office of the Public Guardian may try to resolve the matter (for example: by providing further education and training to the Agent), make a referral to an alternative dispute resolution process or apply to the Court for one or more orders including the revoking of an Agent's authority.

## 5.8

### **What if my Agent makes decisions that are not in accordance with my wishes or my best interests?**

If your family, friends or care or service providers believe that your personal decisions are not being made properly by your Agent, they can either:

- apply to the Court of Queen's Bench, which has the authority to make a decision or vary, confirm, stay or rescind a decision by your Agent or remove your Agent and appoint a guardian in his/her place; or
- if they believe that your Agent is failing to comply with the Personal Directive or the duties of an Agent and that this failure is causing you physical or mental harm, file a complaint with the Office of the Public Guardian. See question 5.7 for more information on this process.

## 5.9

### **Is a photocopy of the Personal Directive valid?**

In most instances, a photocopy will not be enough. Most care-providers will request a notarized copy.

If the original is changed, to avoid confusion all copies of the original Personal Directive should be destroyed and replaced.

## 5.10

### **What happens in a medical emergency, or if my Personal Directive does not state a specific service?**

In a medical emergency, a health care provider can give medical services without consent and without waiting to see a Personal Directive. If this happens, the health care practitioner must inform the Agent of the circumstances as soon as possible.

A Personal Directive does not necessarily have to specifically name a service. This would be far too cumbersome. In general:

- if the Directive simply names the Agent, the Act states the Agent has authority in *all* personal matters;
- if the Directive simply names the Agent and a general area of authority, if the service needed fits in that area, the Agent will be considered to have authority;
- however, if the Directive specifies one or more specific areas of authority, the Agent's authority is restricted to these areas; and
- similarly, if the Directive specifically indicates a service that is not wanted, the Agent does not have authority.

*Your Agent will only be able to make those personal care decisions that you cannot make yourself. You might [...] be incapable of making a serious health care decision but still be able to make your own choices about day-to-day matters.*

## 6. How does it end?

### Top 5 Questions about how Personal Directives Stop Having Effect

#### 6.1

#### When does a Personal Directive generally end?

A Personal Directive generally lasts until:

- you die;
- you revoke it;
- you regain capacity;
- a court determines that it ceases to have effect; or
- your Agent dies or quits.

Your Personal Directive can indicate a date or circumstance in which it will be revoked or changed. For example, you can indicate that your sister is your Agent until your child turns 21, at which point your child will become your Agent

You should also know that your Agent will only be able to make those personal care decisions that you cannot make yourself. You might, for example, be incapable of making a serious health care decision but still be able to make your own choices about routine day-to-day matters.

#### 6.2

#### If I change my mind, how can I cancel (“revoke”) my Personal Directive?

As long as you have mental capacity, you may at any time elect to revoke your Personal Directive. To do so, you should state in writing that you are “revoking” it. There is no special form for this statement, which is referred to as a “revocation”, but it must be signed, dated, and witnessed by one person, in the same way as your Personal Directive.

#### 6.3

#### What should I do once I’ve cancelled (“revoked”) my Personal Directive?

Give the statement to your Agent. Give a copy to any of the health care providers or caregivers who are aware of your original Personal Directive. It is also a good idea to get the original Personal Directive back from your Agent and destroy it, if possible. If you registered your previous Personal Directive with the Alberta Personal Directive Registry, be sure to provide the Office of the Public Guardian with the update information.

#### 6.4

#### Do major life events (like marriage and divorce) automatically invalidate my Personal Directive?

No. When something happens (marriage, divorce, birth of a child, death of person named as your Agent), you should review your Personal Directive to make sure that it continues to meet all of your needs, and, if it does not, you should make a new Personal Directive.

#### 6.5

#### What happens if my Personal Directive is deemed invalid and I do not have the mental capacity to make a new one?

In such a case, interested parties (family or a friend) will have to apply to become the “guardian” of your person (this is called a “Dependent Adult” application).

*Your family, friends or care /service providers can apply to the court if they believe that your personal decisions are not being made properly by your Agent.*

# 7. What do the Words Mean?

## Glossary

<b>agent</b>	a person designated in a Personal Directive to make personal decisions on behalf of the maker.
<b>adult interdependent partner</b>	a person with whom you are in an adult interdependent relationship.
<b>adult interdependent relationship</b>	<p>a “relationship of interdependence” as a relationship outside of marriage where two people: share one another’s lives; are emotionally committed to one another; and function as an economic and domestic unit. To meet these criteria, the relationship need not necessarily be conjugal (sexual). It can be platonic.</p> <p>There are two possible ways for such a relationship to exist.</p> <ul style="list-style-type: none"> <li>• 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 as agreement in order to be considered adult interdependent partners); or</li> <li>• If you are not related by either blood or adoption and if you have: <ul style="list-style-type: none"> <li>– lived with the other person in a “relationship of interdependence” for at least 3 continuous years; or</li> <li>– 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).</li> </ul> </li> </ul>
<b>assets</b>	what you own. Assets can include things such as money, land, investments, and personal possessions such as jewellery and furniture.
<b>Attorney</b>	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.
<b>declaration of incapacity</b>	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/her own behalf.
<b>dependent adult</b>	means a person who is the subject of a guardianship order or trusteeship order, or both, made under the <i>Alberta Dependent Adults Act</i> .
<b>dependent adult application</b>	a court application, brought under the <i>Alberta Dependent Adults Act</i> , that asks the court to appoint a particular person as the trustee or guardian of an adult who no longer has the mental capacity to make decisions on his/her own behalf.
<b>donor</b>	a person who gives a Power of Attorney.
<b>Enduring Power of Attorney</b>	<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"> <li>• take effect immediately upon signing and continue if you become incapable of managing your financial affairs; or</li> <li>• take effect only upon your becoming incapable of managing your financial affairs, or some other specified event (this is also known as a “Springing” Power of Attorney”).</li> </ul>
<b>Immediate Power of Attorney</b>	covers your financial affairs and takes effect as soon as it is signed and stops if you become mentally incapacitated. You might give this Power of Attorney if you need someone to look after your financial transactions while you’re away from home for an extended period of time.
<b>legal representative</b>	Attorney under the <i>Powers of Attorney Act</i> or a guardian or trustee under the <i>Dependent Adults Act</i> .
<b>maker</b>	a person who makes a Personal Directive.
<b>mental capacity</b>	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.
<b>Power of Attorney</b>	a written, signed, dated and witnessed document that gives someone else the right to act on your behalf with respect to your financial affairs. This can include paying bills, depositing and investing money on your behalf, and even selling you house. The Power of Attorney may be for a definite, specific act, or it may be general in nature. It may take effect immediately (Immediate Power of Attorney), can continue upon mental incapacity (Enduring Power of Attorney), or can come into effect only upon incapacity or other event (Springing Power of Attorney).
<b>spouse</b>	a person to whom one is legally married.
<b>Springing Power of Attorney</b>	a Power of Attorney that covers your financial affairs and allows the person you name to act for you only once you become mentally incapable (or some other specified event).

## 8. Where can I get more help?

### Community Resources

For copies of the *Personal Directives Act* and the *Personal Directives Regulation* contact the Queen's Printer Bookstore.

- 780-427-4952 in Edmonton
- 403-297-6251 in Calgary
- Toll-free service in Alberta, dial 310-0000.
- Website: [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca)
- The *Personal Directives Act* is also available electronically at: [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca). See the alphabetical list of Acts.
- The *Personal Directives Regulation* is also available electronically at: [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca). See the alphabetical list of Acts.
- The *Dependent Adults Act* is available electronically at: [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca). See the alphabetical list of Acts.
- The *Dependent Adults Regulation* is available electronically at: [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca). See the alphabetical list of Acts.
- 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](http://www.seniors.gov.ab.ca/services_resources/opg/guardianship/index.asp). In addition, you can access the current draft of the Act, known as Bill 24 of 2008 at: [www.assembly.ab.ca/bills/2008/pdf/bill-024.pdf](http://www.assembly.ab.ca/bills/2008/pdf/bill-024.pdf).

The **Office of the Public Guardian** is responsible for administering the *Personal Directives Act*. The Office of the Public Guardian has offices across the province. To be connected to any of the offices toll-free, call 310-0000. See also a list of offices at:

[www.seniors.gov.ab.ca/contact\\_us/opg](http://www.seniors.gov.ab.ca/contact_us/opg)

For all governmental forms related to Personal Directives, as well as templates and instructions, please see [www.seniors.alberta.ca/opg/personaldirectives](http://www.seniors.alberta.ca/opg/personaldirectives)

For answers to frequently asked questions, please see [www.seniors.alberta.ca/opg/personaldirectives/faq.asp](http://www.seniors.alberta.ca/opg/personaldirectives/faq.asp)

For more information about **applications for guardianship** under the *Dependent Adults Act* please contact the Office of the Public Guardian toll-free, call 310-0000.

See also: [www.seniors.gov.ab.ca/services\\_resources/opg/guardianship/publications](http://www.seniors.gov.ab.ca/services_resources/opg/guardianship/publications). This information on this site is provided in English (including audio), French, Chinese, German, Punjabi and Spanish.

#### **Alberta Seniors Information Line**

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

Edmonton Area: 780-427-7876

Deaf or Hearing Impaired with TDD/TTY units:

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

Edmonton area: 780-427-9999

Fax: 780-422-5954

Hours: Monday to Friday, 8:15 am to 4:30 pm; closed statutory holidays

#### **Alberta Seniors and Community Supports: Personal Directives**

[www.seniors.gov.ab.ca/services\\_resources/opg/persdir](http://www.seniors.gov.ab.ca/services_resources/opg/persdir)

#### **Alberta Seniors and Community Supports: Understanding Personal Directives**

[http://www.seniors.gov.ab.ca/services\\_resources/opg/persdir/publications/pdf/OPG1646.pdf](http://www.seniors.gov.ab.ca/services_resources/opg/persdir/publications/pdf/OPG1646.pdf)

#### **Alberta Seniors and Community Supports: Protection for Persons in Care**

Information and Reporting: 1-888-357-9339

Fax: 780-415-8611

Mailing Address: Station M, Box 476

Edmonton, AB T5J 2K1

Hours: Monday to Friday, 8:15 am to 4:30 pm

#### **Seniors Association of Greater Edmonton (SAGE)**

100 – 102A Ave, 15 Sir Winston Churchill Sq NW

Edmonton AB, T5J 2E5

Phone: 780-423-5510

Fax: 780-426-5175

Email: [info@MySage.ca](mailto:info@MySage.ca)

Website: [www.MySage.ca](http://www.MySage.ca)

Hours: Monday to Friday: 8:30 am to 4:15 pm

#### **Legal Aid Society of Alberta**

Provides legal services to financially eligible applicants.

Phone: 780-427-7575

Website: [www.legalaid.ab.ca](http://www.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 Area: 403-228-1722

[www.lawsocietyalberta.com/publicservices/  
lawyerReferralService.cfm](http://www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm)

### **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 over email.

Toll free: 1-866-845-3425

Edmonton Area: 780-644-7777

Website: [www.lawline.legalaid.ab.ca](http://www.lawline.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, Edmonton, AB T6G 0Z3

Phone: 780-492-8244 Website: [www.slsedmonton.com](http://www.slsedmonton.com)

### **Dial-A-Law**

Pre-recorded legal information messages available 24 hours a day, 7 days a week.

Toll free: 1-800-332-1091

### **Family Law Information Centre**

Edmonton Law Courts Bldg

1A Sir Winston Churchill Sq Edmonton, AB T5J 0R2

Phone: 780-415-0404

### **Older Adult Knowledge Network**

[www.oak-net.org](http://www.oak-net.org)

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This booklet is part of a series from *The Law and You: Seniors and Older Adults* project. Other booklets from the series include:

- Making a Will
- Making a Personal Directive
- Making a Power of Attorney
- Being an Executor
- Being an Attorney
- Being an Agent
- Protecting Yourself from Consumer Fraud and Scams
- Grandparents' Rights

## **The Legal Resource Centre**

The Legal Resource Centre is a non-profit society whose purpose is to provide Albertans with reliable information about their rights and responsibilities under the law.



## **Legal Resource Centre**

#201 10350 – 124 Street

Edmonton, AB T5N 3V9

Phone: 780.451.8764

Fax: 780.451.2341

[www.legalresourcecentre.ca](http://www.legalresourcecentre.ca)

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