

Power of Attorney ~ Property

Many Canadians are concerned about how to manage their money, property, and finances as they age or as life changes take place. You may worry about what will happen if you become unable to deal with your own finances. It is a good idea to plan ahead for a time when you may need help managing your affairs.

An effective tool often used for managing financial and personal care is Powers of Attorney. It is important to know how a Power of Attorney works before you use one. There are risks and advantages. You should never feel pressured to sign a Power of Attorney. Carefully consider all of your options before making any decisions.

What is a Power of Attorney?

A Power of Attorney is a legal document that you sign to give a person the authority to manage your money and property on your behalf. In most of Canada, the person you appoint is called an "attorney." That person does not need to be a lawyer.

Mental Capacity

Among other requirements, you must be mentally capable at the time you sign any type of Power of Attorney for it to be valid. In general, to be mentally capable means that you are able to understand and appreciate financial and legal decisions and understand the consequences of making these decisions. However, the legal definition of mental capacity will vary based on the laws in each province or territory.

What types of Powers of Attorney are used in Canada?

The names and requirements for the different types of Powers of Attorney that deal with finances and property will vary depending on the province or territory where you live.

Generally, there are two main types of Powers of Attorney commonly used for finances and property in Canada.

A **general** Power of Attorney is a legal document that can give your attorney authority over all or some of your finances and property. It allows your attorney to manage your finances and property on your behalf only while you are mentally capable of managing your own affairs. It ends if you become mentally incapable of managing your own affairs.

A general Power of Attorney can be "specific" or "limited", which can give authority to your attorney for a limited task (e.g. sell a house while you are out of the country) or give them authority for a specific period of time. The Power of Attorney can start as soon as you sign it, or it can start on a specific date that you write in the document.

Continued on page 2.

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An **enduring or continuing Power of Attorney** lets your attorney continue acting for you if you become mentally incapable of managing your finances and property. It can also give your attorney authority over all or some of your finances and property. It can take effect as soon as you sign it. In some cases, it is possible to have the Power of Attorney come into effect only when you become mentally incapable, if this was specified in the document.

What can my attorney do?

Unless you limit your attorney's authority, they can do almost everything with your finances and property that you could do. If you don't have any limitations in your Power of Attorney document, your attorney can do your banking, sign cheques, buy or sell real estate in your name, and buy consumer goods. Your attorney does not become the owner of any of your money or property. He or she only has the authority to manage it on your behalf.

- make a Will for you,
- change your existing Will,
- change a beneficiary on a life insurance plan, or
- give a new Power of Attorney to someone else on your behalf.

Can I still make decisions for myself if I grant someone a Power of Attorney?

As long as you are mentally capable, you can continue to make your own decisions about your finances.

Understand the laws where you live

Each province and territory has its own laws relating to Powers of Attorney. You need to follow the law in the province or territory where you live.

Please consult a lawyer when entering into a Power of Attorney to be sure that your document is valid, and to fully understand what your attorney will be able to do.

It is important that you learn how you or others can monitor your attorney's actions, and what to do if you want to change or cancel the Power of Attorney.

Be sure that you fully understand any document before you sign it.

Can my attorney make decisions about my healthcare and personal care?

In most parts of Canada, it is possible to prepare documents that give another person the authority to make health and other types of personal and non-financial decisions for you, if you were to become mentally incapable of doing so for yourself.

Depending on where you live, these documents may be called Powers of Attorney, personal or health directives, representation agreements, or mandates. These documents are not the same as Powers of Attorney for finances and property. It is important to be clear about what type of document you are signing.

Continued on page 3.

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What are the advantages and risks of having a Power of Attorney?

- Makes it clear who will be responsible for your money and property if you can't manage them on your own, even temporarily.
- Your attorney must manage your money and property for your benefit and can be required by law to account for and explain how he or she is managing it.
- Flexible - Can be as general or specific as you need.
- You can choose to appoint two or more attorneys. You can require that your attorneys make all decisions together ("jointly"), or to act together or separately, if one of them is unavailable ("jointly and severally"). You can also appoint alternate or successive attorneys.
- Having two or more attorneys could reduce potential fraudulent use of a Power of Attorney.
- Convenience - A general Power of Attorney allows your attorney to look after your affairs if you are away temporarily or if you need help managing your affairs.
- An enduring Power of Attorney allows your attorney to continue looking after your affairs if you lose your mental capacity.
- If you lose your mental capacity and do not have a valid Power of Attorney document in place, someone will need to get authority from the court to manage your money and property. This can be time consuming and expensive.

Risks - May make you vulnerable to financial abuse

- Can lead to mismanagement of your money and property if the attorney you choose is not trustworthy, uses your money improperly, or does not make decisions that are in your best interest.
- Too directive or not specific enough
 - Not enough information or limitations in the document could lead to the mismanagement of your finances or to your finances being managed in a way that you do not agree with.
 - Your attorney must manage your affairs in the way that you direct in the document. Strict limitations can make it difficult for your attorney to take care of your finances.
 - If you appoint more than one attorney to act jointly, disagreements between them could cause problems and lead to delays in the management of your financial affairs.
- Not up-to-date
 - If not reviewed regularly, your Power of Attorney document might not meet your current needs or the requirements of the law.
 - The person you previously selected to be your attorney may no longer be the best choice or may no longer be available.
 - Possibility of "competing" Powers of Attorney if you have signed more than one Power of Attorney document. If you appoint a new attorney, you should cancel your previous Power of Attorney document and advise your financial institution of the change.

Choosing an attorney

Ask someone you trust. You may choose your spouse, a close friend, a family member or anyone else that you trust. Carefully consider whether they are the best choice to manage your money and property, and do so in your best interest.

Continued on page 4.

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The minimum legal age for an attorney varies according to the province or territory where you live. The person you ask to be your attorney can refuse to act for you, so it is important to ask the person first if they are willing to take on this responsibility and everything that it entails.

Also consider appointing a substitute attorney in case the first attorney can no longer act for you.

Do I have to pay my attorney?

In some provinces, unless you state otherwise in the Power of Attorney, a person appointed under a continuing Power of Attorney may have a right to be paid. Before you sign any documents, it is a good idea to have a conversation with the person you choose as your attorney regarding compensation for their work. You should include this information in your Power of Attorney document.

You may also consider appointing a trust company or a legal or financial professional with the skills to manage finances and property. You will pay fees for this service. Also, these options may only be available to you if your property is over a certain value.

What are my attorney's legal responsibilities?

The attorney's role carries many legal responsibilities. Your attorney must comply with the legal duties and responsibilities of attorneys in the province or territory where you live. Your attorney must manage your finances and property, and keep records, according to any directions you have given in your Power of Attorney document. They must act in your best interest. However, there is always a risk that they may not do so, which is why it is important to name someone that you can really trust and that understands the legal responsibilities they will be taking on.

What to consider when choosing an attorney

Personal Suitability

- Does this person know how to manage money and property? Do they do it well for themselves?
- Do you think this person will manage your money and property in the way that you want and in your best interest?
- **Trustworthiness**
 - Has this person always been open and honest with you?
 - Have you known this person long enough or well enough to feel that you can trust them?
 - Is this person able to act in your best interest?
 - Do they have any personal issues (e.g. financial problems or health concerns) that may interfere with them properly managing your finances?
- **Experience**
 - Does this person understand financial matters?
 - Does this person understand the duties and responsibilities involved in being your attorney?

Continued on page 5.

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- **Availability**

- Does the person have the time to handle your money and property as well as their own?
- Does this person live nearby and is he or she easy to contact and readily available?

- **Reliability**

- Has this person been someone you could rely on?
- Has this person carried through on important decisions or duties in the past?

- **Willingness**

- Has this person agreed to take on the responsibility?
- Does this person clearly understand what is expected of them as your attorney?

What to consider before preparing a Power of Attorney

- Understand how the different types of Powers of Attorney work, and decide what type will best suit your needs.
- Decide when you want the Power of Attorney to start.
- Find out how the Power of Attorney can come to an end, how you can cancel or change the Power of Attorney, and what happens if you or your attorney were to lose mental capacity or pass away. These answers may vary depending on where you live.
- Make sure the person you choose is someone that you can trust to manage your money and property in the way that you want.
- Make sure your attorney understands, or is willing to learn, his or her legal responsibilities and duties.
- Decide whether you want to give your attorney authority over some or all of your financial matters (including bank accounts), and whether it will be for general or specific purposes.
- Decide whether you want regular updates (e.g. account statements) from your attorney sent to you, or a person you name, to check that your affairs are being properly managed.
- If you use a Power of Attorney kit or forms from a website to set up your Power of Attorney, you need to be sure the form is signed in compliance with the law in your province or territory.
- Consider having a lawyer review the document to make sure that it is valid.
- Decide whether you want to appoint one or more persons, and whether they can act alone or must act together.
- If you appoint more than one attorney, and they must act together, consider appointing a third person or including a mechanism to resolve disputes if the attorneys can't agree.
- Consider appointing a substitute attorney in case your attorney is no longer able to act for you.

What to consider after you prepared a Power of Attorney

- Review the terms of your Power of Attorney regularly to make sure it is still valid and still reflects how you want your money and property managed.
- You can make changes to your Power of Attorney, cancel your Power of Attorney, change your attorney, or name more than one attorney, at any time, as long as you are mentally capable. If you make any changes, you should advise your financial institution immediately.

Continued on page 6.

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- Continue to review your own financial records on a regular basis for as long as you can.
- Assigning a Power of Attorney does not prevent you from continuing to manage some or all of your affairs, as long as you are mentally capable.
- Talk to your attorney regularly so that you can understand how they are handling your money and property.
- Even though your attorney is taking care of things for you, you always have the right to ask questions and get answers from them about your money and property.
- If you have questions or concerns about how your attorney is managing your affairs, you can speak to someone at your financial institution or seek legal advice. Attorneys can be held responsible if they fail to manage affairs as directed in a Power of Attorney document.
- Understand that signing a new Power of Attorney, including one signed at a bank, may cancel the previous one that you had signed.
- If you move or will need to use the Power of Attorney in another province, territory, or country, get legal advice to be sure the document will be recognized. It may be necessary for you to make a new document for certain assets.

What if my bank wants me to sign a Power of Attorney form?

Banks, credit unions and other financial institutions may also have their own forms to appoint an attorney to make decisions about a specific account or property that you have with that institution.

If you already have your own Power of Attorney that gives your attorney authority over all of your financial affairs, including accounts with that financial institution, it likely isn't necessary for you to sign the bank's form.

Before you decide whether or not you want to sign the bank's form, you may want to review it with your lawyer or with another person whose opinion you trust. You can also show your own Power of Attorney to the bank manager or a knowledgeable bank representative and ask them to confirm that it can be used for banking purposes. If you sign the bank's form, there is a possibility that your other Power of Attorney could become invalid.

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