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Ontario's Power of Attorney Laws

This booklet contains instructions for a Continuing Power of Attorney for Property.

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 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.

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 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.

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.

Power of Attorney for Personal Care

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

Decisions About Personal Care

If you become mentally incapable, who will decide where you will live? How you will dress? What you will eat? What health care you will receive? How your safety will be assured? Under the Substitute Decisions Act, the person you choose as your attorney for personal care will make these decisions for you.

This is not the only form you can use to make your power of attorney for personal care. 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 of the Substitute Decisions Act, 1992.

The Substitute Decisions Act allows you to appoint someone you trust, in advance, to make decisions for you if you become mentally incapable. You may use this form to give a person of your choice the authority to make decisions about your PERSONAL CARE should you become mentally incapable. Decisions about personal care involve things such as where you live, what you eat, and the kind of medical treatment you receive. The person you appoint is called your “attorney for personal care”. You may appoint more than one attorney if you wish.

To appoint an attorney for personal care, you must be 16 years of age or more and have the mental ability to know whether your attorney truly cares about you and that he or she may make personal care decisions for you if necessary. You may give your attorney special instructions about the particular kind of care you want - or don't want - in certain situations. If you wish to give instructions, there is a space on the form where you can write them down.

Remember, you are not required to appoint an attorney for personal care. This is **your** choice.

Giving a power of attorney is a very serious matter. Your attorney may become responsible for profoundly important decisions about your well-being and quality of life. If you decide to appoint an attorney for personal care, it is important that you do so of your own free will, without pressure from anyone else.

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.

It is important to know that by making this power of attorney, you revoke (cancel) any other power of attorney for personal care 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 the necessary changes may be made to this form.

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 from the statute has been described 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.

Remember, this form does NOT allow decisions to be made about your property or finances. If you want to appoint an attorney for your financial decisions you can make a separate document called a “Continuing Power of Attorney for Property.”

Part 1:

Appointing Your Attorney

Read this part carefully before you complete this form.

Decide who you want to appoint as your attorney for personal care – a family member or close friend, for example. (The word “attorney” does not mean “lawyer.”)

The person you appoint should be someone you know very well and whom you trust completely with your personal decisions.

Talk to that person and make sure that he or she is willing to be your attorney.

The person you appoint must be 16 years of age or more.

Certain people are not allowed to be your attorney.

Do not appoint anyone who provides you with “health care or residential, social, training, or support services for compensation” unless that person is also your spouse, partner, or relative.

For example, do not name any of the following people if they are paid (by you or someone else) to provide services to you *unless* that person is also related to you or is your spouse or partner:

- your landlord;
- any person who provides care for you in the place where you live;
- your social worker, counsellor, teacher;
- your doctor, nurse, therapist, or other health care provider;
- your homemaker or attendant.

You can name more than one person to be your attorney for personal care. You are not required to do so.

If there is more than one person you want involved in your personal care decisions, you may wish to consider appointing more than one attorney. On the other hand, you may decide not to name more than one attorney if you are concerned about the possibility of disagreements, or if you believe that it would be too difficult for your caregivers to deal with more than one person. 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. But if you name two people to be your attorneys and do not say how they should make your decisions or who should make which types of decisions, the law says they must make all your decisions together.

You are allowed to appoint different people for different categories of decision-making. For example, you could appoint one person to make your health care decisions and someone else to make your other personal decisions (e.g. housing, food). If you do this, write the name of each person and the category of personal care decisions to which they are restricted (e.g. housing, nutrition, health, safety, hygiene or clothing) in Part 5 of the form.

If you decide that your attorneys are going to make decisions together, it is a good idea to specify how disagreements should be 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.

Please note that you cannot appoint the Public Guardian and Trustee (PGT) as your attorney for personal care 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 attorney’s name in the space provided.

Part 2: Joint or Separate Attorneys

(Fill in 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). If you have appointed more than one attorney in this form, *the law will require them to make each decision 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.

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 decisions. You may also wish to avoid the risk of inconsistent decisions that may occur as a result of attorneys acting separately.

If you have named more than one attorney and you want them to be authorized to make decisions separately from one another, write the words "jointly and severally" in the space provided in Part 2. ("Jointly and severally" is a legal term which means "together and separately.")

Part 3: Substitute Attorney

(This part is optional.)

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 make important decisions about your care. 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 decision-making.

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

If you decide to appoint a substitute attorney, you should think carefully about who to appoint. The restrictions on who is allowed to be your attorney, described in Part 1, apply to your substitute.

To name a substitute attorney, complete Part 3.

Part 4: Authority of Attorney(s)

This part of the form is very important. It tells your attorney, and your caregivers, the categories of personal care that your attorney is allowed to decide about if you become mentally incapable.

This part gives your attorney(s) the authority to make decisions about **any** category of personal care for which you are mentally incapable. This may include decisions about your health care, housing, safety, hygiene, clothing and nutrition. Your attorney will have first right to give or refuse consent to your medical treatment if you cannot do so.

It is important to understand that no matter what authority is given to your attorney in this document, he or she is only allowed to make decisions about those aspects of your personal care that you cannot make yourself. For example, if you become mentally incapable of making decisions about health care but can still make decisions about other personal care matters, such as housing or safety, you would still have the right to make your own decisions in these areas.

Although you may limit your attorney(s) to only specific categories of personal care (e.g. health care, shelter, nutrition, clothing, safety or hygiene) by writing restrictions in Part 5, think carefully before you do so. If you become incapable of making decisions in a particular area and your attorney does not have authority to decide for you, it may be necessary for the Court to appoint a guardian.

Part 5: Instructions, Conditions and Restrictions

(This part is optional.)

You may, if you wish, give your attorney(s) instructions about specific decisions that you want made in certain circumstances. This is different from saying what areas of authority your attorney has. You have already done this in Part 4.

Giving instructions means telling your attorney what decision to make in a particular situation. For example, you have given your attorney the right to make decisions about where you live but you may want your attorney to keep you in your own home as long as possible. Or you may want to ensure that your attorney observes your religious beliefs when deciding about your food.

You can be very specific in your instructions or give your attorney some general guidelines to follow when making decisions.

The most common type of instruction is about health care. You may be familiar with the idea of a “living will” in which a person may decline certain treatment, such as artificial life supports, in the event of a terminal illness. This is **one** type of instruction that you can make. But remember, you can give instructions about *any* category of personal care in which your attorney has decision-making authority.

Your attorney for personal care can only make decisions about your personal care if you have become mentally incapable of making decisions yourself. If you choose, you can require that your attorney get confirmation of your incapacity before he or she acts and specify how you want this confirmation to be obtained.

If you wish to give your attorney instructions, here are some things you may want to consider doing:

- Put your instructions in words your attorney(s) can understand.
- If you give specific instructions, be very clear as to the type of situation in which the instruction must be followed.
- Be realistic in your choices.
- Talk to your attorney(s) about your instructions to make sure that he or she really understands what you are saying. It is helpful if you explain the values and beliefs which underlie your instructions.
- If you decide to give instructions about health care, talk to your health care provider about your current health and the kind of medical treatment you might face in the future. Be aware that medical language can be very specific, so make sure that what you write actually expresses what you want to say.

Some organizations and individuals offer very detailed forms in which you can record your choices about medical treatment. If you have already completed such a form you may wish to attach it to this power of attorney. If you do attach such a document, it would be wise to say, in this part of the form, what the document is and the date it was signed. Initialing each page of the document you attach is also a good idea.

The law requires that your instructions must be followed by your attorney unless it is impossible for him or her to do so. For example, your attorney cannot be required to do something which is against the law.

But remember, this section is optional. You may choose not to write any instructions to your attorney in this form. It's up to you. Your attorney must still follow any other instructions or wishes you may express about your care while you are capable of making such choices. But you should be sure to communicate these wishes to your attorney!

If you do not provide any instructions, your attorney(s) must make decisions according to what he or she believes is in your best interest at the time.

You may also place conditions or restrictions on your attorney's authority. For example, you might want your attorney to consult with specific people (such as family members or your religious advisor) before decisions are made. If you have named more than one attorney, you may want to specify whose decision will be followed if there is a disagreement, or you may restrict the category of personal care decisions that each attorney can make.

Note: These guidelines do not cover instructions authorizing the attorney to exercise special additional powers such as a forced assessment or admission to a psychiatric facility. These require special procedures and are not covered in this package. You should seek professional advice if you need more information.

Part 6: Your Signature

Read each page of the form over carefully before you sign it. [Note: Those who are providing assistance to someone who cannot read this form should see "Additional Guidelines."]

Before you sign, be sure that:

1. You understand the authority your attorney may have.
2. You trust your attorney to act responsibly and follow any instructions you may provide.
3. You are giving this power of attorney of your own free will.
4. You have carefully considered obtaining advice from a lawyer and your health care providers.

You must sign in front of two witnesses as described in Part 7.

If you are sure that the form says what you want it to say, sign your name in the space provided.

After you have signed the form, print or type the date and your address in the appropriate space.

Part 7: Witness Signatures

The law requires that two people witness your signature.

Both of the witnesses must be present together when you sign.

Certain people are not allowed to sign as your witnesses; these people are listed in Part 7 of the form.

After you have signed, the witnesses should each sign their names in **Part 7** of the form, in your presence and the presence of each other.

Additional Guidelines

What to do if the person making this document cannot read:

Someone should read the complete form to the person giving the power of attorney in the presence of both witnesses.

Then, if satisfied that the person understood it, the witnesses should insert and complete the following clause on the form above the line where they sign:

"This Power of Attorney for Personal Care was signed by

(name of the person giving the power of attorney)

after it was read to him/her in our presence and he/she appeared to understand it and approve it."

What to do with this form after it is signed:

You may wish to have the form reviewed by an expert advisor. If the form is not completed properly, it may not be valid.

It is advisable to tell your family, lawyer, health care providers, and anyone who provides you with care, the name, address and telephone number of your attorney(s). Keep them updated regarding any change in your attorney's address or telephone number.

You may give the original document to your attorney(s) or keep it in a safe place where the attorney(s) can locate it quickly if necessary.

Do not return this completed form to the Office of the Public Guardian and Trustee.

It is a good idea to keep at least one photocopy of the document. If possible, keep it with you,


with the current address and telephone number of your attorney(s).

Revoking this Power of Attorney:

You have the right to revoke (cancel) this power of attorney at any time as long as you are capable.

If you decide to revoke this document, you must write the revocation down on paper, sign and date it, and have it witnessed in the same way as this document. Notify your attorney, caregivers and all the people you told about your power of attorney.

Detach Card: You may wish to complete and detach this card and keep it on your person for easy access in case the information is needed in an emergency.

 Ontario

Office of the Public Guardian and Trustee

IMPORTANT INFORMATION

(This is not a power of attorney.)

I _____ have appointed the following as my power(s) of attorney for:

PROPERTY

Name: _____
Address: _____

Telephone: _____
Date appointed: _____

PERSONAL CARE

Same as above, or

Name: _____
Address: _____

Telephone: _____
Date appointed: _____