



Powers of Attorney

This booklet contains forms for
Continuing Power of Attorney for Property
and
Power of Attorney for Personal Care

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Ce document, intitulé “Les procurations”, est également disponible en français. Pour en obtenir un exemplaire, veuillez écrire à l’adresse suivante:

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Ontario's Power of Attorney Laws

This booklet contains instructions and forms for a Continuing Power of Attorney for Property and a Power of Attorney for Personal Care.

By making powers of attorney, people can plan ahead and be confident that their plans will be carried out.

The role of government is to act as substitute decision-maker of last resort only for people who have no one else to make decisions on their behalf. A person appointed under a Continuing Power of Attorney or a Power of Attorney for Personal Care will have first right to act as substitute decision-maker. If there is no power of attorney a family member or friend may apply to be appointed as guardian.

Powers of attorney which were properly made under previous laws of Ontario remain legally valid.

The forms for a Continuing Power of Attorney for Property and a Power of Attorney for Personal Care contained in this booklet were revised on March 29, 1996 in accordance with amendments to the Substitute Decisions Act, 1992 . Former versions of these forms may be used and will be valid if properly completed and witnessed.

If you have questions after reading the instructions, you may wish to seek advice from a legal professional.

NOT FOR SALE

Some Important Definitions

This list of definitions will help you understand some of the unfamiliar legal or technical terms.

Assessor

Assessors are persons who are authorized to conduct an assessment of a person's mental capacity for certain purposes such as appointing a guardian for property without going through the courts. They have appropriate professional backgrounds and have successfully completed a training course in capacity assessment. They are independent of the government.

Continuing Power of Attorney for Property

A Continuing Power of Attorney is a legal document in which a person gives someone else the legal authority to make decisions about their finances if they become unable to make those decisions themselves. The person who is named as the attorney does not have to be a lawyer. The power of attorney is called "continuing" because it can be used after the person who gave it is no longer mentally capable. Some people use the word "durable" which means the same as "continuing".

Guardian of Property

A guardian of property is someone who is appointed by the Public Guardian and Trustee or the Courts to look after an incapable person's property or finances. The person must be at least 18 years old. A guardian is different from an attorney; an attorney is chosen by the individual, before becoming incapable, to act on their behalf, while a guardian is appointed after incapacity. A guardian can be a statutory guardian or a guardian appointed by the court. If a valid power of attorney is in place, guardianship is not necessary.

Guardian of the Person

A Court may appoint a guardian of the person to make decisions on behalf of an incapable person in some or all areas of personal care in the absence of a power of attorney for personal care. The guardian must be at least 16 years old.

Incapacity

Under the Substitute Decisions Act, incapacity refers to mental incapacity. It means that the person is unable to understand information that is relevant to making a decision or is unable to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

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Partners

Two people who have lived together for at least one year and who have a close relationship which is of primary importance in both their lives are considered to be partners.

Personal Care

Personal care includes health care, nutrition, shelter, clothing, hygiene, and safety.

Power of Attorney for Personal Care

A Power of Attorney for Personal Care is a legal document in which one person gives another person the authority to make personal care decisions on their behalf if they become mentally incapable.

Property Management

The Act refers to decisions about property management and powers of attorney for property. It means finances. Finances include any type of financial decision or transaction that a person would make in the course of managing his or her income, spending, assets, and debts. For example, it could include budgeting expenses and paying bills, doing tax returns, safeguarding valuables, selling real estate, or making loans.

Public Guardian and Trustee

The Public Guardian and Trustee's role is to act as substitute decision-maker of last resort on behalf of those mentally incapable people who have no one who is willing or able to act on their behalf.

Statutory Guardian

A statutory guardian is a person who is appointed to act on another person's behalf without going to court. Statutory guardianship applies only to property or finances; there is no statutory guardianship for personal care. A statutory guardian can be the Public Guardian and Trustee (PGT) or someone approved by the PGT to replace the PGT as statutory guardian.

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Continuing Power of Attorney for Property

This booklet contains step by step instructions for completing the enclosed Continuing Power of Attorney for Property form.

(Made in accordance with the Substitute Decisions Act, 1992)

Decisions About Property

If you become mentally incapable, who will pay your bills and your taxes? Who will look after your bank accounts? Who will manage your real estate and investments? The person you choose as your “attorney” for property will take care of these things for you. (The word “attorney” does not mean “lawyer.”) The attorney can be a relative, friend, or someone else.

You may use the form contained in this booklet to appoint a person of your choice to make decisions about your **property** and manage your **finances** on your behalf. This may include doing things such as signing documents for you, paying your bills, or selling your home. This power of attorney will allow the person you appoint to manage your financial affairs even if you become mentally incapable. The person you appoint is called your “attorney for property.” You may name more than one attorney if you wish.

If you have already made a power of attorney for property that continues to be effective after you become mentally incapable, you do *not* need to make a new one.

If you wish, you may use another form or make your own, but if you do this, make sure that it meets the legal requirements necessary under the Substitute Decisions Act to make a valid continuing power of attorney.

It’s important to know that you are not required to appoint an attorney for property. This is **your** choice. Giving a power of attorney to someone is a very serious matter. You are giving the person you appoint significant power over your property. There is always a risk that your attorney could misuse this power. If you have any doubts about the motives or ability of the

person you are considering - or are under any pressure from your proposed attorney to pick him or her - do not appoint that person.

Before you decide, you may want to talk with your family or close friends. Although you are not required to consult a lawyer in order to make a legally binding power of attorney, it is a good idea to do so. Consulting with other expert advisors is also a good idea, providing they are impartial and concerned only with your best interests.

This document includes guidelines designed to help you complete this power of attorney. They do not cover every option available in the Substitute Decisions Act. They are not legal advice. Some legal terminology in the statute has been described here in simpler words to make it easier to understand.

The guidelines also point out some of the reasons why you may or may not wish to make certain choices. But remember, all decisions are up to you.

Refer to the enclosed Continuing Power of Attorney for Property form as you review the following instructions.

This form does not allow your attorney to make decisions about your personal care. If you wish to appoint an attorney for your personal decisions you can make a separate document called a “Power of Attorney for Personal Care.”

Part 1:

APPOINTING YOUR ATTORNEY

Read this section carefully before you begin to complete the power of attorney form.

To make a valid power of attorney, you must be 18 years of age or more and “mentally capable” of giving a continuing power of attorney for property.

This means that you:

- know what property you have and its approximate value;
- are aware of your obligations to those people who depend on you financially;
- know what authority your attorney will have;
- know that your attorney must account for all the decisions he or she makes about your property;
- know that, if you are capable, you may cancel your power of attorney;
- understand that unless your attorney manages the property prudently, its value may decline;
- understand that there is always the possibility that your attorney could misuse the authority.

Consider who you want to appoint as your attorney for property. You can choose anyone you want as your attorney as long as he or she is 18 years of age or more. Many trust companies are prepared to act as attorney and charge a fee for this service. Some individuals choose this option because they want an attorney who is professional and impartial.

Talk to the person you wish to appoint and make sure that he or she is willing to accept the responsibility involved in being your attorney for property.

It is important to know that by making this power of attorney, you revoke (cancel) any other continuing power of attorney for property that you have made before. If you *have* made such a power of attorney before and you *don't* want to revoke it, you should consult with a lawyer so that he or she will make the necessary changes to this form.

If you want more than one person involved in your financial decisions, you can name more than one person to be your attorney for property. But you are not required to do so. On the other hand, you may decide not to name more than one attorney if you're concerned about the possibility of disagreements or if you believe it may be difficult for others to deal with more than one person concerning your finances.

Please note that you cannot appoint the Public Guardian and Trustee (PGT) as your attorney for property unless the PGT agrees in advance in writing to act as attorney for you.

Once you have decided who you want to appoint as your attorney(s), write your name and the name of the person(s) you are appointing in the space provided in

Part 1 of the power of attorney form which follows page eight of these instructions.

Part 2:

JOINT OR SEPARATE ATTORNEYS

Fill out this part **only** if you have named more than one attorney and you want your attorneys to be able to make decisions separately, that is, without having to act together.

You can name more than one person as your attorney for property and/or personal care. If you do this, you may decide whether they will share the job or divide their responsibilities. Or, you could name one person as your attorney and another person as a substitute or backup who could step in if your first choice resigns, gets sick or dies.

If you have appointed more than one attorney in this form, the law will require them to make decisions together unless you specifically give them permission to act separately. You can give permission to act separately by writing it down in this part of the form. If you don't do this, your attorneys will be required to act together all the time.

There are some good reasons for giving your attorneys the flexibility to make decisions separately. Think, for example, about what would happen if one of your attorneys was temporarily unavailable because of sickness, vacation, or some other reason. If your attorneys are allowed to act separately, this will not be a problem.

On the other hand, you may decide not to give this permission if you want to ensure that there is always a "double-check" regarding the decision. You may also wish to avoid the risk of inconsistent decisions that may occur as a result of attorneys acting separately.

If you decide that your attorneys are going to make decisions together, it's a good idea to specify how disagreements get resolved. You might say that in a case of conflict, one attorney's decision will override the other's. Otherwise, your attorneys might have to go to Court and the judge will have to decide.

If you have named more than one attorney and you want them to be able to act separately from one another, write the words “jointly and severally” in the space provided in **Part 2** of the form. (“Jointly and severally” is a legal term which means “together and separately.”) If you don’t do this, your attorneys will be required to make your financial decisions together at all times.

Part 3:

SUBSTITUTE ATTORNEY

(This part is optional.)

It could happen that your appointed attorney may not be willing or able to act on your behalf when the time comes. Or something may happen after your attorney has begun to make decisions on your behalf that prevents him or her from continuing to act for you. In either case, you could be left with no one to manage your financial affairs. So you may wish to consider naming a substitute attorney.

This is especially important if you have named only one attorney. If you have named more than one attorney, there is less reason to be concerned because the remaining attorney can usually carry on if something happens to the other. You may still want to name a substitute, however, to replace the one who cannot act. There is no guarantee that something will not happen to your remaining attorney or you may feel strongly that there should always be more than one person involved in your financial decision-making.

Your substitute attorney will have the same authority and powers as the attorney he or she replaces.

If you choose to name more than one person to act as your substitute attorney, they would have to make decisions together unless you say otherwise by writing in the words “jointly and severally” after their names. (See **Part 2**)

To name a substitute attorney, complete **Part 3** of the enclosed power of attorney form.

Part 4:

AUTHORITY OF ATTORNEY(S)

This part of the form is very important. It tells your attorney, and people who deal with him or her, the types of financial decisions your attorney is allowed to make on your behalf.

This part of the form gives your attorney(s) the authority to make *any kind of financial decision that you could make yourself – except make a will*. If you wish to limit your attorney’s authority, you may do so later in **Part 5** of this form.

Part 4 of the form also states that the power of attorney may be used *even if* you become mentally incapable of making financial decisions. It makes it clear that you want the power of attorney to “continue” to be effective if this happens.

Part 5:

CONDITIONS AND RESTRICTIONS

(This part is optional)

The law permits you to limit your attorney’s authority. For example, you may limit your attorney to transactions concerning specific assets, such as your bank accounts, or prohibit him or her from dealing with a particular piece of property.

But think carefully before you limit the scope of your attorney’s authority. If you become incapable of making financial decisions and your attorney does not have full authority, it may be necessary for your attorney, a family member, friend or the Public Guardian and Trustee to be appointed as your guardian in order to manage the balance of your property. In that case, a management plan must be filed and security may be required.

Also, an *unlimited* continuing power of attorney automatically takes priority if the Public Guardian and Trustee (PGT) is appointed as statutory guardian of property. A limited continuing power of attorney does not take priority over the PGT and a legal application would be required to replace the PGT.

