

# Harnessing the Power of Attorney



If you were to become incapacitated through illness or accident, your spouse may not be able to help manage your financial or personal affairs without a power of attorney in place. In fact, in some cases, your spouse would have to apply to the courts to be appointed as guardian to your property; and the cost of going to court is far greater than setting up a power of attorney.

Part of a complete estate plan includes planning for possible mental incapacity or other inability to manage your financial affairs during your lifetime. As well, some provinces allow people to name an attorney to make personal care decisions if they become incapacitated.

In all cases, the “attorney” in the power of attorney does not need to be a lawyer; he or she could be any person over the age of 18.

## Types of Powers of Attorney

There are two types of Powers of Attorney for Property:

**General:** Means that the appointed person has the authority to manage your financial affairs.

**Limited:** Restricts the amount of control the person has. An example of a limited power of attorney is a bank Power of

Attorney, which could apply to your bank account, and would only apply for dealing with that particular bank.

A “continuing” or “enduring” power of attorney allows the power of attorney to continue in the event of mental incapacity. Other powers of attorney note specific periods of time in which they are in effect; for example, if you are planning to be out of the country for a while and need to have your affairs managed in your absence.

Another type of power of attorney, called a “Power of Attorney for Personal Care” in Ontario, allows someone else to make decisions on your behalf regarding housing or health care.

## Establishing a Power of Attorney

In all cases, when establishing a continuing power of attorney for your property (including financial assets) the following conditions apply:

- You must be mentally competent to give or revoke a power of attorney. To be considered mentally competent you must be able to show that you:
  - know how much property you have and its approximate value,
  - are aware of your obligations to dependents,

- understand the authority you’re granting to your attorney,
- know that the attorney has to account for the decisions they make about your property, and
- know that you may revoke the power of attorney as long as you are mentally capable.

- Powers of Attorney for Property become valid immediately (unless otherwise stated in the document).
- Powers of attorney cease upon death at which time your Will comes into effect.

Without powers of attorney in place, your affairs could be administered by a Public Trustee (Public Curator in Quebec), who is an agent of the government. While this person has certain legal obligations to manage your assets fairly, your family’s views and needs might not be fully taken into consideration.

One consideration for you when establishing a power of attorney is to name alternates in the event that the person you’ve selected is unable to take on the responsibility. As an added level of protection, you may want to appoint co-attorneys to manage your finances and property. A family member or trusted friend can provide the details of your personal needs and wishes, while a professional can provide the



knowledge and experience required to manage your financial affairs.

## Revisit Regularly

Revisiting powers of attorney should be done on a regular basis. And just as you would reassess your financial position after any major life events – such as marriage, divorce, or the birth of a child – your powers of attorney should be updated as well.

Like Wills, this area of the law falls under provincial jurisdiction. As the

law varies from province to province, you should consult your legal advisor regarding specific provisions that apply in your province. While you do not require a lawyer to establish a power of attorney, if your financial affairs are complicated, it is highly recommended. Your financial advisor may be able to provide a referral to a qualified legal advisor if you do not have one.

Canadians are increasingly aware of the importance of planning for a long, financially sound retirement. By

establishing appropriate powers of attorney as part of that sound plan, you can make sure that you and your loved ones are taken care of in the event of the unexpected.

**Note:** An enduring Power of Attorney is variously described, in different provinces, as continuing, enduring or durable Power of Attorney, or mandate given in anticipation of the mandator's incapacity in the Province of Quebec.

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