

Powers of Attorney

A Power of Attorney for Property may save substantial time and money in the event of incapacity or an extended time away from home and is relatively inexpensive. A Power of Attorney for Property is a simple written document that allows someone else financial management of some or all of your property while alive. It can become effective now and continuously, for a limited time, or only in the event of incapacity, can be limited to only dealing with certain assets and should provide for an alternate attorney. A bank power of attorney only deals with assets at that institution. Most people should take this simple precaution in this very complex and hurried environment in which we live. Failure to have a Power of Attorney for Property could result in a costly court application to administer your affairs. You can protect yourself by requiring that two people act together as your attorney. You do not want the Ontario Public Guardian and Trustee in your affairs. If you have an old power of attorney completed under the Power of Attorney Act, you do not need a new one unless you are changing the attorney or the alternate.

Any mentally capable person over 18 years of age may grant such power to a person over the age of 18 years. The Substitute Decisions Act mandates that the attorney appointed acts diligently with honesty, integrity and good faith. Compensation is payable to the attorney at rates specified in the Substitute Decisions Act unless prohibited in the Power of Attorney but a higher duty of care is imposed when compensation is payable. Your attorney cannot, however, make or change a will for you and sign it. Your property still belongs to you but it is managed by your attorney. This document does not allow your attorney to make decisions concerning personal care.

A Power of Attorney for Personal Care is sometimes referred to as a Living Will. It is a relatively new legal document statutorily provided for under the Substitute Decisions Act. You may now designate a substitute decision maker(s) to make decisions for you relative to your continuing medical, dietary, housing, clothing, safety, hygiene or health needs in the event of your incapacity. This Power of Attorney is not valid until the person granting the power is mentally incapable of making his/her own decisions relative to personal care.

In the Power of Attorney for Personal Care you may:

- express a wish that you not be kept alive through heroic measures if there is no reasonable prospect of a satisfactory quality of life;
- what steps should be taken to preserve life;
- give authority to consent to or refuse treatment;
- where you want to live, what food or medicine you will take;
- under what conditions you would consent to certain kinds of medical treatment;
- the quality of health care you want to receive;

The substitute decision maker (attorney) must follow your wishes as expressed in the Power of Attorney or, if the attorney thinks you might have changed your mind, such person can apply to the Consent and Capacity Board.

To sign a Power of Attorney you must be at least 16 years of age and have the mental capacity to understand the nature of this grant. The best advice concerning such a document comes from an impartial professional. The word attorney in this context does not mean lawyer. The person you appoint should be someone you know well, whom you trust completely with your personal decisions and be at least 16 years of age. You may not appoint someone who provides you with “health care or residential, social, training or support services for compensation” unless that person is your spouse, partner or relative.

It is important to realize that the attorney appointed can only make decisions that you are unable to make. The law requires that your attorney follow your instructions unless it is impossible for such person to do so. If you do not put in special instructions, your attorney then must make decisions according to what he or she believes to be in your best interest at the time. This document does not allow your attorney to make financial decisions concerning your property, except inferentially, by deciding on your care.

It is wise to appoint an alternate or back up person in case the primary designate, for any reason, does not make a decision. You do not want to have to go back to the lawyer to prepare another document (and fee) when it can be dealt with easily in the first place.

You have the right to revoke (cancel) either type of Power of Attorney at any time as long as you are capable, but such revocation must be in writing with two witnesses.