

PUBLICATION

Road Testing Your Incapacity Plan

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Since our offices closed and we started working remotely, I haven't been driving very often. Now that Alberta is into its phased re-opening I'm driving more frequently, and my car is now telling me it needs an oil change. This got me thinking about what other maintenance I need for a longer road trip starting with an oil change, an alignment, and a thorough cleaning...

I also started to think about what I might need to have in place should I catch COVID. Thankfully our hospitalization and ICU numbers remain low, so I guess there is room for me if needed. But what would happen if I need a ventilator or require an induced coma?

Fortunately, I have planned for incapacity. Have you?

To plan for incapacity, you need to plan for medical and financial incapacity. A financial incapacity plan involves preparing an Enduring Power of Attorney ("EPA") whereby you are the Donor and you appoint an Attorney who is authorized to handle your financial affairs during your incapacity. Planning for medical incapacity involves preparing a Personal Directive ("PD") whereby you (the Maker) appoint an Agent who is authorized to make medical and other personal decisions during your incapacity.

Even if you do have an EPA or PD, it may be time to "check the oil" and make sure fluid levels are still correct. Some things to consider when reviewing your documents include:

1. Are the appointed Attorney and Agent alive, capable and willing to act? Are they still the appropriate person for the role? Are they still Canadian residents? Will family dynamics get in the way?
2. Are your EPA and PD properly executed in such a way that they meet the official requirements under the Powers of Attorney Act and Personal Directives Act?
3. Does your EPA contain the appropriate language so that it's effective after a loss of capacity?
4. Is your EPA consistent with your Will? If you have updated one but not the other, they should both be reviewed.

5. Will your EPA and PD be effective in other provincial or international jurisdictions that you may travel to, or own property in?
6. Does your appointed Attorney and Agent have access (or even know where) your original EPA and PD are stored?
7. Have you considered what your lawyer might need from you, your Attorney or your Agent in order to release documents?
8. Have you considered the kind of advice your Attorney and Agent may require to get started on the right foot and avoid mistakes?
9. How will your Attorney find all the information they need about your financial assets? Do they know who your advisors are? If you cannot share this information with the Attorney now but still believe they are the right person for the job, who can you share it with?
10. Does your Agent know your beliefs and values so they can make the best decisions about your wishes for medical treatment, where you might live, and who you might live with? Do you have any religious or other considerations to communicate to your Agent?

Until mid-August of 2020, you can work with a lawyer to have your documents remotely signed with your witnesses by video conference, under a temporary government order. We've outlined [the details here](#).

Our [Wills, Trusts and Estates team](#) helps people put their incapacity plan in place, or review their existing plan. We recommend every Albertan have an EPA or PD in place. If you have questions about your will, estate and personal planning, we can help. Call us to speak to one of our Wills, Trusts and Estates lawyers — we're here to assist you.

Stay well!