



Representation Agreement Basics – Health and Personal Care during Incapacity**

Estate planning is about putting a plan in place now for the ‘who, what and how’ of taking care of things when we die or if we become incapable of managing our own finances or making our own health care decisions. With a few basic legal documents, we create a roadmap and give the people we choose legal authority to act when they are needed.

What is a Representation Agreement?

A Representation Agreement is the main legal document in BC for dealing with health and personal care decisions. It gives the person you name, called the **representative**, the power to make decisions for you about health care and personal care if you are no longer capable of making those decisions for yourself. There are formal requirements that need to be met for a Representation Agreement to be valid.

Representation Agreements often include language people think of as ‘living will’ language to express their wishes about end of life and to let loved ones know at what point they do not want heroic measures taken to prolong life. A living will is not a legal document in BC (but it is a valid expression of wishes), but a Representation Agreement is.

Are there different kinds of Representation Agreements?

Yes, but the distinction can be confusing for people who are not lawyers.

“Section 9” Representation Agreements – For most people who are fully mentally capable, and who can make a separate Power of Attorney document for their finances, this is the type of Representation Agreement they will make. This type of Representation Agreement can contain the broadest powers over health and personal care, including the ability to refuse life sustaining treatment.

“Section 7” Representation Agreements – Even if a person does not have full mental capacity to make a Section 9 Representation Agreement, or the full capacity to make a Power of Attorney for their finances, they may be capable of making a Section 7 Representation Agreement. This type of Representation Agreement has somewhat more limited powers, but can also include the ability to carry out ‘routine management of financial affairs’.

What decisions do I need to make?

The main decision you need to make is **who** to name as your representative. There should be at least one primary representative and one or more alternate representatives.

- Technically, this can be anyone over 19 *except it cannot be* a person who provides you with personal care or health care for compensation (unless they are your child, parent or spouse) or who is an employee of a facility where you reside and through which you receive personal care or health care services. It can also be the Public Guardian and Trustee.

- You can choose to have more than one representative, in which case they can either share the same areas of authority (acting unanimously unless you say otherwise) or have different areas of authority. The risk of co-representatives is that there will be disagreement and impasse.
- Most people who have a spouse choose their spouse to be their primary representative. They may choose adult child(ren), siblings, other family members or close friends as the alternate. This is a very personal decision.

The second set of decisions is **what powers** to give the representative. Practically speaking, a draft Representation Agreement will usually contain the broadest range of powers – and you can choose to remove powers that you disagree with. A few powers that are typically found in a draft Representation Agreement are:

- To give or refuse consent to health care, including health care necessary to preserve life
- To decide where the adult is to live and with whom, including whether the adult should live in a care facility
- To decide whether the adult should have contact with or associate with another person (for example, to protect the adult from predatory people who target widows and widowers)
- There are some decisions a substitute decision-maker can only make if the power to do so is explicitly listed in a Representation Agreement (for example, the decision to try experimental health care)

An adult may want to include **express wishes** for the representative to follow, such as wishes about end of life (this is where the “living will” type of language comes in). There is a set of language that is commonly used about end of life – which sets out when heroic measures are no longer to be taken, and that medication is to be administered for pain even if it may hasten death – but these express wishes can and should be as personal as you want to make them.

When does a Representation Agreement come into effect?

There are different approaches to this. The default in the Representation Agreements I make with clients is that the agreement will be valid when it is signed by the person and their representative, but it will not come into effect to be used by the representative until 2 doctors, one of whom is the family physician or a treating physician, give the opinion that the adult is no longer capable of making one or more major health care decisions. This reflects the underlying principle that a person has the right to make their own health care decisions as long as they are capable of doing so.

What if I don't have a Representation Agreement?

Without a Representation Agreement, you must rely on the background law in the *Health Care (Consent) and Care Facility (Admission) Act* (the “Act”) or other statutes. If a person is incapable of making their own health care decisions, the Act directs health care providers to obtain consent for major and minor health care from a substitute decision maker, and sets out the order of priority for who can be the substitute decision makers: first spouse, then adult child, then parent, then brother or sister, then grandparent, then grandchild, then anyone else related by birth or adoption, then a close friend, then a person immediately related by marriage. The powers of a substitute decision maker are more limited than those of a representative.

**** Of course, this handout is provided for information only, and is not legal advice. Proper advice, specific to your situation, should be sought from a lawyer.**