
LAKI VALTAKIRJASTA (POWER OF ATTORNEY ACT)

2 osa – Edunvalvontavaltuus

1 luku – Määritelmät ja kykenevyysolettama

Määritelmät

10. Tässä osassa ja 3 osassa tarkoitetaan

'aikuisella' henkilöä, joka on vähintään 19-vuotias;

'valtuutetulla' henkilöä,

a) jolla on edunvalvontavaltuutuksen nojalla oikeus toimia valtuutettuna ja

b) joka on allekirjoittanut 17 §:n mukaisen edunvalvontavaltuutuksen;

'tuomioistuimella' Supreme Court of British Columbiaa [Brittiläisen Kolumbian ylin tuomioistuin];

'edunvalvontavaltuutuksella' valtakirjaa,

a) jolla aikuinen valtuuttaa valtuutetun

i) tekemään puolestaan päätöksiä tai

ii) tekemään tiettyjä asioita,

joitka koskevat aikuisen raha-asioita, ja

b) joka on voimassa niin kauan kuin aikuinen on kykenemätön

huolehtimaan asioistaan, tai joka tulee voimaan, kun aikuinen ei enää

kykene huolehtimaan asioistaan;

Luku 3 – Valtuutetut

Kuka voi toimia valtuutettuna

18. 1) Aikuinen voi nimetä yhden tai useamman seuraavista valtuutetuksi:

a) henkilö, joka

i) ei tarjoa aikuiselle korvausta vastaan hoiva- tai hoitopalveluja;

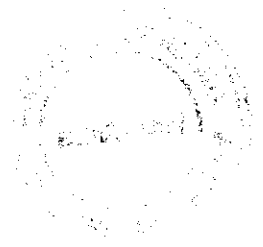
ii) ei ole työntekijänä laitoksessa, jossa aikuinen asuu ja jonka

kautta aikuinen saa hoiva- tai hoitopalveluja;

b) virallinen edunvalvoja (*Public Guardian and Trustee*)

c) rahoituslaitos, joka on oikeutettu harjoittamaan sijoitusrahastotoimintaa rahoituslaitoksista annetun lain (*Financial Institutions Act*) mukaisesti.

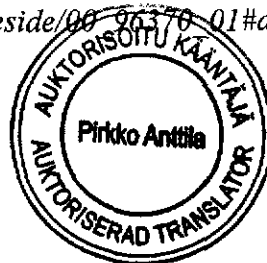
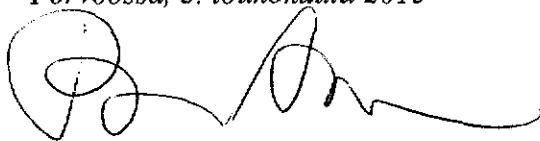




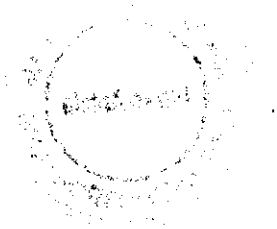
- 2) Edellä 1 momentin a kohdasta huolimatta 1 momentin a kohdan i tai ii alakohdassa tarkoitettu henkilö, joka on aikuisen lapsi, vanhempi tai puoliso, voidaan nimetä valtuutetuksi.
- 3) Jos valtuutetuksi nimetään henkilö, joka ei ole aikuinen, hän saa toimia valtuutettuna vasta aikuiseksi tultuaan.
- 4) Aikuinen joka nimeää useamman kuin yhden valtuutetun, voi määrätä
- a) kullekin heistä eri valtuutusalueen tai
 - b) kaikille saman valtuutusalueen tai osan samasta valtuutusalueesta.
- 5) Jos koko valtuutusalue tai osa samasta valtuutusalueesta on määrätty useammalle kuin yhdelle valtuutetulle, näiden on oltava yksimielisiä valtuuksia käyttäessään, ellei aikuinen edunvalvontavaltuutuksessa tee jotakin tai kaikkia seuraavista:
- a) määrittelee olosuhteet, joissa valtuutettujen ei tarvitse olla yksimielisiä;
 - b) määrittelee, miten valtuutettujen väliset ristiriidat ratkaistaan;
 - c) valtuuttaa valtuutetun toimimaan vain varavaltuutettuna ja
 - i) määrittelee olosuhteet, joissa varavaltuutetulla on oikeus toimia valtuutetun sijasta; esimerkiksi silloin, kun valtuutettu ei halua hoitaa tehtävänsä, kuolee tai tulee muusta syystä estyneeksi hoitamaan tehtävänsä, ja
 - ii) asettaa mahdollisesti rajoja tai ehtoja sille, miten varavaltuutettu voi käyttää valtuuksiaan.

Englanninkielisestä, oheen liitetystä asiakirjan osasta (2 osan 1 ja 3 luku asiakirjasta Power of Attorney Act, Brittiläinen Kolumbia, Kanada, ks. http://www.bclaws.ca/Recon/document/ID/freeside/00-96376-01#division_d2e1194) tehdyn otteittaisen suomennoksen vakuudeksi

Porvoossa, 3. toukokuuta 2015



Auktorisoitu kääntäjä (Laki 2007/1231)



Teksti sivulta

http://www.bclaws.ca/Recon/document/ID/freeside/00_96370_01#division_d2e1194 (Part 2, Division 1 & Division 3)

POWER OF ATTORNEY ACT

Part 2 – Enduring Powers of Attorney

Division 1 – Definitions and Presumption of Capability

Definitions

10 In this Part and Part 3:

"**adult**" means an individual who is 19 years of age or older;

"**attorney**" means a person who

- (a) is authorized under an enduring power of attorney to act as an attorney, and
- (b) has signed the enduring power of attorney under section 17;

"**court**" means the Supreme Court of British Columbia;

"**enduring power of attorney**" means a power of attorney

(a) in which an adult authorizes an attorney to

- (i) make decisions on behalf of the adult, or
- (ii) do certain things

in relation to the adult's financial affairs, and

(b) that continues to have effect while, or comes into effect when, the adult is incapable;

~~"**financial affairs**" includes an adult's business and property, and the conduct of the adult's legal affairs;~~

~~"**health care**" has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;~~

~~"**health care provider**" means a person who is licensed, certified or registered under a prescribed Act to provide health care;~~

~~"**near relative**" means an adult child, a parent, a grandparent, an adult brother or sister or any other adult relation by birth or adoption;~~

~~"**personal care**" includes the following matters in respect of an adult:~~

- ~~(a) diet, dress and hygiene;~~
- ~~(b) health related activities, including medication;~~
- ~~(c) social, recreational, employment and educational activities;~~



~~(d) shelter, including admission to a care facility under the *Health Care (Consent) and Care Facility (Admission) Act*;~~

~~"qualified health care provider" means a medical practitioner or a member of a prescribed class of health care providers;~~

~~"spouse" means a person who~~

~~(a) is married to another person and is not living separate and apart, within the meaning of the *Divorce Act (Canada)*, from the other person,~~
~~or~~

~~(b) is living with another person in a marriage-like relationship.~~

~~Adults presumed to be capable~~

~~11 (1) Until the contrary is demonstrated, an adult is presumed to be capable of~~

~~(a) making decisions about the adult's financial affairs, and~~

~~(b) understanding the nature and consequences of making, changing or revoking an enduring power of attorney.~~

~~(2) An adult's way of communicating with others is not grounds for deciding that the adult is incapable of making the decisions or having the understanding referred to in subsection (1).~~

Division 3 — Attorneys

Who may act as attorney

18 (1) An adult may name one or more of the following persons as an attorney:

(a) an individual, other than an individual who

(i) provides personal care or health care services to the adult for compensation, or

(ii) is an employee of a facility in which the adult resides and through which the adult receives personal care or health care services;

(b) the Public Guardian and Trustee;

(c) a financial institution authorized to carry on trust business under the *Financial Institutions Act*.

(2) Despite subsection (1) (a), an individual described in subsection (1) (a) (i) or (ii) who is a child, parent or spouse of the adult may be named as an attorney.

(3) If an individual who is not an adult is named as an attorney, the individual must not act as attorney until that individual is an adult.

(4) An adult who names more than one attorney may assign to each of them

(a) a different area of authority, or

(b) all or part of the same area of authority.

(5) If all or part of the same area of authority is assigned to more than one attorney, the attorneys must act unanimously in exercising the authority, unless the adult does one or more of the following in the enduring power of attorney:

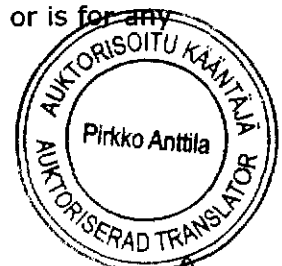
(a) describes the circumstances in which the attorneys need not act unanimously;

(b) sets out how a conflict between attorneys is to be resolved;

(c) authorizes an attorney to act only as an alternate attorney and sets out

(i) the circumstances in which the alternate is authorized to act in place of the attorney, including, for example, if the attorney is unwilling to act, dies or is for any

other reason unable to act, and



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(ii) the limits or conditions, if any, on the exercise of authority by the alternate.

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.~~



- (5) An attorney may, in an instrument other than a will,
(a) change a beneficiary designation made by the adult, if the court authorizes the change, or
(b) create a new beneficiary designation, if the designation is made in
(i) an instrument that is renewing, replacing or converting a similar instrument made by the adult, while capable, and the newly designated beneficiary is the same beneficiary that was designated in the similar instrument, or
(ii) a new instrument that is not renewing, replacing or converting a similar instrument made by the adult, while capable, and the newly designated beneficiary is the adult's estate.
- (6) Subject to subsection (7), a person having custody or control of property belonging to an adult must deliver the property promptly, on request of the adult's attorney, to the attorney.
- (7) A person must not deliver, to an adult's attorney, a will made by the adult if the adult has given instructions to a lawyer or notary public who holds the adult's will, or the will contains instructions, prohibiting delivery of the will to the attorney.

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.

Liability of attorney

~~22~~ An attorney who acts in the course of the attorney's duties is not liable for any loss or damage to the adult's financial affairs if the attorney complies with
(a) the duties of the attorney as set out in section 19 and the enduring power of attorney,
(b) any directions of the court given under section 36 (1) (a), and
(c) any other duty that may be imposed by law.

No delegation by attorney

~~23~~ (1) Unless the enduring power of attorney states otherwise, an attorney must not delegate any decision-making authority given to the attorney in an enduring power of attorney.
(2) Despite subsection (1), unless the enduring power of attorney states otherwise, an attorney may delegate all or part of the attorney's authority in relation to investment matters to a qualified investment specialist, including a mutual fund manager, if done in accordance with,
(a) if the attorney is the Public Guardian and Trustee, the *Public Guardian and Trustee Act*, or
(b) in any other case, section 15.5 of the *Trustee Act*.

Payment and expenses of attorney

~~24~~ (1) An attorney must not be compensated for acting as an adult's attorney unless the enduring power of attorney expressly authorizes the compensation and sets the amount or rate.
(2) An attorney may be reimbursed from an adult's property for reasonable expenses properly incurred in acting as the adult's attorney.



Resignation of attorney

~~25 (1) In this section, "close friend", in respect of an adult who has made an enduring power of attorney, means another adult who has a long-term, close personal relationship involving frequent personal contact with the adult, but does not include a person who receives compensation for providing personal care or health care to the adult.~~

~~(2) An attorney may resign by giving written notice to the adult and any other attorneys named in the enduring power of attorney.~~

~~(3) In addition to the persons referred to in subsection (2), if the adult is incapable of making decisions at the time the attorney resigns, the attorney must give written notice of the resignation to a spouse, near relative or, if known to the attorney, close friend of the adult.~~

~~(4) The resignation of an attorney is effective~~

~~(a) when notice has been given under this section, or~~

~~(b) on a later date specified in the notice.~~

