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# Ontario's Power of Attorney Laws

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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

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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.

# Continuing Power of Attorney for Property

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

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## 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 in accordance to 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.

**The 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

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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.

## **Part 2:**

### **Joint or Separate Attorneys**

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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**

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(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)**

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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**

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(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.

You can put other types of conditions and restrictions in your power of attorney if you wish. Some examples of such conditions and restrictions are:

- requiring your attorney to consult with specific people (e.g. family members, financial advisors) before certain decisions are made;
- specifying the types of investments your attorney may or may not make;
- requiring your attorney to give priority to certain people in making loans or gifts on your behalf;
- specifying how disagreements will be resolved if you have named more than one attorney.

These are just some examples of the types of conditions and restrictions you may want to think about. But remember, you are not required to put anything in this section.

## Part 6: Date of Effectiveness

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This document will give your attorney legal authority *as soon as it is signed and witnessed unless you specify otherwise in this form*. This does not prevent you, however, from looking after your own affairs while you are still capable of doing so. In other words, your attorney will not necessarily begin to manage your financial affairs right away. You and your appointed attorney may agree, for example, to leave this document in a safe place or with a trusted third person, such as your lawyer, accountant or other professional advisor. You can give written directions to the third person about when the power of attorney may be released to the person you have appointed. You would continue to manage your own financial affairs in the meantime.

This approach means that your attorney will not have to go through formal procedures to prove to third parties, such as banks and pension sources, that the power of attorney has come into effect.

Alternatively, you may wish to exercise more control over when the power of attorney may be used. You may state in **Part 5** that the document is only to come into effect on a certain date or when something specific happens. For example, you can say in this document that it won't take effect unless you become mentally incapable of managing your property. If you place this condition in your power of attorney, it is advisable to give very specific directions about how your mental incapacity is to be decided. You could, for example, say that a letter from your doctor or another trusted person which states that you are no longer mentally capable of managing property is sufficient proof.

If you don't indicate how your mental capacity is to be reviewed in your power of attorney, your attorney may have to use some of your funds to pay for an assessor to judge your capacity. An assessor is a person qualified to make this decision.

If you do wish to restrict the circumstances in which the power of attorney may be used, **write this in Part 5**.

But remember, your property will still belong to you and must be managed by your attorney in your best interests and in accordance with the law.

## Part 7: Compensation

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Your attorney(s) is entitled to take payment at a rate set out in the law, unless you say otherwise. The amounts are the same as those allowed to "guardians" of property (people who are appointed under the Substitute Decisions Act by the Court or by the Public Guardian and Trustee). Effective April 1, 2000, the rates permitted to guardians and attorneys of property are 3 percent on monies received and paid out and 3/5 of 1 percent on the average annual value of the assets. If your attorney acted under your power of attorney before April 1, 2000, the rates permitted were 2½ percent on monies received and paid out and 2/5 of 1 percent on the average annual value of the assets.

If there is more than one attorney, they will have to share the permitted amount.

If you want to prohibit your attorney(s) from taking any payment or you want to set a specific amount yourself (such as a percentage of your income or a fixed yearly amount), you can do this by writing your instructions in **Part 5** of the form.

*If no specific instruction is made in your power of attorney, your attorney may use his/her discretion in accepting compensation allowed for by the law.*

## Part 8: Your Signature

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

Before you sign, be sure that:

1. You understand the power your attorney will have and when the document will become effective.
2. You trust your attorney to act in your best interests.
3. You are signing this document of your own free will and not because of pressure from anyone else.
4. You have carefully considered obtaining advice from a lawyer or other trusted advisor.

You must sign in front of two witnesses as described in **Part 9** of the guidelines.

If you are sure that the form says what you want it to say, sign your name in **Part 8** of the form.

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

## Part 9: Witness Signatures

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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 9 of the forms.

After you have signed, the witnesses should each sign their names in **Part 9** of the form, in your presence and in the presence of each other.

## Additional Guidelines

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**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 continuing power of attorney for property was signed by*

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*(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 it reviewed by an expert advisor. If it is not completed properly, it may not be valid. It is advisable to tell your family, lawyer, and any financial institutions you deal with the name, address and telephone number of your attorney(s). Keep them updated regarding any change in your attorney’s address or telephone number.

**Please do not return this completed form to the Public Guardian and Trustee's Office.**

It is not necessary to register your continuing powers of attorney for property anywhere.

**You may give the original document to your attorney(s), leave it with a trusted person other than your attorney to hold it for safekeeping (with instructions about when it**


may be released), or keep it in a safe place where the attorney(s) can locate it quickly if necessary.

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