

Duties of attorney

19 (1) An attorney must

- (a) act honestly and in good faith,
 - (b) exercise the care, diligence and skill of a reasonably prudent person,
 - (c) act within the authority given in the enduring power of attorney and under any enactment, and
 - (d) keep prescribed records and produce the prescribed records for inspection and copying at the request of the adult.
- (2) When managing and making decisions about the adult's financial affairs, an attorney must act in the adult's best interests, taking into account the adult's current wishes, known beliefs and values, and any directions to the attorney set out in the enduring power of attorney.
- (3) An attorney must do all of the following:
- (a) to the extent reasonable, give priority when managing the adult's financial affairs to meeting the personal care and health care needs of the adult;
 - (b) unless the enduring power of attorney states otherwise, invest the adult's property only in accordance with the *Trustee Act*;
 - (c) to the extent reasonable, foster the independence of the adult and encourage the adult's involvement in any decision-making that affects the adult;
 - (d) not dispose of property that the attorney knows is subject to a specific testamentary gift in the adult's will, except if the disposition is necessary to comply with the attorney's duties;
 - (e) to the extent reasonable, keep the adult's personal effects at the disposal of the adult.
- (4) An attorney must keep the adult's property separate from his or her own property.
- (5) Unless the enduring power of attorney states otherwise, subsection (4) does not apply to property that
- (a) is jointly owned by the adult and the attorney as joint tenants or otherwise, or
 - (b) has been substituted for, or derived from, property described in paragraph (a).

Attorney's powers

- 20** (1) An attorney may make a gift or loan, or charitable gift, from the adult's property if the enduring power of attorney permits the attorney to do so or if
- (a) the adult will have sufficient property remaining to meet the personal care and health care needs of the adult and the adult's dependants, and to satisfy the adult's other legal obligations, if any,
 - (b) the adult, when capable, made gifts or loans, or charitable gifts, of that nature, and
 - (c) the total value of all gifts, loans and charitable gifts in a year is equal to or less than a prescribed value.
- (2) An attorney may receive a gift or loan under subsection (1) if the enduring power of attorney permits.

- (3) Permissions under subsections (1) and (2)
 - (a) must be express, and
 - (b) may be in relation to a specific gift or loan, or charitable gift, or to gifts or loans, or charitable gifts, generally.
- (4) An attorney may retain the services of a qualified person to assist the attorney in doing anything the adult has authorized the attorney to do.

Attorney must not make a will for adult

21 An attorney must not make or change a will for the adult for whom the attorney is acting, and any will or change that is made for an adult by his or her attorney has no force or effect.

Section 26

- (1) An enduring power of attorney is effective **on the latest of:**
 - (a) The date by which the enduring power of attorney has been signed both by the adult under section 16 and by an attorney under section 17,
 - (b) A date stated in the enduring power of attorney as being its effective date, and
 - (c) The date an event described in the enduring power of attorney as bringing the power of attorney into effect is confirmed to have occurred.
- (2) If the enduring power of attorney or a provision of its, is effective after a specified event occurs, the adult must state in the enduring power of attorney how and by whom the event is to be confirmed.
If the adult specifies that the enduring power of attorney is effective when the adult is incapable of making decisions about the adult's financial affairs, and the person named to confirm the adult's incapability is incapable, unwilling or unable to act, a qualified health care provider may confirm whether the adult is incapable.

When authority of attorney is suspended or ends

- 29
- (1) The authority of an attorney is suspended in any circumstances set out in an enduring power of attorney, for as long as those circumstances continue.
 - (2) The authority of an attorney ends
 - (a) if the enduring power of attorney is terminated,
 - (b) if the provisions of the enduring power of attorney that give authority to the attorney are revoked,
 - (c) if the attorney resigns in accordance with section 25, or
 - (d) if the attorney
 - (i) is the adult's spouse and their marriage or marriage-like relationship ends,
 - (ii) becomes incapable or dies,
 - (iii) is bankrupt,
 - (iv) is a corporation and the corporation dissolves, winds up or ceases to carry on business, or
 - (v) is convicted of a prescribed offence or an offence in which the adult was the victim.
 - (3) Subsection (2) (d) (i) does not apply if the enduring power of attorney states that the authority of the attorney continues regardless of whether the marriage or marriage-like relationship ends.
 - (4) A marriage ends for the purposes of this section when an agreement, judgment or order referred to in section 56 of the *Family Relations Act* is first made in respect of the marriage.

- (5) A marriage-like relationship ends for the purposes of this section when the parties to the marriage-like relationship stop cohabiting with each other, with the intention of ending the relationship.
- (6) If the authority of an attorney ends under subsection (2), any remaining attorneys may continue to act unless the enduring power of attorney states otherwise.
- (7) Anything lawfully done by an attorney on behalf of the adult, including making an agreement, remains binding on the adult after the authority of the attorney ends.

When enduring power of attorney is suspended or terminates

- 30** (1) If an adult becomes incapable after making an enduring power of attorney, any authority given to an attorney under the enduring power of attorney continues.
- (2) An adult may set out in an enduring power of attorney any circumstances in which the enduring power of attorney is suspended, and, if those circumstances exist, the enduring power of attorney is suspended for as long as those circumstances continue.
- (3) An enduring power of attorney is suspended in accordance with the *Adult Guardianship Act* if the adult has a statutory property guardian under that Act.
- (4) An enduring power of attorney terminates
- (a) according to the terms of the enduring power of attorney,
 - (b) if the adult who made the enduring power of attorney dies,
 - (c) if the court terminates the enduring power of attorney under section 36 (5),
 - (d) if the enduring power of attorney is terminated under section 12 or 33 (5) of the *Adult Guardianship Act*, or
 - (e) if the enduring power of attorney is revoked.

END OF DOCUMENT

COURTESY OF:

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