

Statutory Declaration Regarding Age

Submissions

On the Form 17 Charge, Notation or Filing, select Nature of Interest, Power of Attorney, and attach an image of the statutory declaration to the power of attorney

The following form of statutory declaration satisfies the requirements of s. 51(3).

CANADA

PROVINCE OF BRITISH COLUMBIA

TO WIT:

I, JOHN BRIAN JONES, of 345 Johnson Street, Victoria, B.C., Bank Manager, DO SOLEMNLY DECLARE THAT:

1. I am the Attorney appointed by the foregoing Power of Attorney;
 2. At the time of such appointment, namely the 20th day of January 2005, I was of the full age of Nineteen (19) years;
- AND I make this solemn Declaration, conscientiously and believing it to be true and knowing that it is of the same force and effect as if made under oath.

SWORN BEFORE ME at *[location]*, British
Columbia, on *[month, day, year]*

A commissioner for taking
affidavits for British Columbia

John Brian Jones

PRACTICE

“Power of Attorney”

A power of attorney is a document under which one person, the donor (sometimes called the principal), confers authority on another person, the attorney (sometimes called the donee).

Limitations on the Power to Grant a Power of Attorney

There are different limitations on a donor’s ability to grant a power of attorney depending on whether the donor is a personal representative or trustee, or is a company director:

- (1) **Personal Representatives (Executors) and Trustees:** Generally, a personal representative or trustee cannot delegate or assign, by power of attorney or otherwise, discretion in dealing with real property unless authorized by the trust instrument. See, however, s. 55 of the Act which allows a personal representative or trustee living outside British Columbia to appoint an attorney to exercise the personal representative’s or trustee’s power within the province unless the trust instrument expressly forbids such an appointment.
- (2) **Company Directors:** Generally, the directors of a company cannot delegate their powers and duties except as the constating documents of the corporation allow.

Two Types of Powers of Attorney

There are two types of power of attorney:

- (1) **General:** The attorney can deal with any property owned by the donor, including “after acquired property”, unless the power of attorney expressly provides to the contrary.
- (2) **Limited (or Special or Restricted):** The powers are restricted to the property described in the power of attorney or to the nature of the dealing described in it.

Either type may be enduring. An enduring power of attorney expressly provides that the power of attorney does not cease when the donor becomes mentally infirm, although it does cease when the donor becomes a “patient” under the *Patients Property Act* or when it is revoked by the donor. See s. 56 of this Act regarding enduring powers of attorney.

Enduring Powers of Attorney

Amendments to the *Power of Attorney Act*, which came into force September 1, 2011, establish new requirements relating to enduring powers of attorney. The requirements include:

- additional executions and specific witnessing requirements;
- a specific amendment related to the effective date of an enduring power of attorney;
- recognition of alternate attorneys;
- “springing” or “contingent” enduring powers of attorney; and
- enduring powers of attorney made in a foreign jurisdiction.

The *Power of Attorney Act* has been further amended to authorize the establishment of alternative processes for signing of enduring powers of attorney. The amendments came into force on January 1, 2023, along with amendments to the *Power of Attorney Regulation*, B.C. Reg. 20/2011 that establish processes for the remote witnessing of enduring powers of attorney.

Some of the following commentary originates from Practice Bulletin No. 02-11 (Enduring Powers of Attorney), updated to January 1, 2023.

Under the *Power of Attorney Act*, the donor of an enduring power of attorney is referred to as the “adult”, while the donee is referred to as the “attorney”.

Executions and Witnessing

The execution and witnessing requirements for both the adult and the attorney are set out in ss. 16, 17, and 17.1 of the *Power of Attorney Act*.

Execution by the Adult (s. 16)

An enduring power of attorney must be signed by the adult whose signature must be witnessed in the presence of:

- (1) a notary public, who is a member of the Society of Notaries Public of British Columbia, in accordance with Part 5 of the *Land Title Act*; or
- (2) a British Columbia lawyer (see note below) in accordance with Part 5 of the *Land Title Act*; or
- (3) any other person who may act as an officer under the *Evidence Act* in accordance with Part 5 of the *Land Title Act*, along with a second witness whose signature must be proven by affidavit of witness covering the matters noted in s. 16(6) of the *Power of Attorney Act* unless that second witness is also an officer; or
- (4) two witnesses, who are not officers under the *Evidence Act*, whose signatures must be proven by affidavit of witness covering the matters noted in s. 16(6) of the *Power of Attorney Act* and s. 49 of the *Land Title Act*.

Note that s. 16(4) of the *Power of Attorney Act* does not specify a British Columbia lawyer. However, s. 29 of the *Interpretation Act* defines a lawyer as:

“**lawyer**” means a practising lawyer as defined in section 1(1) of the *Legal Profession Act*;

Section 1(1) *Legal Profession Act*, S.B.C. 1998, c. 9 *Legal Profession Act*, S.B.C. 1998, c. 9 of the *Legal Profession Act* provides the following definitions:

“**practising lawyer**” means a member in good standing who holds or is entitled to hold a practising certificate;

“**member**” means a member of the society;

“**society**” means the Law Society of British Columbia continued under section 2;

If the adult's signature is witnessed by two witnesses, the adult must sign the enduring power of attorney in the presence of both witnesses and both witnesses must sign in the presence of the adult. The registrar will refuse to register the enduring power of attorney if the enduring power of attorney is witnessed by two witnesses on separate execution dates.

Execution by the Attorney (ss. 16 and 17)

An enduring power of attorney must be signed by the attorney whose signature must be witnessed by:

- (1) a notary public, who is a member of the Society of Notaries Public of British Columbia; or
- (2) a British Columbia lawyer; or
- (3) if not witnessed by a British Columbia lawyer or British Columbia notary public, two witnesses whose signatures must be proven by affidavit of witness covering the matters noted in s. 16(6) of the *Power of Attorney Act*.

The witnessing of execution by the attorney does not need to meet the requirements of Part 5 of the *Land Title Act*.

As always, if the power of attorney is to be used in a land title office, each attorney must file a statutory declaration proving that the attorney was of age at the time of registration of the power of attorney (see *Land Title Act*, s. 51(3.1)).

Section 17 of the *Power of Attorney Act* requires the attorney. Drafters of enduring powers of attorney should be aware that the requirements of s. 17 are not met by virtue of the attorney only executing the "proof of age" declaration referenced above.

Two Witnesses

Section 17(1) of the *Power of Attorney Act* requires two witnesses if the attorney's signature is not witnessed by a British Columbia lawyer or British Columbia notary public. Powers of attorney witnessed in this fashion are valid since the attorney signature does not need to be witnessed in accordance with the *Land Title Act*, Part 5. This is because s. 17(3) of the *Power of Attorney Act* specifically does not incorporate s. 16(5) of the *Power of Attorney Act*.

While such powers of attorney may be valid for use outside the land title system, they will not, without further evidence, be accepted for use in the land title office. The registrar requires an affidavit from each witness establishing that they are not disqualified by s. 16(6) of the *Power of Attorney Act*. These particular requirements must be followed if the power of attorney is executed by the attorney in the presence of someone other than a British Columbia lawyer or British Columbia notary public. Particular care is needed, for example, if the attorney signs outside British Columbia.

See Scenario C under the "Execution by an Adult" heading below for a suggested form of the affidavit required to be provided by both witnesses to the execution of the power of attorney by the attorney named. If more than one attorney is named, this affidavit must be provided by both witnesses to the execution of the power of attorney by each named attorney.

Affidavit of Execution

Remote Witnessing

Section 17.1 of the Act authorizes the establishment by regulation of an alternative process for signing enduring powers of attorney. Section 2.1 of the *Power of Attorney Regulation* sets out an alternative process for remote witnessing of the execution of enduring powers of attorney by the adult and the attorney. An enduring power of attorney that is remotely witnessed under the alternative process must:

- include a B.C. lawyer or B.C. notary public as the officer that does the remote witnessing;
- include a statement that the enduring power of attorney was signed and dated in accordance with the alternative process under the *Power of Attorney Regulation*;
- be signed and dated by signing and dating complete and identical copies of the enduring power of attorney in counterpart. The enduring power of attorney submitted to the land title office must include the enduring power of attorney that includes the signature of the witnessing officer and the copy of the enduring power of attorney that includes the signature of the adult and/or attorney, as applicable; and

- include an affidavit under s. 49 of the *Land Title Act* (“LTA”) where the execution of the adult is remotely witnessed. The remote witnessing of an enduring power of attorney under the alternative process does not meet the Part 5, LTA requirement for the adult to be in the physical presence of (appear before) the witnessing officer. Consequently, a s. 49 affidavit is required to ensure the execution of the enduring power of attorney is in accordance with the LTA. The s. 49 affidavit must be from the officer who remotely witnessed the enduring power of attorney, as this is the individual who can attest to the information required under s. 49. See the “Affidavit of Execution” guidance below for information on the suggested form of affidavit when an enduring power of attorney is executed by an adult and remotely witnessed.

A s. 49 affidavit is not required when the signature of the attorney on the enduring power of attorney is remotely witnessed, as the execution of the attorney does not need to meet the requirements of Part 5, LTA.

Affidavit of Execution

An affidavit of execution may be used:

- to address any witnessing limitations noted in s. 16(6) of the *Power of Attorney Act*;
- to cover the matters noted in s. 49 of the LTA in the event neither of the witnesses is an officer pursuant to the *Evidence Act* to ensure the enduring power of attorney has been executed and witnessed in accordance with s. 16(5) of the *Power of Attorney Act* and Part 5 of the LTA;
- by the witnessing officer when the execution by the adult is remotely witnessed in accordance with the alternative process under the *Power of Attorney Regulation* to ensure the execution of the enduring power of attorney is in accordance with Part 5 of the LTA.

The following describes common execution scenarios and the suggested form of affidavit for enduring powers of attorney that are to be used for land title purposes.

Execution by an Adult

Scenario A: One witness who is not a B.C. lawyer or B.C. notary public but is an officer under the *Evidence Act*, together with a second witness who is not an officer.

The following form of affidavit is required from the witness who is **not** an officer to cover the matters under s. 16(1) and (6) of the *Power of Attorney Act*:

1. This enduring power of attorney was signed and dated by the adult/donor in my presence and in the presence of [name of other witness]. Both witnesses to this enduring power of attorney signed and dated it in the presence of the adult/donor.
2. I am not any of the following:
 - (a) a person named in the enduring power of attorney as an attorney;
 - (b) a spouse, child, or parent of a person named in the enduring power of attorney as an attorney;
 - (c) a person who is not an adult;
 - (d) a person who does not understand the type of communication used by the adult/donor; or
 - (e) an employee or agent of a person named in the enduring power of attorney as an attorney.

[If the person is an employee or agent of a person named in the enduring power of attorney as an attorney, then paragraph 2(e) should be deleted and replaced with the following paragraph:]

3. I am an employee or agent of a person named in the enduring power of attorney as an attorney, but the person named as an attorney is [cross out those that do not apply]
 - (a) a lawyer;
 - (b) a member in good standing of the Society of Notaries Public of British Columbia;
 - (c) the Public Guardian and Trustee; or
 - (d) a financial institution authorized to carry on trust business under the *Financial Institutions Act*, R.S.B.C. 1996, c. 141.