Guide to

Making an Enduring Power of Attorney

using the LISNS POA-E App



LEGAL INFO NOVA SCOTIA

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Acknowledging the Land

The Legal Information Society of Nova Scotia recognizes that it is situated on Mi'kmaq'ki, the ancestral and unceded territory of the Mi'kmaq people. This territory is covered by the "Treaties of Peace and Friendship," which Mi'kmaq, Wolastoqyik, and Passamaquoddy signed with the British Crown in 1726. The Treaties recognized Mi'kmaq, Wolastoqyik, and Passamaquoddy title to the land and established rules for an ongoing relationship between nations. We are all treaty people.

Disclaimer

This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice and is not intended to replace professional, legal, or other advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation.

The Legal Information Society of Nova Scotia disclaims any liability arising from the use or application of any information in this publication. If you feel you have a legal problem, you should talk with a lawyer.

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Guide to making an Enduring Power of Attorney using the LISNS POA-E App

This POA-E App Guide will help you understand how to make a general enduring power of attorney (POA-E) using the Legal Information Society of Nova Scotia's POA-E App. The app is free to use.

A **power of attorney** is a legal document that lets a capable adult give another adult they trust the power to look after their finances and property. This could include the power to manage their land, house, bank accounts, investments, vehicles and anything else they own, paying their bills, filing their tax returns, cashing their cheques, and making other legal or financial decisions.

The person who gets the power to act is called the **attorney**, even if they are not a lawyer. The person who gives an attorney the power to look after their finances and property is called the **donor**.

An **enduring** power of attorney keeps working even after you can no longer make your own decisions. This free LISNS POA-E App makes an enduring power of attorney.

If you already have a power of attorney and you make another one, the newer power of attorney cancels the older one.

A general enduring power of attorney will cover all your personal and real property. Personal property means anything you own. It also includes:

- anything that only you have the right to use, such as an apartment you rent or car you lease
- money, your bank accounts, and any way you save your money such as in a guaranteed income certificate or registered retirement savings plan
- your furniture, jewellery, clothing, cars or trucks

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If you own a house, condominium, cottage, land or woodlot that is also property, but it's called real property.

Learn more about powers of attorney from:

- the Legal Information Society of Nova Scotia's **powers of attorney** page
- the government of Canada's **What every older Canadian should know about: Powers of attorney (for financial matters and property) and joint bank accounts page**

Learn more about the duties and responsibilities of **being an attorney** from the Legal Information Society of Nova Scotia.

Who can make a power of attorney?

To make your power of attorney you must be able to understand all of the statements below. You must also be able to understand what they mean for you:

- What property you own and the value. You must also have a basic idea of what things are valuable and what things are not.
- What the law says you must do for the people who depend on you for financial support. These people are called your dependents. They might include your spouse or any children.
- What your attorney can do with your power of attorney. Your attorney can do almost anything that you can do with your property and finances unless you say something in your power of attorney to limit their power.
- What could happen if your attorney does not do a good job. Your property could lose value and you could lose money.
- That your attorney could abuse the powers you give them. Your attorney might not do what you tell them.
- That you can cancel your power of attorney at any time if you are able to understand what it means to do that. This is called revoking your power of attorney. You cannot revoke the power of attorney if you lose capacity to make legal decisions.

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Sometimes a person may need help to communicate and to explain their wishes. The way you communicate does not tell people whether you are capable. You may need support or help from a family member, friend, translator, interpreter, or technology to tell people about your wishes. Communicating in different ways does not mean that you cannot understand what it means to make a power of attorney.

Helping someone make a power of attorney

You may need help or support to use the POA-E App to make your power of attorney. That is okay. But the person who helps you must follow your instructions and you must make every decision yourself.

Making your enduring power of attorney with the POA-E App

The POA-E App lets you make an enduring power of attorney for all your property and money. There are some things a person can do in a power of attorney that this POA-E App will not let you do. The next few pages will help you to see if this POA-E App is right for you. If you decide not to use the POA-E App, the Legal Information Society of Nova Scotia website at **legalinfo.org** gives more information about powers of attorney.

The POA-E App lets you:

- name one attorney and one back-up attorney
- name someone to watch over your attorney's work, called a monitor
- say who your attorney must tell when they begin to act for you
- name someone who cannot get information about your money and property
- add additional personal wishes

This POA-E App also:

- describes your attorney's duties to you
- describes the powers you are giving your attorney
- says your attorney can only get paid for reasonable expenses they have to pay for properly doing their job as your attorney.

See a lawyer if you want to do something in your enduring power of attorney that the POA-E App does not let you do or does not cover.

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Who can use the POA-E App?

You can use the POA-E App if:

- you live in Nova Scotia
- you are 19 or older
- you are naming an attorney who is in Canada, and ideally in Nova Scotia
- you have a straightforward personal and financial situation
- you can understand the consequences of your decisions
- you are making a power of attorney voluntarily without pressure or influence from anyone else.

You should not use the POA-E App if:

- you may not be able to understand the consequences of your decisions. For example, if you have a health problem that seriously affects your thinking, reasoning, decision-making or memory don't use this app. Speak with a lawyer about your options.
- you feel pressured to write a power of attorney because someone is insisting that you do one.
- you have status under the Indian Act, you live on reserve, and are a dependent adult. You can get information about power of attorney from **Indigenous Services Canada**.
- you need to set up complicated financial arrangements. For example, if you have joint accounts with someone other than the person you want to name as attorney.
- You want to do something the POA-E App does not let you do.



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What you need to get started

You need the following information to make your enduring power of attorney using the POA-E App:

- the full name of your spouse, registered domestic partner, common law spouse
- the full name of your attorney, including back-up attorney if you name one
- the full name of your monitor if you name one
- details of any wishes you have about your money and property
- details of any supportive actions you want your attorney to follow before acting

Read this guide before you start. You can also find more information about **power of attorney** on Legal Information Society's website, including information about your **attorney's responsibilities** to you.

Your wishes and instructions

This POA-E App makes an enduring power of attorney. This means that the attorney's power continues after you can no longer make your own property and financial decisions.

For that reason, you may include instructions for your attorney and describe your wishes so that the attorney knows what you want.

In making a power of attorney with the POA-E App, you decide who will be your attorney and who will be your back-up attorney. This means that the person you name as your attorney must follow the law and learn about their duties. If the attorney is not able to be your attorney when asked, then the person you name as your back-up attorney takes over the role.

It's a good idea to ask someone if they are willing and able to be your attorney before you name them in the POA-E App.

Your attorney owes you certain duties and responsibilities when they begin to act for you.



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You can add specific wishes about how your attorney should talk with you and ask you what you want in the POA-E App. In your own words, you can tell your attorney, monitors, and supporters what you want to make it easier for them to follow your wishes. You can also say how you'd like them to talk with you if you can no longer make legal or financial decisions on your own.

Some examples:

- *I want my attorney to talk with me about decisions that affect me. I also want them to make sure I can participate in decisions as much as I am able.*
- *I have chosen the people named in this power of attorney and I expect them to work with me and with one another.*
- *I have named a delegate in my personal directive for medical and health care decisions. I wish my attorney and my delegate to communicate with each other to support my well-being.*
- *I have written a list of values that I will give to my attorney with this power of attorney document that I want to guide any decision-making that affects me.*
- *I want my attorney to follow my express wishes. If my wishes change, I want my attorney to listen and talk with me before acting.*

Naming a monitor and a supporter

The POA-E App lets you name a monitor and supporter.

A **monitor** can review and watch over your attorney's activities and decision-making. This person can help protect your well-being and finances if your attorney misuses their authority.

You can use the POA-E App to say that your attorney must tell your monitor every time they plan to do something for you under the power of attorney.

The monitor can ask your attorney to give them records of what they have done while using the power of attorney. They can ask your attorney for more details about their activities and the value of your property and money. This is called giving an **accounting**. The monitor can also ask the court to order the attorney to provide this information.

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A **supporter** can be any family, friend, or professional person that supports you and your decision-making. You can say in the POA-E App that your attorney must tell your supporter when they have started to use the power of attorney to act for you.

Do you feel pressured to make a power of attorney?

Nobody can force you to make a power of attorney. This includes hospitals, long-term care homes, banks, other facilities or institutions, family, friends or other people. If you make and sign a power of attorney because you were pressured or forced to do so, the power of attorney may not be valid. That means that the attorney won't be able to use it.

If you feel pressured by anyone to prepare a power of attorney, do not use the POA-E App. Get legal advice from a lawyer.

Talking with a lawyer

The law does not say that a lawyer must write your power of attorney. But it is good to speak to a lawyer about it. A power of attorney is an important legal document. You have to write it carefully to make sure that it says what you want. If you make a mistake, that could cost you or your family money. If a lawyer makes a mistake, someone may sue the lawyer.



The POA-E App makes a simple enduring power of attorney document that might not cover everything you want it to. A lawyer can make a very detailed power of attorney that meets your unique needs.

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Signing your enduring power of attorney

Once you finish making your enduring power of attorney using the POA-E App, you must follow a few formal steps to make it legal.

Your power of attorney must:

- be in writing
- be dated
- be witnessed by two independent adults
- be signed by you and your two witnesses at the same time

STEP 1 – Print your POA-E: You must print a copy of your enduring power of attorney so that it is in writing. A video, electronic, or audio power of attorney is not valid.

STEP 2 - Sign and date your POA: You must sign your power of attorney. Do not use an electronic signature. You must write the date on your power of attorney.

STEP 3 - Two adults must witness your POA-E: You must have two adults watch you sign and date the printed power of attorney, and they must also sign and date it at the same time. The two people must be at least 19 years old.

Your witnesses **cannot** be:

- your attorney
- your attorney's spouse, registered domestic partner, or common law partner
- your attorney's child

Your witnesses must both be with you when you sign the document, in the same place, and must then also sign the document in front of you. Your witnesses do not need to know what your power of attorney says. They don't have to read it.

We will remind you about these steps when you finish making your enduring power of attorney.

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If you own land

You must also do a few things if your attorney will deal with land for you.

People often do an affidavit of execution for a general power of attorney, even though the law does not say you must do one. But if you want your attorney to buy or sell land for you, the Land Registration Office will need an **affidavit of execution** and an **affidavit of status**.

Affidavit of execution

Arrange to have one of your witnesses sign an affidavit of execution. An affidavit of execution is a sworn statement where a witness says in writing (confirms) that they saw you sign the power of attorney and that you were at least 19 years old (an adult) when you made the power of attorney. The witness signs the affidavit of execution in front of a Commissioner of Oaths, a lawyer, or a notary public.

One of your witnesses can do this any time after you sign your power of attorney. But the best time is right after you sign your power of attorney.

A Commissioner of Oaths, a lawyer or a notary public must confirm that the affidavit of execution is true. All lawyers are Commissioners of Oaths. You can find notaries public and Commissioners of Oaths **here**.

Affidavit of status

An affidavit of status is a sworn statement that says in writing (confirms) three facts about you:

- your age (that you are 19 years old or older)
- where you live (that you live in Nova Scotia)
- your marital status (that you are married, live common law or are single).

You or your attorney can write and sign an affidavit of status any time after you sign your power of attorney. If you are selling real property, like a house, cottage, or land, attach the affidavit of status to your power of attorney. If your attorney will not be dealing with land for you, you will not need an affidavit of status.

Any lawyer helping you sell land will prepare an affidavit of status for you or your attorney to sign. If your address or marital status changes, your lawyer will update the affidavit of status.

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What to do after you sign your POA-E

You should put your power of attorney documents in a safe place. A fire-proof lock box or safe is the best place. Make sure you tell your attorney where the document is stored so that they can find it if they need it.

If you want your attorney to start using the power immediately, give it to them. Or give it to them and tell them when they should start acting. Keep a second original signed copy for yourself in a safe place. Let your monitor know where your power of attorney is located or give them a photocopy of the document.

Give a copy to your bank, credit union, Service Canada office, and to any other parties that your attorney will deal with for you. Keep a list of the businesses and people who have copies of your power of attorney in case you have to make any changes or want to revoke it.

It may be many years before your power of attorney is needed. As time passes, keep track of where you are keeping it. Tell the people in your life who need to know about your power of attorney where to get it if they need it.

Changing your POA-E

By using the POA-E App to make a new power of attorney you are cancelling (revoking) any power of attorney you may already have made. You cannot just change or add to an existing power of attorney. A power of attorney that has changes can cause confusion.

If you already had a power of attorney and make a new one using the POA-E App, you must tell your attorney in writing about the change. You should also do the following:

- Write to anyone who has been relying on your power of attorney, like your bank. Tell them that you have changed your power of attorney and give them the new power of attorney. Keep copies of these letters.
- Ask everyone who has a copy of the old power of attorney document to return it to you. Banks and some other organizations may need to keep a copy of the document for their files.
- Contact the Land Registration Office to find out if the power of attorney is registered there. If so, you may need to register your new power of attorney document to replace the old one.

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Cancelling or revoking your power of attorney

You can cancel your power of attorney at any time if you are capable of understanding what it means to do that and the effects of cancelling it. This is called **revoking** your power of attorney.

To revoke your power of attorney, you can make a new power of attorney.

You must also tell your attorney or attorneys in writing that you have done this. This is called giving notice of revocation. Put the date on your written notice of revocation and sign it.

You can also use a form in the **LISNS POA Forms Booklet: Form 5 — Notice of revoking a power of attorney**. You don't have to use a form, but this one can help you include the information that tells your attorney clearly that you are cancelling your power of attorney.

If you revoke your power of attorney, you should do these three things:

- Write to anyone who has been relying on your power of attorney, like your bank. Tell them that you have changed your power of attorney and give them the new power of attorney. Keep copies of these letters.
- Ask everyone who has a copy of the old power of attorney document to return it to you. Banks and some other organizations may need to keep a copy of the document for their files.
- Contact the Land Registration Office to find out if the power of attorney is registered there. If so, you may need to register your new power of attorney document to replace the old one.

Powers of attorney can also end in the following ways:

If the court thinks it is appropriate, the court can end an attorney's authority or end a power of attorney. The attorney, a monitor, the **Public Trustee**, your lawyer, or another interested person would need to apply to court to ask for that to happen. A judge would hear the facts and decide what should happen.

When you die, the power of attorney ends and your attorney must stop acting.

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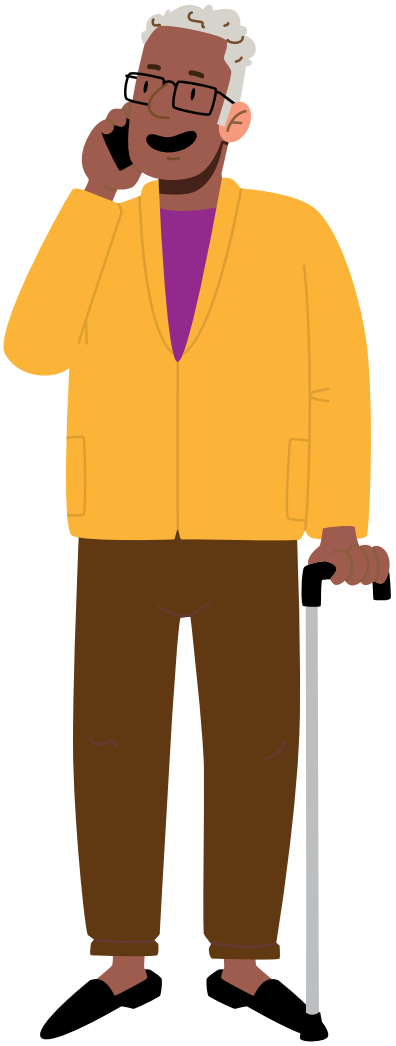
If the attorney dies, the power of attorney ends unless you have named a back-up attorney.

If the Nova Scotia Public Trustee is acting as attorney or representative for a person who dies without a will naming an executor, they will continue to act until a court appoints someone to administer the estate.

Where can I get more help?

Ask a lawyer for legal advice. It is a good idea to speak with a lawyer who focuses on estate planning. Contact the **Legal Information Society of Nova Scotia** for legal information or to learn more about finding a lawyer.



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Words you need to know



Accounting: Your attorney must keep current, detailed and accurate records of what they do for you as an attorney. In some situations, your attorney must provide a complete record of all transactions they made for you, including a statement of the things you own and what they are worth (assets) and what you owe (liabilities), and how that financial picture may have changed over the period they are reporting on. This is called giving an accounting.

Attorney: The person you give the power to take care of your financial and property matters is called the attorney, even if they aren't a lawyer. You can name one attorney or more than one attorney The POA app allows you to name one attorney and one back up attorney. The back-up attorney would only act if your first attorney cannot or will not act.

Donor: When you name one attorney or more than one attorney in a power of attorney to take care of your financial and property matters, you are called the donor. You do not donate your money or property when you make a POA, but donor is the legal term.

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Immediate family member: Immediate family members include your spouse, registered domestic partner, common law partner, adult child, adult sibling or parent. Immediate family members may be entitled to information about your attorney's activities.

Interested person: Interested person is a large category of people that are entitled to apply to court if they are concerned about the activities of your attorney.

Monitor: You can name a monitor to review and watch over your attorney's activities and decision-making. This person can help protect your well-being and finances if your attorney misuses their authority.

Power of attorney: A power of attorney is a legal document that lets you give someone you trust power to look after your finances and property for you based on your instructions. This could include the power to manage your land, house, bank accounts, investments, vehicles and anything else you own, paying your bills, filing your tax returns, cashing your cheques, and making other legal or financial decisions. A power of attorney does not deal with health or personal care decisions.

Giving someone power of attorney doesn't limit you from making your own decisions — you still have control of your financial affairs and are free to deal with your property, money and investments, as long as you have capacity to understand and appreciate the consequences of making those decisions.

Supporter: Supporters is a general term used in the POA-E App to include spouses, parents and other family members, friends, disability support workers, social workers. You can name a supporter to receive notice from your attorney when they begin to act under the power of attorney.

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