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POWERS OF ATTORNEY

IT'S FOR YOU TO DECIDE



Most Common
Questions Answered

What is a Power of Attorney?

A Power of Attorney is a document where you appoint another person to act on your behalf. The person who is appointed is called the “attorney”. The person you appoint does not have to be a lawyer.

Under the Substitute Decisions Act, there are two kinds of Powers of Attorney in Ontario: the first is a Continuing Power of Attorney for Property which deals with property and finances. It is different from other types of powers of attorney because it allows a person to act on your behalf if you become mentally incapable. A Power of Attorney which is not a Continuing Power of Attorney is automatically revoked if the grantor becomes mentally incompetent.

The second type is a Power of Attorney for Personal Care which deals with your personal care and health decisions. The Power of Attorney for Personal Care comes into effect only when a person is declared mentally incapable of making their own personal care decisions.



Why do I need a Power of Attorney?

By making a Power of Attorney, you can be confident that your wishes will be carried out if you are declared mentally incapable. By planning ahead, you will have protected yourself in the event of an accident or unforeseen illness. The role of Ontario's Public Guardian and Trustee is to act as a substitute decision-maker of last resort for people who have no one else to make decisions on their behalf. If there is no Power of Attorney, a family member or friend may apply to be appointed as guardian.

MANY PEOPLE BELIEVE THAT BEING MENTALLY INCAPACITATED IS AN ISSUE THAT ONLY CONCERNS THE ELDERLY, THE TERMINALLY ILL, OR A PATIENT BEFORE SURGERY.

Not true. Anyone can be injured or affected by illness at any time of their life.

What does "mentally incapable" mean?

Under the Act, "mentally incapable" is defined as a person who cannot understand information relevant to making a decision, or cannot understand the consequences of a decision. This incapacity could be caused by an accident or illness. Mental incapacity can be a temporary or permanent condition.

I'm young and healthy – why worry about a Power of Attorney?

It's never too early to plan for the future. The office of the Public Guardian and Trustee encourages anyone over the age of 18 to establish a Power of Attorney for Property and anyone over the age of 16 to create one for personal care.

What if I become mentally incapable of making my own decisions?

The person you choose as your attorney will be able to take care of such things as paying your bills and taxes, maintaining your bank accounts, real estate and investments, or make decisions about your health care, nutrition, shelter or medical treatment for you. You can choose anyone you want as your attorney – a relative, a friend or someone else – as long as he or she is at least 18 years old.

How do I choose an attorney?

Your attorney should be someone you know well, that you can trust completely and has good judgment. They should have the skills to be able to manage your finances and property. You should ask that person whether he or she is willing to be your attorney and discuss what the responsibilities will be and how you want your affairs handled. Before you decide, you may want to talk to your family and close friends, your financial planner or other trusted advisors, providing they are impartial and concerned only with your best interests.

Can I name more than one attorney?

If you want more than one person involved in your financial decisions, you can name more than one person to be your attorney. However, you are not required to do so. If you do name two people to be your attorneys, the law says they must make all decisions together, unless you state that they may make decisions “jointly and severally” meaning “together and separately”. If it is your choice that two attorneys always act together in all decisions, for a “double-check”, it is a good idea to specify how disagreements get resolved.

On the other hand, you may decide to name only one attorney if you're concerned about the possibility of disagreements or you believe it may be difficult for others to deal with more than one person concerning your finances. You could name one person as your attorney and another person as your substitute, or backup, who could step in if your first choice resigns, gets sick or dies.

What are the responsibilities of the attorney?

THE ATTORNEY'S RESPONSIBILITY IS TO ACT IN YOUR BEST INTERESTS, AND IN ACCORDANCE WITH THE LAW, IN MANAGING YOUR AFFAIRS WHILE YOU ARE UNABLE TO ACT FOR YOURSELF.

Your attorney is accountable to you and should keep accurate and detailed records of transactions and decisions made on your behalf.



Can I put conditions or restrictions on my attorney's authority concerning my property or finances?

YES. A Continuing Power of Attorney can be very specific. However, you don't want the power too narrow because it may turn out that your attorney lacks the authority to do something that is necessary in order to carry out your wishes. On the other hand, if you make it too broad, the risk is that your attorney may do something that you had not planned on.

What about instructions, restrictions or conditions on personal care or medical treatment?

You may be familiar with the idea of a "living will" in which a person may decline certain treatment, such as artificial life support or other "heroic measures" in the event of a terminal illness. There is one type of instruction that you can make. You may want your attorney to keep you in your own home as long as possible, or you may want to ensure your attorney observes your religious beliefs when making decisions. You can be very specific in your instructions or give your attorney general guidelines to follow. You are not required to give instructions – and if you don't, your attorney must make decisions according to what he or she believes is in your best interests at the time. Remember, your attorney cannot be required to do something which is against the law.

I'm convinced! What do I do now?

Complete our Powers of Attorney Questionnaire and send it to our office. We will then prepare draft documents for your review and approval. Once you are satisfied that your requirements have been met, we will invite you to attend at our office to sign four copies of each Power of Attorney and have them properly witnessed.



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This document is provided for information only and is not intended to be construed as advice.



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